

In the Matter of Merchant Mariner's Document No. Z-232930-D2
Issued to: JUAN OJEA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

482

JUAN OJEA

This appeal comes before me by virtue of Title 46 United States Code 239(g) and 46 Code of Federal Regulations Sec. 137.11-1.

On 26 January, 1950, an Examiner of the United States Coast Guard at Baltimore, Maryland, revoked Merchant Mariner's Document No. Z-232930-D2 issued to Juan Ojea upon finding him guilty of "misconduct" based upon three specifications alleging in substance, that while serving as fireman-watertender and wiper on board various American merchant vessels, under authority of the document above described, he did:

1. " * * * fail to join the S.S. ARCHIBALD R. MANSFIELD when that vessel sailed from Rio de Janeiro, Brazil, during the early morning hours of 28 April, 1948."
2. " * * * on or about 29 May, 1947, fail to join the vessel [S.S. JOSEPH MURGAS] when it sailed from Amsterdam, Netherlands."
3. " * * * on or about 20, 21, 22, 23 and 24 June, 1949,

absent yourself from your station and duty aboard said vessel [Captain John D.P.], without permission, while in port at Port de Bouc, France."

Several other specifications were found "not proved" by the Examiner.

The hearing was originally commenced in Baltimore on 11 January, 1950, and was conducted in absentia due to the absence of the person charged. On 23 January, Appellant appeared with counsel and a hearing de novo was started. Appellant was given a full explanation of the nature of the proceedings and the possible consequences through an interpreter. Appellant entered a plea of "not guilty" to specification No.1 and 2 above; and a plea of "guilty" to specification No. 3 above. After the Investigating Officer had made his opening statement, the hearing was adjourned until 25 January, 1950, to allow counsel time to prepare a defense.

At the continued hearing, counsel formally withdrew from the case when the person charged failed to put in an appearance and the hearing proceeded in absentia.

Thereupon, the Investigating Officer introduced in evidence certified copies of extracts from the official log books and shipping articles of the above vessels, and a sworn statement by the Master of one of the ships, in support of the three specifications. Other similar evidence, in support of the specifications later found "not proved", was rejected by the Examiner. The Investigating Officer then rested his case.

At the conclusion of the hearing, the Examiner found the charge "proved" by proof of specifications Nos. 1 and 2; and "proved by plea" to specification No. 3. He then entered an order revoking Appellant's Merchant Mariner's Document No. Z-232930-D2 and all other valid licenses and certificates of service held by him.

From that order, this appeal has been taken, and it is stated that Appellant's absence from the ships in all three cases was occasioned either by his inability to locate the ship or by transportation difficulties encountered while attempting to return to the ships.

Based upon my examination of the Record submitted, I hereby make the following

FINDINGS OF FACT

On a foreign vessel covering the date of 27 April, 1948, Appellant was in the service of the American S.S. ARCHIBALD R. MANSFIELD, acting under authority of his Merchant Mariner's Document No. Z-232930-D2, as a fireman-watertender. On this date, Appellant failed to join said vessel when she departed from Rio de Janeiro, Brazil.

On a foreign voyage covering the date of 29 May, 1947, Appellant was in the service of the American S.S. JOSEPH MURGAS, acting under authority of his Merchant Mariner's Document No. 232930-D2, as a fireman-watertender. On this date, Appellant failed to join said vessel when she departed from Amsterdam, Holland.

On 20, 21, 22, 23 and 24 June, 1949, Appellant was serving as a wiper on board the American S.S. CAPTAIN JOHN D. P., under authority of his Merchant Mariner's Document No. 232930-D2, while said vessel was at Port deBouc, France. On these dates, Appellant failed to report for work without permission.

Appellant's only prior disciplinary record is an admonition received in 1946 for being absent without leave at Naples, Italy. Appellant is fifty-six years of age and states, in his appeal, that he has been going to sea for forty-three years. Coast Guard records confirm Appellant's service since 1940. The latter records also disclose that Appellant was interned as a prisoner of war for a period of three years when the vessel on which he was serving was attacked and sunk by enemy action in 1942.

OPINION

Appellant's failure to join the MANSFIELD and the MURGAS occurred during the period when the Coast Guard was precluded from holding hearings. The offense of failure to perform his duties aboard the CAPTAIN JOHN D.P. is the most recent of the three

charges of which Appellant was found guilty. None of these offenses standing alone are considered to be of an extremely serious nature but when coupled together they show a strong tendency of irresponsibility towards the duties which Appellant contracts to perform when he undertakes a voyage. On the other hand, it is not really fair to impose the maximum order of revocation since Appellant received no warning in the nature of a hearing, after the first and second offenses, to impress upon him the necessity of carrying out his obligations aboard ship.

CONCLUSION

It is believed that an outright suspension and a probationary suspension for a substantial period of time will prove a salutary lesson to the person charged as well as accomplishing the desired results from the point of view of the Coast Guard. Therefore, the Order of the Examiner dated 26 January, 1950, is modified to read as follows:

ORDER

"It is hereby ordered that Merchant Mariner's Document No. Z-232930-D2 and all other valid licenses, certificates and documents held by Juan Ojea, are suspended for a period of one (1) year; six months of this suspension is to be outright and the remaining six months on eighteen months probation."

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 9th day of January, 1951.

***** END OF DECISION NO. 482 *****

