

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT
Issued to: Thomas P. KEYS 181 36 5647

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2413

Thomas P. KEYS

This appeal has been taken in accordance with 46 U.S.C. 7702 and 46 CFR 5.30-1.

By order dated 4 December 1984, and Administrative Law Judge of the United States Coast Guard at New York, New York, revoked Appellant's merchant mariner's document upon finding proved the charge of misconduct. The specifications found proved allege that Appellant, while serving as Able-bodied seaman aboard the SS SANTA ROSA, under the authority of the captioned document, on 8 July 1984: (1) failed to turn to for docking operations, and (2) had in his possession marijuana and valium.

The hearing was held at Philadelphia, Pennsylvania on 2 November 1984.

At the hearing Appellant was represented by professional counsel and entered a plea of not guilty to the charge and both specifications.

The Investigating Officer introduced in evidence two exhibits and the testimony of one witness.

In defense, Appellant testified in his own behalf.

The Administrative Law Judge rendered a written Decision and Order on 4 December 1984. He concluded that the charge and both specifications had been proved and revoked all licenses and documents issued to Appellant.

The Decision and Order was served on 10 December 1984. Appeal

was timely filed on 11 January 1985 and perfected on 5 July 1985.

FINDINGS OF FACT

On 8 July 1984, Appellant was serving under the authority of his document as Able-bodied seaman aboard the SS SANTA ROSA. During docking operations at Guayquil, Ecuador, Appellant failed to turn to. This incident was duly recorded by the Master in the ship's official log book.

At approximately 1630 the same day, Appellant's room was searched by the Chief Mate in the presence of the Master and Deck Delegate. During the search, five milligrams of marijuana and 86 valium tablets were found. This incident was also recorded in the official log book, accompanied by the notation "No Prescription" [sic]. Following the search, Appellant was discharged from the vessel, and he returned to the Philadelphia International Airport at his own expense.

Upon arrival in Philadelphia, Appellant was met by a special agent of the U.S. Customs Service, who had been advised of the results of the search by the shipping company. The special agent identified himself, informed Appellant that he was not under arrest, and proceeded to interview him concerning the items found in his room aboard the vessel. Appellant admitted possession and ownership of the marijuana and valium tablets, and further admitted he had used marijuana.

On 20 July 1984, upon the return of the vessel to the United States, the marijuana and valium tablets were delivered to the special agent, who then turned them over to a private laboratory for analysis.

At the hearing, the special agent testified that the laboratory analysis had showed the substances found in Appellant's room to be marijuana and valium. The laboratory report was not introduced.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant contends that the testimony concerning the laboratory findings presented by the U.S. Customs Service special agent was hearsay and was improperly admitted, that the report itself was required under the best evidence rule, and that the investigating officer's failure to subpoena the laboratory report denied Appellant the opportunity for a fair and impartial hearing.

APPEARANCE: Gerard Lavery Lederer, Esq. of Needleman, Needleman, Caney, Stein & Kratzer, Ltd., 600 One East Penn Square Bldg., Philadelphia, PA 19107.

OPINION

I

Appellant argues that the testimony of the U.S. Customs Service special agent concerning the laboratory findings should have been excluded as hearsay and that the best evidence rule requires introduction of the written report containing the chemical analyses of the substances in question. This argument is without merit.

In support of his contention, Appellant argues that Federal Rule of Evidence 1002 requires that a party seeking to prove the contents of a writing must produce the original writing and that there was no basis for the substitution of oral testimony for the contents of the original written report. Strict adherence to the Federal Rules of Evidence, however, is not required in suspension and revocation proceedings (46 CFR 5.537, formerly 46 CFR 5.20-95(a)), and hearsay evidence is not, as Appellant urges, inadmissible. (T)he evidence competent to support findings need not fulfill the prerequisites of admissibility necessary in jury trials. Hearsay evidence may be admitted and used to support an ultimate conclusion, the only caveat being that the findings must not be based upon hearsay alone. . . . The Administrative Law Judge has broad discretion as to the weight to be given evidence. The regulation which requires consideration of opposing evidence (46 CFR 5.20-95(b)) does not require hearsay evidence to be dismissed or given no weight merely because it is opposed by conflicting testimony. The aforementioned regulation only requires that the trier of fact accord hearsay such weight as the circumstances warrant. Appeal Decision 2183 (FAIRALL), appeal dismissed on Coast Guard motion sub nom. Commandant v. Fairall, NTSB Order EM-89 (1981).

Here, the special agent's testimony concerning the identity of the substances found in Appellant's room is supported by Appellant's admissions during his interview at the Philadelphia airport with the special agent, during which he admitted the marijuana and valium tablets found in his room were his and admitted having used marijuana.

Further, in his testimony at the hearing, Appellant admitted to

the ownership and possession of the substances shown to be marijuana and valium tablets. He testified that he had gone to a pharmacy in Panama seeking medication to help him sleep and that the pharmacist sold him the valium, and that the marijuana was given to him by a longshreman and he didn't have time to throw it away.

II

Appellant argues that the failure of the investigating officer to subpoena the report of analysis of the substances found in Appellant's possession denied him the opportunity for a fair and impartial hearing. This argument is also without merit.

Appellant points out that Coast Guard regulations (46 CFR 5.20-45) provide that the person charged has the right to have witnesses and relevant evidence subpoenaed, then argues that the investigating officer had a duty to subpoena the laboratory report, and that his failure to do so denied Appellant the opportunity to contest the report's findings. The identity of the substances found in Appellant's possession, however, was established by substantial evidence adduced at the hearing, and introduction of the laboratory report was not required. See Appeal Decision 2065 (TORRES), *affd* sub nom. *Commandant v. Torres*, NTSB Order EM-66 (1978). As noted above the testimony of the special agent concerning the identity of the substance and the admissions made by Appellant was properly admitted. Appellant had, and exercised, the opportunity to cross examine the special agent.

Appellant did not request the issuance of a subpoena to compel the production of witnesses or documents, and he was not deprived of his right to a fair and impartial hearing because, absent such a request, the investigating officer did not do so.

CONCLUSION

The findings of the Administrative Law Judge are supported by substantial evidence of a reliable and probative nature. The hearing was conducted in accordance with the requirements of applicable regulations.

ORDER

The order of the Administrative Law Judge dated at New York, New York on 4 December 1984 is AFFIRMED.

J.S. GRACEY
Admiral, U.S. Coast Guard
COMMANDANT

Signed at Washington, D.C. this 18th day of October 1985.

***** END OF DECISION NO. 2413 *****