

IN THE MATTER OF LICENSE NO. R 4151 AND MERCHANT MARINER'S
DOCUMENT Z 386645 AND ALL OTHER SEAMAN'S DOCUMENTS

Issued to: James J. CLYNE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1893

James J. CLYNE

This appeal had been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 17 February 1971, an Administrative Law Judge of the United States Coast Guard at New York, N. Y., suspended Appellant's seaman's documents for six months on eighteen months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as a radio operator on board SS MURMACDRACO under authority of the document and license above captioned, Appellant:

- 1) on or about 18 March 1973, at Yokohama, Japan, wrongfully removed the radar repair manual from the bridge where it had been placed by the master for use by radar repairmen;
- 2) at about 1300 on the same date, wrongfully secured the main source of power for bridge electronic equipment;
- 3) at about 1700 on the same date, again wrongfully secured the main source of power for bridge electronic equipment; and
- 4) on or about 7 June 1970 at sea, wrongfully failed to carry out a direct order of the master to turn on the VHF phone.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence voyage records of MORMACDRACO and the testimony of eyewitnesses.

In defense, Appellant offered in evidence his own testimony and certain radio and medical records.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specifications had been proved. He then entered an order suspending all documents issued to Appellant for a period of six months on eighteen months' probation.

The entire decision was served on 19 February 1971. Appeal was timely filed on 1 March 1971 and perfected on 16 August 1971.

FINDINGS OF FACT

On all dates in question, Appellant was serving as a radio officer on board the SS MORMACDRACO and acting under authority of his license and document.

On 18 March 1970 the master of MORMACDRACO discussed the ship's radar with Appellant at Yokosuka, Japan. The master advised Appellant that shore-side personnel were coming aboard to make repairs. The master took the radar maintenance-repair log, and possibly a manual, to the bridge for the use of the repairmen.

Before the repairmen came aboard Appellant took the log from the bridge and locked it in his office before going ashore. Also before going ashore at about 1300 Appellant turned off all power to the electronics equipment on the bridge from the master control in the radio shack. There was on the bridge a control to provide or shut off power to the radar but with the main switch thrown on the bridge control was rendered useless.

After the repairmen came aboard, no work could be done until entry was obtained to the radio room and power was supplied through the main switch. At about 1700, with repair work still going on, Appellant returned to the vessel and again shut off the main power supply, causing disruption to the work.

On 7 April 1970, when the vessel was proceeding from Savannah to the Chesapeake, the master ordered Appellant to turn on the VHF. Appellant did not do so.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that the Administrative Law Judge misconstrued the evidence and found against the weight of the evidence.

APPEARANCE: Zwerling & Zwerling, by Irving Zwerling, Esq., New York City.

OPINION

I

Appellant argues that the decision is contrary to the weight of the evidence, although no specifics are given. This must be construed as meaning that the Administrative Law Judge's decision is not based upon substantial evidence.

The evidence upon which the Administrative Law Judge made his findings is chiefly of the eyewitness category with no real probability of unreliability. In addition, in rejecting Appellant's versions of certain acts, the Administrative Law Judge carefully evaluated the inherent credibility of Appellant's explanations. Thus, he did not accept Appellant's urging that his securing power at 1300 on 18 March was innocent because Appellant had the habit of securing everything when he went ashore. The reasons for rejection are twofold:

- (1) Appellant would not have the habit of securing all power whenever he left the radio room or the ship since power could be needed at such times; especially since
- (2) Appellant was well aware that power would be needed that afternoon because of the work to be done by the repairmen.

II

Appellant speaks more particularly in his brief of the Administrative Law Judge's misunderstanding of the nature of the book removed from the bridge. The specification found proved referred to the wrongful removal of a "radar repair manual" from the bridge. Appellant admits that he took a book from the bridge but insists that, since what it was was a radar repair log, the specification was not proved.

While there is some confusion in the record as to the nature of the book involved, Appellant, while implying that others were unreliable because they did not use correct terminology, himself contributed to the confusion by mixing terminology. Out of it all comes the fact, admitted by Appellant, that he removed the log from the bridge, knowing that it would be needed by the shoreside repairmen. The findings of fact now reflect this apparent discrepancy. Kuhn v Civil Aeronautics Board, Ca D. C. (1950), 183 F. 2nd 839.

Appellant's proposed justification for the removal, that he needed the log to make a necessary entry and simply forgot to

return it, was rejected by the Administrative Law Judge with good reason, especially since the entry actually made by Appellant was not a routine entry of anything but was a diatribe against the master for his stupidity.

III

Appellant also complains that the order is too severe. Normally I will not question the propriety of an order entered by the trier of facts unless it appears arbitrary or capricious. Here the Administrative Law Judge, in determining an appropriate order, specified that he had considered certain exhibits, photographs, which had evidentiary pertinence only to two specifications which had been dismissed. It would first appear to be error for these to have been considered in connection with an order based upon other, entirely different, offenses found proved. From what the Administrative Law Judge said, however, it can be seen that the use of these exhibits, far from operating to the prejudice of Appellant, actually served him well, because the Administrative Law Judge deduced that from all he had before him there "could" have been a "personality conflict" with the master of the vessel. I am far from persuaded that disobedience of orders or derangement of the orderly conduct of ship's affairs may be excused or mitigated by the existence of a "personality conflict," but Appellant has been the beneficiary of such a concept and I will not disturb as "too severe" an order in which the trier of facts has already extended such a benefit.

ORDER

The order of the Administrative Law Judge dated at New York, N. Y., on 17 February 1971, is AFFIRMED.

C. R. BENDER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 19th day of October 1972.

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