

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 508238 and MERCHANT MARINER'S DOCUMENT
Issued to: Frankie L. BOGGAN Z-469525-D4

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2260

Frankie L. BOGGAN

This appeal has been taken in accordance with Title 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 12 December 1979, an Administrative Law Judge of the United States Coast Guard at Mobile, Alabama, suspended Appellant's documents outright for two months, plus four months on twelve months' probation, upon finding him guilty of misconduct. The specification found proved alleged that while serving as First Assistant Engineer on board SS INTREPID under authority of the documents above captioned, on or about 11 September 1979, Appellant wrongfully deserted the vessel at a foreign port, to wit: Guam, Mariana Islands.

The hearing was held at Mobile, Alabama, on 16 November 1979.

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 four exhibits.

In defense, Appellant offered in evidence two exhibits and his own testimony.

After the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then entered an order suspending all documents issued to Appellant for a period of two months plus four months on twelve months' probation.

The entire decision was served on 15 December 1979. Appeal was timely filed on 14 January 1980 and perfected on 13 May 1980.

FINDINGS OF FACT

On 11 September 1979, Appellant was serving as First Assistant Engineer on board SS INTREPID and acting under authority of his license and document while the vessel was in a port in Guam in the

Mariana Islands. On or about that date Appellant departed the vessel, taking his license and personal effects with him. Prior to his departure he notified the Chief Engineer but was never officially discharged from the service of the vessel. On 13 September, Appellant was found "Not Fit for Duty" at the USPHS Outpatient Office, Niceville, Florida. This situation continued until 8 October 1979 when Appellant was certified "Fit for Duty."

Appellant's physical problems resulted from burns sustained prior to the vessel's arrival in Guam. During the vessel's stay in port, Appellant burned his left wrist a second time, rendering it difficult for him to perform some jobs. On the date in question Appellant was assigned a task he found impossible to perform because of the injuries to his left hand. He phoned the Chief Engineer and informed that officer that he was leaving the vessel. One of his reasons for leaving the vessel was animosity towards the Chief Engineer.

Appellant never sought a master's certificate while in Guam in order to consult a physician, nor did he advise the master that he was departing the vessel. Upon departing the vessel he did not seek medical aid locally, but returned to the United States and sought medical help the morning after his arrival in Florida.

The vessel's Shipping Articles indicate that Appellant signed on: 18 July 1979 at sea-Los Angeles.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. In essence two grounds are urged to justify reversal of the decision of the Administrative Law Judge. First, Appellant urges that the preponderance of the evidence refutes certain of the findings of the Administrative Law Judge. Second, the facts as elicited justify as a matter of law Appellant's departure from his vessel without being signed off.

APPEARANCE: Donald H. Flintoft, Esq., of Houston, Texas.

OPINION

I

The Administrative Law Judge correctly relied on Decisions on Appeal Nos. 2003 and 1100 to conclude that Appellant's medical condition was insufficient justification for his desertion of INTREPID. Although his physical condition was painful at times, and ultimately was judged sufficient to render Appellant not fit for duty, his precipitous action in the circumstances of this case was not justified. While in an appropriate case denial of medical

care might justify such a summary departure, Appellant's failure properly to seek such aid precludes his use of that defense.

II

The jurisdiction of the Coast Guard over a person charged is often established by a Certificate of Shipping Articles introduced at the R.S. 4450 hearing. Absent challenge, and considering the presumption of proper execution of his duties by the officer attesting to the Certification, amenability to R.S. 4450 proceedings is established.

Jurisdiction may also be established by testimony of the person charged or others. In the instant case, in addition to a Certification of Shipping Articles, Appellant testified that he served as Third Assistant Engineer under the authority of his Coast Guard issued license aboard INTREPID. Entries from the ship's log corroborated the testimony.

In order to be liable to a charge of desertion, seamen must be properly signed - on the vessel. See 46 U.S.C. 564; 579. See also The Theodore Perry, F. Cas. 13, 880 (D. Mich. 1878). The Certification of Shipping Articles does not on its face establish that Appellant signed the Articles prior to the vessel's departure from port. Thus, an essential element of the charge of desertion is not established by evidence meeting the standard required in R.S. 4450 proceedings. 46 CFR 5.20-95(b). Desertion can be an offense only when service is obligatory; but this is not to say that a seaman may not be held accountable for his actions aboard a vessel due to defective Shipping Articles. So long as service aboard the vessel is in fact under the authority of a seaman's document or a license, other types of offenses can be reviewed in R.S. 4450 proceedings.

CONCLUSION

It should be clearly recognized that the result in this case is predicated solely upon a failure of proof with respect to an element of the offense of desertion. In light of the attendant circumstances, it would not serve the interests of justice in this case to remand for further proceedings.

ORDER

The order of the Administrative Law Judge dated at Mobile, Alabama, on 12 December 1979, is VACATED, and the charge DISMISSED.

R. H. SCARBOROUGH
Vice Admiral, U. S. Coast Guard

Vice Commandant

Signed at Washington, D.C., this 30th day of July 1981.