

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-765625-D2
AND ALL OTHER SEAMAN'S DOCUMENTS

Issued to: George D. POTTS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1963

George D. POTTS

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 12 January 1973. an Administrative Law Judge of the United States Coast Guard at Long Beach, California, suspended Appellant's seaman's documents for three months on six months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as an A. B. on board the SS WESTERN COMET under authority of the document above captioned, on or about 18 December 1971, Appellant failed to join the vessel on her sailing from Augusta, Sicily.

At the hearing, Appellant elected to act as his own counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence excerpts from the Shipping Articles and the Official Ship's Log.

In defense, Appellant offered in evidence his own testimony and was give a continuance to produce certain medical records, however, he failed to appear on the continuance date.

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

The entire decision was served on 18 January 1973. Appeal was timely filed on 25 January 1973.

FINDINGS OF FACT

On 18 December 1971, Appellant was serving as an A. B. on board the SS WESTERN COMET and acting under authority of his document while the ship was in the port of Augusta, Sicily.

On that date at approximately 2400 hours the SS WESTERN COMET made her regularly scheduled sailing from Augusta, Sicily, and Appellant, without permission, failed to join the vessel upon her sailing.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that Appellant was unable to attend the hearing because he was in jail on the date set for the hearing.

APPEARANCE: Appellant, pro se.

OPINION

Appellant contends that he was unable to attend the hearing or notify the Administrative Law Judge of his inability because he was in jail, and on that basis he requests a new hearing. Appellant attended the hearing on 11 December 1972 and was give a continuance until 18 December so that he could obtain certain medical evidence to present in his defense. He was arrested on 16 December 1972 and was in fact in jail on 18 December. However, when it became apparent that he would not be able to attend the hearing, it was incumbent upon Appellant to notify the Administrative Law Judge of that fact. Appellant's letter presents no indication that he even attempted to give notification; it contains no more than an assertion that he was unable to phone out, which is contrary to the statement on the booking form that he could make phone calls at the convenience of the jailer.

Appellant's lack of interest is further evidenced by the fact that he was released from jail on 22 December 1972, but did not attempt to contact the Coast Guard or the Administrative Law Judge until after he was served with the order over a month later.

By failing to appear at the hearing on 18 December 1972, Appellant waived his right to present further evidence in his defense. A prima facie case was established by entry into evidence of the Official Log entry showing that Appellant had failed to join without permission, and this was not rebutted by Appellant's unsupported statements to the contrary. Therefore, there is evidence of a reliable probative nature to support the Administrative Law Judge's findings and order.

On appeal it is the burden of the Appellant to show justification for failure to give notice of inability to attend his hearing. A mere unsupported assertion that he was unable to call taken together with his failure to attempt to communicate with the

Administrative Law Judge upon release from jail does not meet this burden.

ORDER

The order of the Administrative Law Judge dated at Long Beach, California, on 12 January 1973, is AFFIRMED.

T.R. SARGENT
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D.C., this 29th day of June 1973.

INDEX

Failure to Join

Foreign port

Hearings

Absence from, due to jailing

Absence from, with inexcused failure to
communicate with Coast Guard

Absence from, as waiver of right to present
evidence

In absentia proceedings

Jailing as excuse for absence, inadequate

Involuntary absence, effect of

Party has burden to appear or arrange a

Different date

Prima facie case

Log entries, sufficiency of

Failure to join