

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-67692
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Hugh C. McMARRAY

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1903

Hugh C. McMURRAY

This appeal has 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 20 January 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 outright plus six months on 12 months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as A.B., on board SS MORMACRIO under authority of the document above captioned, Appellant:

- (1) on 17 October 1969 did wrongfully assault and batter a fellow crewmember, while the vessel was at sea;
- (2) on 22 October 1969 did wrongfully fail to obey a lawful order of the Chief Mate, to present the "Medical Report of Duty Status" form at Baltimore, Maryland; and
- (3) on 23 October 1969 did wrongfully desert the vessel at Baltimore, Maryland, after being ordered to remain aboard by the Chief Mate.

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 excerpts from the vessel's shipping articles and official log and testimony by the Master and four crewmembers.

In defense, Appellant offered in evidence his own testimony, notes of the Investigating Officer, the "Medical Report of Duty Status" form, and a clinical abstract from USPHS Hospital, Baltimore, Maryland.

On 20 January 1971, the Administrative Law Judge rendered a

written decision in which he concluded that the charge and specifications had been proved. He entered an order suspending all documents issued to Appellant for a period of six months outright plus six months on 12 months' probation.

The entire decision was served on 1 February 1971. Appeal was timely filed on or about 22 February 1971.

FINDINGS OF FACT

Between 17 and 23 October 1969, Appellant was serving as A.B. on board the SS MORMACRIO and acting under authority of his document while the ship was at sea and in the port of Baltimore, Maryland.

On 17 October 1969, Appellant, in the course of an argument in the messroom, struck a crewmember on the face. During the ensuing struggle, Appellant clenched the crewmember's thumb in his teeth, whereupon the latter struck him on the head with a bottle. The Chief Mate, having been summoned by a crewmember, attended to the wounds of the two men, notably a profusely bleeding laceration of the Appellant's head. Appellant was placed in the ship's hospital until the vessel arrived in Baltimore on 22 October whereupon he was provided a Master's Certificate for the USPHS Hospital. At the hospital he was classified "Not fit for duty until further evaluation. Should seek evaluation within one week." The Medical Report of Duty Status contained in the space captioned "to return to clinic," the handwritten words "Baltimore tomorrow 10-23-69."

On the morning of 23 October, the Chief Mate inquired whether Appellant had his duty status slip. Appellant exhibited the slip and stated that he was "not fit for duty," but refused to comply with the Chief Mate's order that he give him a copy. This incident was reported to the Master who ordered Appellant summoned to his office. The Chief Mate encountered Appellant prepared to go ashore and ordered him to remain aboard and report to the Master's office. Refusing to comply, Appellant left the ship taking all of his belongings except some work clothes.

He did not return to USPHS Hospital, Baltimore, but travelled to New York where he boarded the ship at payoff.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that the findings, opinion and order of the administrative law judge are arbitrary, capricious, contrary to law and against any reasonable inferences from the facts.

APPEARANCE: Appellant, pro se.

OPINION

While the basis for appeal in this case is quite vague, it would appear to be reducible to two propositions: that the findings of fact are not warranted by the evidence and that proper findings of fact would fail to support the specific allegations of misconduct.

Concerning the first point, it need only be said that it is well within the province of the administrative law judge to weigh the evidence on the basis of his perception of the credibility of the various witnesses. He has not only done so in this case, but has provided an explanation of the grounds upon which he assessed that credibility. The record provides no basis whatsoever for any present determination that he either erred in his assessment or abused his discretion.

As to the second point, it is clear that the findings of fact hold more than adequate support at law for the findings of misconduct as alleged in the specifications found proved. It was found that Appellant struck the first blow in the scuffle, and this constituted an assault and battery. It was found that the Chief Mate ordered Appellant to give him his duty status slip. Appellant's refusal to do so constituted failure to obey a lawful order.

It was found that Appellant left the ship against orders with the avowed intention of seeking medical care, took substantially all of his belongings and did not return until payoff in another port. If, as Appellant testified, he was told by the hospital staff that he could not be treated until the "end of the week" and that he could go to the hospital in New York, he had a duty to return to the ship and accompany it to New York. Yet there is no evidence that he did so. That these facts establish desertion is clear from Decision on Appeal No. 447. There was no justification for Appellant's absence and the facts show his intent to remain ashore until payoff.

ORDER

The order of the Administrative Law Judge dated at New York, N.Y., on 20 January 1971, is AFFIRMED.

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

Signed at Washington, D. C., this 29th day of December 1972.

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