

In the Matter of Merchant Mariner's Document No. Z-113961-D6
Issued to: LEONARD A. FISTER

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

743

LEONARD A. FISTER

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

By order dated 13 November, 1953, an Examiner of the United States Coast Guard at Norfolk, Virginia, revoked Merchant Mariner's Document No. Z-113961-D6 (and all other documents) issued to Leonard A. Fister upon finding him guilty of misconduct based upon thirteen specifications alleging in substance that while serving under authority of the document above described, on various dates in 1952 and 1953, he failed to perform his duties, deserted ships on which he was serving, and wrongfully battered a fellow crew member resulting in serious bodily injuries.

On 12 August, 1953, Appellant was served with the charge and specifications and ordered to appear for the hearing on 14 August, 1953. The hearing was commenced on the latter date but due to extremely inclement weather and the absence of Appellant, the Examiner continued the hearing till some future date to be set by him.

On 18 August, 1953, the hearing was reconvened and the

Examiner announced that the proceedings would be conducted in *absentia* since the Investigating Officer had been unsuccessful in his attempts to contact the Appellant. The Examiner entered pleas of "not guilty" to the charge and each specification on behalf of Appellant. The hearing was again continued to await the taking of a deposition on application by the Investigating Officer.

The Appellant still had not appeared personally when the hearing was reconvened on 13 November, 1953, but the Investigating Officer had received two letters from Appellant which were mailed in Chicago, Illinois. The letter is dated 3 October, 1953, and states that Appellant had no money for the fare to Norfolk since he had an accident which crushed his hand and prevented him from working. The Examiner was informed of these two letters and received them in evidence before admitting in evidence the deposition and several other documentary items submitted by the Investigating Officer in support of the specifications. The record does not disclose that there was any attempt to contact Appellant subsequent to receipt of his letter of 3 October, 1953.

Among other points raised on appeal, it is contended that Appellant was deprived of a fair hearing as a result of the failure to afford Appellant a fair opportunity to present his version of the facts by taking his deposition in Chicago. It is also urged that Appellant would have been in a position to be present at the hearing if had not been without funds and suffering from an injury as shown by his letter of 3 October, 1953.

Despite the fact that it was improper for Appellant to leave Norfolk without any explanation of his failure to appear at the hearing, I agree with the substance of the above contentions on appeal. Under the prevailing circumstances, about which the Examiner was acquainted prior to the conclusion of the hearing, Appellant should have been given an opportunity to submit his defense to the evidence which was produced in support of the specifications. Appellant's location and alleged inability to travel to Norfolk was known before the decision of the Examiner was announced.

In my opinion, the ends of justice will be served best by remanding the record for further proceedings looking to a full

discovery of the facts attending the incidents alleged in the thirteen specifications. If Appellant's failure to appear, on the original date of hearing or on a subsequent definite date about which he had been informed, were known to have resulted from his own wilful conduct, the result would be different.

ORDER

The order of the Examiner dated at Norfolk, Virginia, on 13 November, 1953, is VACATED and SET ASIDE. The entire record is REMANDED for further proceedings as may be deemed appropriate.

A.C.Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D.C., this 23th day of May, 1954.

***** END OF DECISION NO. 743 *****

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