

IN THE MATTER OF LICENSE NO. 333863
MERCHANT MARINER'S DOCUMENT NO. Z-915627-D2
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Joseph F. O'CONNOR

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1907

Joseph F. O'CONNOR

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 18 March 1968, an Administrative Law Judge of the United States Coast Guard at Portsmouth, Va., revoked Appellant's seaman's documents upon finding him guilty of negligence. The specifications found proved allege that while serving as a Third Assistant Engineer on board the United States SS U.S. ADVENTURER under authority of the document and license above captioned, on or about 26 January 1968, Appellant:

- (1) left his assigned engineroom watch without relief and retired to his bunk;
- (2) while on watch became intoxicated to the extent that he was unable to perform his assigned duty; and
- (3) by absenting himself from his assigned duties contributed to a casualty to the vessel's port boiler.

At the hearing, Appellant did not appear. The Administrative Law Judge entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence voyage records and the testimony of two engineering officers.

There was no defense.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and the First and Third specifications had been proved. He then entered an order revoking all documents issued to Appellant.

The entire decision order was served on 30 March 1971. Appeal was timely filed on 16 April 1971.

FINDINGS OF FACT

On 26 January 1968, Appellant was serving as a Third Assistant Engineer on board the United States SS U.S. ADVENTURER and acting under authority of his license and document while the ship was in the port of Sunny Point, North Carolina. On that day Appellant was assigned as the in-port engineer on watch from midnight to 0800. Appellant properly assumed the watch with the normal amount of machinery in operation. While on watch Appellant was responsible for all the engineering systems and was assisted by a Fireman. Appellant's primary watch station was in the engineroom where he could assure adequate performance of assisting personnel, be alert for malfunctions, and take the necessary actions to maintain normal engineering operations.

At an unknown time during his watch between 0045 hours and 0750 hours the Appellant departed the engineroom without permission and without having been relieved of his duties. At 0750 he was found asleep in his quarters and could not be awakened. Repeated attempts to awake him were of no avail. Appellant's room and breath were permeated with the odor of alcohol. Appellant awoke sometime near noon and went ashore.

Prior to 0750 the Fireman on watch was experiencing difficulty in maintaining an adequate water level in the port boiler and called the First Assistant Engineer when Appellant could not be found.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that Appellant was never notified of a hearing.

APPEARANCE: Appellant, pro se.

OPINION

Notice and an opportunity to be heard are essential in administrative proceedings but actual appearance is not a necessary condition. There is evidence in this case that notice of hearing was properly served. There is likewise no error, per se, in

holding a hearing in absentia.

There is sworn testimony that Appellant on 30 January 1968 was advised of the boiler casualty which occurred on his watch by a fellow shipmate, an engineering officer. On this date he also returned to the vessel and was paid off by mutual consent. The Coast Guard investigating officer testified that he found Appellant in Southport, North Carolina, the next day, 31 January 1968 at 1800 hours. At this time, he testified that Appellant was advised of the investigation of the boiler casualty and that there was basis to charge him with negligence. Appellant was advised of the three specifications, as required, together with a notice of the time and place of the hearing. Appellant was advised as to the nature of the proceedings and his right to representation by counsel. Appellant was given a copy of the charges and specifications and acknowledged the service of same by signature. On the day of the scheduled hearing Appellant failed to appear. The conclusion of the hearing was delayed to afford him a further opportunity to appear. I find no reason or cause to dispute the testimony offered and find that Appellant did have adequate notice and an opportunity to be heard.

Appellant alleges that acknowledgement of the charges and specifications by signature is not his. This allegation supported by an unsworn statement of fact is not very persuasive. A cursory examination of his records on file reliably supports the fact that the signature acknowledging receipt is, in fact, that of Appellant. Further, Appellant's credibility is also considered unreliable in light of the following information.

Appellant also alleges that he had no knowledge of any action pending against him until 30 March 1971. This is simply not true. Personnel records and correspondence indicates that Appellant appeared at the Marine Inspection Office at San Francisco during mid December 1968 with professional counsel for service of the Decision and Order rendered on 18 March 1968. At this time Appellant deposited his merchant mariner's document and departed; while his attorney was consulting with officials and prior to being formally served with the Decision and Order. Appellant has, through his own actions, successfully evaded and frustrated formal service of Decision and Order for over three years.

CONCLUSION

I conclude that there was adequate notice of hearing, that the

charges and specifications were properly served and that Appellant was given the opportunity to be heard. Failing to appear, the procedure followed for an "in absentia" hearing was proper and within established time tested regulatory provisions under 46 CFR 137.20-25. I also conclude that the order of revocation was not excessive in light of Appellant's record dating back to 1963.

ORDER

The order of the Administrative Law Judge at Portsmouth, Va., on 18 March, is AFFIRMED.

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

Signed at Washington, D.C., this 30th day of January 1973.

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