

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT
AND ALL OTHER SEAMAN'S DOCUMENTS NO. Z-752738-D2
Issued to: Bienvenido C. RODRIGUEZ

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1938

Bienvenido C. RODRIGUEZ

This appeal has 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 15 December 1971, an Administrative Law Judge of the United States Coast Guard at New York, New York suspended Appellant's seaman's documents for 4 months outright upon finding him guilty of misconduct. The specification found proved alleges that while serving as an A.B. on board the SS COPPER STATE under authority of the document above captioned, on or about 22 June 1970 Appellant did create a disturbance aboard ship due to intoxication.

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 excerpts from the vessel's shipping article and official log, answers to written interrogatories submitted to the Second Mate and certified copies of written statements of eight crewmembers.

In defense, Appellant offered in evidence his own testimony and answers to cross-examination interrogatories submitted to the Second Mate.

At the end of 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 four (4) months outright.

The entire decision was served on 20 December 1971. Appeal was timely filed on 11 January 1972.

FINDINGS OF FACT

On 22 June 1970, appellant was serving as an A.B. on board the SS COPPER STATE and acting under authority of his document while the ship was in the port of Singapore.

On 22 June 1970, Appellant was at the aft docking station in an intoxicated condition at a time when his ship was in the process of shifting from anchorage to a dock. Appellant was very noisy, agitated and belligerent and was interfering with oral communication by walkie-talkie between the Second Mate and the Master. He was twice told to be quiet, and when he failed to do so, the Second Mate ordered him below. Appellant then made advances toward the Second Mate, but another crewmember intervened. A scuffle ensued which terminated when Appellant fell overboard, necessitating the stopping of the ship in mid-evolution. Appellant was rescued and returned on board at the dock. He was again ordered below by the Second Mate, but instead of going below, he went to the bridge where he encountered the Master who was still engaged in docking the ship. The Master ordered Appellant below and at this time he complied.

BASES OF APPEAL

This appeal has been taken from the order of the Administrative Law Judge. It is contended that the punishment is

excessive in that the offense of creating a wrongful disturbance does not warrant a four (4) month suspension of Appellant's Merchant Mariner's Document.

APPEARANCE: Appellant, by F. L. Wertheimer, Esq.

OPINION

The bases of appeal, that the order of four (4) months suspension of Appellant's Merchant Mariner's Document is excessive, would appear to be basically a plea for clemency in that the 4 month suspension would prohibit Appellant from maintaining continuity in his "Pension Plan."

Based upon appellant's past record of disciplinary action and the extremely precarious position in which he placed his ship by interfering with the communications during the docking evolution and eventually necessitating the ship's stopping in mid-evolution, it can hardly be said that the order of the Administrative Law Judge was excessive.

The fact that Appellant may lose some benefit under his "Pension Plan" is unfortunate, but something that he should have taken into consideration prior to his actions. In view of his past disciplinary record this circumstance hardly presents a compelling basis for granting a reduction of the Administrative Law Judge's order.

ORDER

The order of the Administrative Law Judge dated at New York, New York on 15 December 1971, is AFFIRMED.

T.R. SARGENT
Acting Vice Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D.C., this 7th day of June 1973.

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