

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MERINER'S DOCUMENT NO. Z-1137 867-D6  
Issued to: Lowell T. BAILEY

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

2081

Lowell T. BAILEY

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 21 June 1971, an Administrative Law Judge of the United States Coast Guard at San Francisco, California, suspended Appellant's seaman's document for six months outright upon finding him guilty of misconduct. The specifications found proved allege that under authority of the document above captioned, Appellant:

- (1) While serving aboard the SEATRAN MARYLAND as a Fireman/Watertender,
  - (a) on 7 February 1969, wrongfully failed to join his vessel on its departure from Sattahip, Thailand.
- (2) While serving aboard the SS RAPHAEL SEMMES as a Fireman/Watertender,
  - (a) on 9 April 1969, Appellant wrongfully failed to join his vessel on its departure from Qui Nhon, South Viet Nam;
  - (b) on 9 May 1969, Appellant was wrongfully absent from his vessel and duties; and
  - (c) on 20 June 1969, turned over the last hour of his 2000 to 2400 port watch to another crew member without authority and was thereafter absent from his vessel and duties. Appellant then failed to stand his 0800 to 1200 sea watch on 21 June 1969.

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

The Investigating Officer introduced in evidence four exhibits, including entries taken from the log books of both

vessels.

In defense, Appellant offered in evidence his own testimony.

At the end of the hearing, the Judge reserved decision. He entered a written order suspending all documents, issued to Appellant, for a period of six months outright on 21 June 1971.

The entire decision and order was served on 22 April 1976. Appeal was timely filed on 27 April 1976.

#### FINDINGS OF FACT

On or about April 9, May 9, and June 20, 1969, Appellant wrongfully failed to stand watch and was wrongfully absent from his vessel and duties while serving aboard the SS RAPHAEL SEMMES. In addition, on or about 7 February 1969, Appellant wrongfully failed to join his vessel, the SS SEATRAN MARYLAND, at Sattahip, Thailand.

On 7 October 1969, a hearing was held regarding the charge of misconduct for the above acts. Following the presentation of evidence by the Investigating Officer and Appellant on that date, the Administrative Law Judge declared that the hearing would be continued subject to service of his Decision and Order. The Decision and Order was rendered by the Judge on 21 June 1971. A report of the hearing, dated 6 December 1971, states that an attempted delivery of service of the Decision and Order by registered mail was unsuccessful. The record indicates that Appellant has been employed as a Fire/Watertender upon a vessel of the United States since the hearing. Service of the Decision and Order and surrender of Appellant's document was finally effectuated on 22 April 1976 at Baltimore, Maryland.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that:

- (1) the delay of nearly two years between the hearing and rendering of the Decision and Order merits a reconsideration of the order of suspension for six months.

APPEARANCE: Appellant pro se.

#### OPINION

The issue to be considered in this appeal is the delay of nearly two years between the hearing and rendering of the Decision

and Order. It is noted that a delay of this magnitude does not per se constitute grounds for reversal. Each case must be individually scrutinized so as to determine any justification for the delay and possible prejudice to the Appellant which may have occurred as a result. In addition, it is vital to ascertain whether the important remedial function of the hearing has been frustrated. As it was stated in Commandant's Appeal Decision No. 1131, an unjustifiably long delay in rendering a decision:

"...tends to defeat the remedial purpose of these proceedings to act as a deterrent in the immediate future."

See also Commandant's Appeal Decision No. 1912.

The record fails to disclose any explanation for the inordinate length of time taken to render the Decision and Order. 46 CFR 5.20-175(c) charges the Judge with delivery of the written decision, "at the earliest possible date." The rendering of a decision nearly two years after the hearing is held violates both the letter and spirit of this regulation.

Appellant has been prejudiced with respect to his right to have this matter concluded as quickly as possible. If the Decision and Order had been rendered in a reasonable time following the hearing, Appellant's suspension would have terminated approximately four years ago. In view of this fact, it would be grossly unfair to permit the suspension to begin running from 22 April 1976, the date of actual service.

The remedial purpose of the hearing is determined to have been defeated by the length of time involved in rendering the Decision. Suspending of Appellant's document at this late date would not have the desired affect of furthering safety at sea.

#### CONCLUSION

The unexplained delay in rendering the Decision and Order for a period of nearly two years has resulted in prejudice to the Appellant and frustration of the remedial purpose of the hearing. In addition, a collateral issue which I feel must be addressed is the delay of approximately five years between rendering of the Decision and Order and actual service upon Appellant. The five year delay in service has no relevance in this particular case as the sole concern is the failure of the Judge to render his Decision and Order within a reasonable time. However, I stress the fact that a delay in the service of a decision caused solely by a failure to locate the seaman in question will not operate to result in its dismissal. This rule is especially applicable if it is determined that the seaman actively avoided service.

ORDER

The order of the Administrative Law Judge dated at San Francisco, California, on 21 June 1971, is VACATED.

O. W. Siler  
Admiral, U. S. Coast Guard  
Commandant

Singed at Washington, D. C., this 27th day of Oct. 1976.

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