

IN THE MATTER OF LICENSE NO. 3625004
AND MERCHANT MARINER'S DOCUMENT NO. Z-636817
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Walter M. McCLAIN, Jr.

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1946

Walter M. McCLAIN, Jr.

This appeal has been taken in accordance with Title 46 United States Code 239 (g) and Title 46 Code of Federal Regulations 137.300-1.

By order dated 2 November 1971, an Administrative Law Judge of the United States Coast Guard at Long Beach, California suspended Appellant's seaman's documents for 6 months outright plus 3 months on 6 months' probation upon finding him guilty of misconduct and negligence. The specifications found proved allege that while serving as Third Assistant Engineer on board the SS SONOMA under authority of the license above captioned, Appellant:

(1) On or about 18 January 1971, was negligent in failing to properly supervise the operation of all machinery and the assigned personnel on the 1600-2400 watch, thereby contributing to the boiler casualty on that date; and

(2) On or about 29 January 1971, did wrongfully assault and batter the Second Assistant Engineer;

And that while so serving on board the SS SEATRIN LOUISIANA, Appellant did:

(3) On or about 7 June 1969, wrongfully fail to perform his regularly assigned duties, to wit, the 0000-0400 watch.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charges and to each of the first two specifications.

The Investigating Officer introduced in evidence extracts from the Shipping Articles and Official Logbooks of the vessel, the deposition of an Oiler and the testimony of the Chief Engineer of the SS SONOMA.

In defense, Appellant offered in evidence his own testimony. At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charges and the above specifications had been proved, the third by plea. The Administrative Law Judge then served a written order on Appellant suspending all documents issued to him for a period of 6 months outright plus 3 months on 6 months' probation.

The entire decision was served on 2 November 1971. Appeal was timely filed on 24 November 1971 and timely perfected on 1 August 1972.

FINDINGS OF FACT

From 2 December 1970 to 30 January 1971, Appellant was serving as Third Assistant Engineer on board the SS SONOMA and acting under authority of his license while the ship was at sea and in port.

On 7 June 1968, Appellant was serving as Third Assistant Engineer on board the SS SEATRIN LOUISIANA and acting under authority of his license.

Due to the disposition to be made of this case, no further findings of fact are necessary.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

(1) The Administrative Law Judge erred in finding the third above Specification proved by plea; and

(2) The Administrative Law Judge failed to afford Appellant the opportunity to submit proposed findings and conclusions.

Due to the disposition to be made of these grounds for appeal, it is unnecessary to enumerate or discuss Appellant's other contentions.

APPEARANCE: George E. Shipley, Long Beach, California

OPINION

Appellant correctly states that he did not, in fact, plead guilty to the third above enumerated specification. This is shown conclusively by the arraignment portion of the record and borne out by the fact that both the Investigating Officer and Appellant introduced evidence as to that specification. The Administrative Law Judge's decision thus displays an apparent failure to consider the evidence offered by Appellant on the subject.

Appellant is also quite correct in starting that 46 CFR 137.20-150 requires the Administrative Law Judge to afford the person charged an opportunity to submit proposed findings and conclusions. The record in this case is devoid of any reference to such a procedure. The most logical inference from the state of the record is that the Administrative Law Judge did not offer Appellant the opportunity to submit proposed findings and conclusions, thus denying him the benefit of a procedural right guaranteed by the regulations and by the Administrative Procedures Act.

CONCLUSION

The above errors could normally be cured by remanding the case for further proceedings. It is noted, however, that the acts alleged in the specifications all occurred over two years ago and

that the hearing closed some 18 months ago. Considering these facts and the remedial nature of the proceedings, it would serve little purpose to remand this case.

ORDER

The order of the Administrative Law Judge dated at Long Beach, California on 2 November 1971, is VACATED and the charges DISMISSED.

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

Signed at Washington, D. C., this 18TH Day of July 1973.

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