

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-996496-D1 AND  
ALL OTHER SEAMAN DOCUMENTS  
Issued to: Moses Jacobs

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1517

Moses Jacobs

This appeal had 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 11 March 1965, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for three months on nine month's probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a fireman-watertender on board the United States SS EXCHEQUER under authority of the document above described, on 27 June 1964, Appellant failed to join his vessel upon her departure form Ceuta, Spanish Morocco.

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

The Investigating Officer introduced in evidence an entry in the ship's official logbook and the testimony of the Master.

In defense, Appellant testified that he missed the ship

because he went ashore for medical treatment, for his eyes, which impaired his vision; Appellant was told by the ship's agent to wait for him on the street until he returned; Appellant waited in vain for about an hour and a half (one-half hour beyond the scheduled sailing time of 2000) before making any effort to get a cab to the ship although his vision had cleared to some extent by 2000; Appellant reached the dock at 2100, in time to see the ship turning around in the harbor to depart.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved. The Examiner then entered the order mentioned above.

On 27 June 1965, Appellant was serving as a fireman-watertender on the United States SS EXCHEQUER and acting under authority of his document. Appellant stood his 0800 to 1200 watch on this date and had been relieved before the ship arrived at Ceuta, Spanish Morocco at about 1230. The scheduled departure time of 2000 was posted on the sailing board.

About 1800, Appellant went ashore with the ship's agent to receive medical treatment for his eyes. The examination and treatment of Appellant's eyes, by a physician in the town of Cueta, were completed by 1900. At this time, Appellant was not more than a mile and a half from the ship. Although his vision was somewhat impaired by the treatment, his eyes were clearing by 2000 and he could have reached the ship by cab in 10 or 15 minutes at most.

Appellant failed to return on board the ship prior to her departure at 2053. No other member of the crew missed the ship. Appellant was logged as a deserter by the Master and later repatriated on another ship.

Appellant's prior record, during nine years at sea, consists of a warning, on 6 May 1964, for desertion.

#### *BASES OF APPEAL*

This appeal has been taken from the order imposed by the Examiner. It contended that Appellant was not guilty because,

after receiving medical treatment, he waited for the agents as Appellant had been instructed to do so by the agent.

APPEARANCES: Paul C. Matthews, Esquire, of New York City, of Counsel.

*OPINION*

I am convinced that, even accepting Appellant's detailed explanation as true, he did not have reasonable cause or justification for failing to join his ship.

Appellant attempts to place the blame primarily on two factors: his poor vision after his eyes were treated and the agent's instruction to wait on the street until he returned.

With respect to the former, Appellant repeatedly tried to create the impression that he could not see well enough to get back to the ship by himself. But he admitted that his eyes had begun to clear up at 2000 and said he could see the ship turning around in the harbor at 2100. This was after it was dark. Nevertheless, being on notice that the ship was scheduled to sail at 2000, he stood on the street talking with a soldier until about 2030. By his own admission, he could not any longer place the blame on his eyesight at this time.

This leaves Appellant's version of his reliance on the word of the ship's agent, that he would return for Appellant, as his only remaining excuse. It seems obvious that, if the agent did say this to Appellant, it was only intended that Appellant should wait if he were unable to return to the ship by himself. Certainly, the agent did not intend to cause Appellant to miss the ship if it could be avoided. Furthermore, it was Appellant's responsibility to make every reasonable effort to reach the ship before her departure regardless of what might have been said by the agent. Since Appellant did not do this, he is guilty of the offense alleged.

*ORDER*

The order of the Examiner dated at New York, New York, on 11 March 1965, is AFFIRMED.

W.D. Shields  
Vice Admiral, U.S. Coast Guard  
Acting Commandant

Signed at Washington D.C., this 9th day of September 1965.

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