

NTSB Order No.
EM-108

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D. C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D. C.
on the 31st day of May, 1984

JAMES S. GRACEY, Commandant, United States Coast Guard,

v.

STEPHEN J. MINTZ, Appellant.

Docket No. ME-100

ORDER DISMISSING APPEAL

The appellant, pro se, has appealed from a September 7, 1983 decision of the Vice Commandant (Appeal No. 2320) affirming a suspension of his seaman's document (Merchant Mariner's Document No. Z-714 745) for three months on twelve month's probation ordered by Administrative Law Judge H. J. Gardner on September 30, 1980 following an evidentiary hearing completed on September 17, 1980.¹ The suspension was premised on findings sustaining a charge of misconduct in connection with his employment as Steward Utility aboard the SS PRESIDENT POLK in December, 1979.² For the reasons that follow we have concluded that appellant's appeal must be dismissed for his failure to present an issue subject to Board review under our procedural regulations.³

Appellant's brief identifies no legal or factual basis for invalidating the conclusions reached by either the law judge or the

¹Copies of the decisions of the Vice Commandant (acting by delegation) and the law judge are attached.

²The law judge found proved specifications alleging that appellant had on three occasions failed to obey orders of the Chief Steward pertaining to appellant's custodial duties and on one occasion created a disturbance through his use of loud and profane language in a dispute with the Chief Steward.

³See 49 CFR Part 825 -- "Rules of Procedure for Merchant Marine Appeals from Decisions of the Commandant, U.S. Coast Guard."

Vice Commandant.⁴ Instead, it is devoted exclusively to a challenge to the accuracy of the transcript of the hearing conducted on the charge against appellant; a transcript appellant maintains is "incomplete and fraudulent." Apart from the fact, however, that appellant has made no effort to demonstrate how the transcript prepared by the Coast Guard differs from his recollection of the hearing itself, there is no indication that any inaccuracies in the hearing transcript, if such exist, adversely affected appellant's ability to advance objections to the Vice Commandant's decision to affirm the finding of guilty to the charge of misconduct.⁵ In such circumstances, there is no basis for the exercise of the Board's review authority.

ACCORDINGLY, IT IS ORDERED THAT:

The appeal of seaman Stephen J. Mintz in Docket ME-100 is dismissed.

BURNETT, Chairman, GOLDMAN, BURSLEY and GROSE, Members of the Board, concurred in the above order.

⁴Rule 15 of our procedural regulations, 49 CFR 825.15, states that: "[t]he only issues that may be considered on appeal are: (a) A finding of material fact is erroneous; (b) A necessary legal conclusion is without governing precedent or is a departure from or contrary to law or precedent; (c) A substantial and important question of law, policy, or discretion is involved, or (d) A prejudicial error has occurred."

⁵Appellant does state, without elaboration, his belief that "the transcript issue must somehow be adjusted [sic] one way or the other before any further proceedings in this case can begin" (Brief at 8).