

In the Matter of Merchant Mariner's Document No. Z-622184
Issued to: ROBERT CONCEPCION

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

778

ROBERT CONCEPCION

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 15 August, 1952, an Examiner of the United States Coast Guard at San Francisco, California suspended Merchant Mariner's Document No. Z-622184 issued to Robert Concepcion upon finding him guilty of misconduct based upon eleven specifications alleging in substance that while serving as a messman on board the American SS MORMACKITE under authority of the document above described, between 27 January, 1952, and 27 February, 1952, while said vessel was in the ports of Victoria, Brazil, and Rio de Janeiro, Brazil, he failed to perform his duties on seven different occasions; he was absent from the ship without leave on five of the seven occasions on which he failed to perform his duties; and he wilfully damaged ship's property on one occasion.

On 8 August, 1952, Appellant was served with the charge and specifications and ordered to appear for the hearing on 13 August, 1952. At the time of service, Appellant stated that he had reservations for New York that evening and he would not attend the hearing in San Francisco.

On 13 August, 1952, the hearing was commenced. When Appellant failed to put in an appearance, the Examiner entered pleas of "no guilty," on behalf of the Appellant, to the charge and each of the eleven specifications. The Examiner also announced that the hearing would be conducted in *absentia*.

After the Investigating Officer made his opening statement, he introduced in evidence an extract from the Shipping Articles of the *MORMACKITE* certified by the U. S. Shipping Commissioner at Baltimore, Maryland, and entries from the Official Logbook of the *MORMACKITE* which were certified by an Investigating Officer at Baltimore, Maryland. The Examiner received these documents in evidence and stated, in his decision, that the log entries made out a *prima facie* case against the Appellant since the entries complied fully with the statutory requirements.

At the conclusion of the hearing, the Examiner announced his findings and concluded that the charge had been proved by proof of the eleven specifications. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-622184 and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of six months. The Examiner's decision was not served on the Appellant until March, 1954, in New York City.

From that order, this appeal has been taken, and it is urged that Appellant should be granted a rehearing so that he may have an opportunity to defend himself by presenting witnesses in his behalf. Appellant contends that he could not afford to stay in San Francisco for any length of time and that he requested the Examiner to transfer the case to New York City where Appellant lives.

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

FINDINGS OF FACT

Between 27 January, 1952, and 27 February, 1952, Appellant was serving as a messman on board the American SS *MORMACKITE* and acting under authority of his Merchant Mariner's Document No. Z-622184

while the ship was in various South American ports.

On 27 January, 1952, while the ship was at Victoria, Brazil, Appellant went ashore without permission and failed to perform his assigned duty of serving supper at 1600.

On 1, 2, 22, 23, 24 and 26 February, 1952, Appellant failed to turn to and perform his regular duties while the ship was at Rio de Janeiro, Brazil. On 1, 2, 22 and 24 February, 1952, Appellant went ashore without permission.

On 3 February, 1952, Appellant damaged ship's property by wilfully breaking dishes while the ship was at Rio de Janeiro, Brazil.

OPINION

The record does not disclose that the Examiner was requested to transfer the hearing to New York City as is contended by Appellant on appeal. On the contrary, the Investigating Officer stated that Appellant absolutely refused to attend the hearing at San Francisco; and the Examiner stated that Appellant did not at any time make a request for a continuance of the hearing. Under these circumstances, I conclude that Appellant waived his opportunity to submit evidence in his defense. The record indicates that Appellant acted in an arbitrary manner in refusing to appear at the hearing rather than submitting a request to the Investigating Officer or the Examiner to transferee the case to New York City for good cause shown by Appellant before he departed from San Francisco a few days prior to the scheduled date of the hearing.

Since the charge and specifications are adequately supported by the certified extract from the Shipping Articles and the certified copies of entries in the Official Logbook of the ship, a prima facie case was made out against Appellant with respect to each of the specifications. See decision on [Appeal No. 718](#).

In view of numerous repetitions of the same offenses, I do not consider the order of six months suspension to be excessive.

ORDER

The order of the Examiner dated at San Francisco, California,
on 15 August, 1952, is hereby AFFIRMED.

J. Hirshfreed
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 6th day of December, 1954.

***** END OF DECISION NO. 778 *****

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