

In the Matter of License No. 152118 and Merchant Mariner's
Document No. Z-85164-D3
Issued to: EDWARD U. JONES

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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EDWARD U. JONES

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Res. 137.11-1.

On 12 January, 1953, an Examiner of the United States Coast Guard at San Francisco, California, suspended License No. 152118 and Merchant Mariner's Document No. Z-85164-D3 issued to Edward U. Jones upon finding him guilty of three of six misconduct specifications and one negligence specification. These four specifications allege in substance that while serving in various capacities on board the American SS CHINA TRANSPORT or SS PRESIDENT VAN BUREN under authority of the above described license, he did:

"Charles II: Misconduct. Second Specification:
on or about 23 January, 1950, fail to stand your regular
0000 to 0800 engine room watch while the SS PRESIDENT VAN
BUREN was in the port of Djakarta, Indonesia.

"Third Specification: on or about 24 January,
1950, fail to stand your regular 0000 to 0800 engine room
watch while in the port of Djakarta, Indonesia.

"Sixth Specification: in the port of New York, on or about 1 April, 1950, the day of departure, fail to join the vessel on departure."

Charge: Negligence. First Specification: on or about 26 December, 1952, in the port of San Francisco, California, remain absent from the engine room of the SS CHINA TRANSPORT while on watch, thereby contributing to the loss of the plant."

The first specification under the charge of misconduct was dismissed by the Examiner as being duplicitous; and the Examiner concluded that the evidence was insufficient to establish the fourth and fifth specifications under the misconduct charge.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by an attorney of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charges and each specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of two witnesses to the incident upon which the negligence charge is based and excerpts from the Official Log Book and Shipping Articles of the PRESIDENT VAN BUREN concerning the charge of misconduct.

In defense, Appellant testified under oath in his own behalf.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charges had been proved by proof of the four specifications. He then entered the order suspending Appellant's License No. 152118 and Merchant Mariner's Document No. Z-85164-D3. The former was suspended for six months outright and six months on two years probation from 12

January, 1953. The latter was suspended for two months outright and four months on one year probation from 12 January, 1953.

From that order, this appeal has been taken, and it is urged that the order of suspension is unjust and severe; and it discriminates against Appellant.

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

FINDINGS OF FACT

On a foreign voyage including the dates from 22 January, 1950, to 1 April, 1950, Appellant was serving as Junior Third Assistant Engineer on board the American SS PRESIDENT VAN BUREN and acting under authority of his License No. 152118.

While the ship was at Djakarta, Indonesia, Appellant went ashore on 22 January, 1950, and failed to return on board to stand his watches from 0000 to 0800 on 23 and 24 January, 1950. The reason for Appellant's failure to return on board was that he lost his pass from his shirt pocket and was not able to pass through a three mile blockaded area around the docks until he obtained a special pass from the Danish Consul and returned to the ship on 24 January, 1950. The blockade was imposed by the local Army due to an uprising of the natives. Appellant had no identification with him other than his pass when he went ashore.

During the course of the voyage, Appellant verbally arranged with the Chief Engineer to leave the ship by mutual consent at New York before the completion of the voyage. On 1 April, 1950, when the ship sailed from New York, Appellant failed to join her. Although Appellant was paid off by the Shipping Commissioner in New York and was given a Certificate of Discharge on 4 April, 1950, he was not signed off the Shipping Articles of the PRESIDENT VAN BUREN by mutual consent or otherwise. His excuse was that the Purser was ashore when Appellant left the ship. There is no evidence that Appellant had contacted the Master about this matter.

On 26 December, 1952, Appellant was serving as Night Engineer on board the American SS CHINA TRANSPORT and acting under the authority of his License No. 152118 while the ship was in the port

of San Francisco, California.

Appellant commenced standing the engine room watch at some time prior to 2045 on 26 December, 1952. Cargo and water were being taken aboard. An oiler and a fireman-watertender were on watch with Appellant. At about 2045, Appellant left the engine room to see whether the fore peak tank was filled with water. After performing this duty, he went to the crew's messroom and drank some coffee. While he was there, the door was closed and a radio was playing. These factors, together with the noise caused by the loading of cargo, prevented Appellant from hearing the engine room emergency whistle which was sounded while he was in the messhall. The Night Mate who was on deck heard the whistle the first time it was sounded. When he heard it a second time, he started to look for the Night Engineer and found Appellant in the messroom. Appellant left immediately for the engine room but it was then about five minutes after the emergency signal had first been sounded.

When Appellant arrived in the engine room, he was informed by the oiler that there was no water in the boiler. Appellant hastily examined the water glass on the boiler and since he did not think that the gauge contained any water reflecting the water level in the boiler, he assumed that the report by the oiler was accurate. Consequently, he immediately ordered the boiler fires extinguished in order to save the boiler from damage; he tripped the generator circuit breakers on the board; and he secured the ship's operating plant by closing all steam valves except the one to the fuel oil heater.

The Chief Engineer and other engineering officers of the ship arrived in the engine room about five minutes after Appellant reached there. Appellant told the Chief Engineer that the water in the boiler had been lost. Attempts to start the emergency diesel generator were unsuccessful. One of the ship's engineering officers then discovered that the boiler was flooded with water rather than empty.

With the assistance of the shipowner's Port Engineer who was called and came on board at approximately 2145, the boiler was lighted off under natural draft at about 2200 and eventually the main generator was put on the line. But the steam pressure had

dropped to such an extent that it was not sufficiently built up to permit the resumption of cargo loading for a period of about three hours after the plant had been secured. As a result of this delay, it was necessary for the ship to get underway before taking on board some of her commercial cargo which was left on the dock.

Appellant has been going to sea since 1943. His prior record consists of a two months outright and two months probationary suspension in 1944 for being absent without leave and taking liquor aboard ship in a foreign port.

OPINION

With respect to the first two misconduct specifications, the record does not disclose that it was through anyone's fault other than his own that Appellant lost his pass and that this loss resulted in his failure to stand two eight hour watches. In support of this, Appellant testified that the pass must have dropped out of his shirt pocket when "I was going after my cigarettes." Although I accept the latter statement, as did the Examiner, this does not excuse Appellant from the alleged offenses since they were brought about through his own fault.

Concerning the third misconduct specification, Appellant was again at fault because regardless of whether he had obtained the permission of the Master through the Chief Engineer to sign off the Shipping Articles by mutual consent at New York, that procedure was not followed by Appellant when he left the ship and did not return before she departed from New York.

The issue presented by the negligence specification is whether Appellant's prolonged absence from the engine room was a contributory factor to the complete loss of power on the ship, rather than whether this absence was the sole cause of the failure of the plant.

It was permissible for Appellant to leave his watch station in order to check the tanks which were receiving water aboard. But since the Night Mate heard the engine room emergency whistle when it was first sounded, it is apparent that Appellant also would have heard it if he had remained on deck and returned to the engine room after checking the fore peak tank. By doing this, he would have

returned to the engine room at least five minutes sooner than he did. The Night Mate testified that it was about five minutes between the time when he heard the first whistle and when he found Appellant in the messhall where he had not been able to hear the whistle. This is substantiated by the testimony of the Port Engineer who stated that it would not have taken over five minutes to check the water and that it would take a minimum of ten minutes for the boiler to become flooded. Appellant recognized the importance of keeping a close check on the water level in the boiler and testified that he had observed the water glass before leaving to inspect the fore peak tank. The logical inference is that the water level was normal at this time or Appellant would not have left the engine room.

Assuming Appellant's competency as a licensed engineering officer, he would have had more time to determine the source of the difficulty if he had been able to utilize the five minutes or more which was wasted after the first alarm sounded. Under the existing circumstances, he was required to act upon his own incomplete examination and the word of the oiler that the boiler was empty; and the possibility that the oiler was right required prompt action to prevent the risk of the boiler being damaged considerably. If Appellant had had the advantage of this additional time, he would have been able to examine the water glass carefully and determine that the boiler was flooded rather than empty; and then he could have maintained the steam pressure by reducing the water in the boiler to the proper operating level.

Therefore, I conclude that the securing of the plant would have been avoided by the proper and prompt action of the engineering officer on watch; and that Appellant's excessive absence from the engine room prevented him, to some extent, from taking such action and thus contributed to the loss of power from the ship's plant. But in view of the fact that this action is based upon Appellant's negligence in remaining absent from his watch station and there is no allegation that he acted incompetently after his return to the engine room, the order of the Examiner dated at San Francisco, California, on 12 January, 1953, is modified to read as follows:

That your License No. 152118, your Merchant Mariner's Document No. 85164-D3 and all other certificates of service and documents

issued to you by the United States Coast Guard or its predecessor authority, are hereby suspended for a period of six (6) months. The suspension ordered shall not be effective provided no charge under R.S. 4450, as amended (46 U.S.C. 239), is proved against you for acts committed within twelve (12) months of 12 January, 1953.

If this probation is violated, the order for which probation was granted shall become effective with respect to all Merchant Mariner's Documents, certificates, and licenses here involved, and also any Merchant Mariner's Document, certificate, or license acquired by you during the period of probation, at such time as designated by any Coast Guard Examiner finding the violation, and may be added to or form a part of any additional order which is entered by such Examiner.

As so MODIFIED, the order of the Examiner dated at San Francisco, California, on 12 January, 1953, is AFFIRMED.

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

Dated at Washington, D. C., this 15th day of May, 1953.

***** END OF DECISION NO. 657 *****

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