

In the Matter of License No. R-2947-2 and Merchant Mariner's
Document No. Z-936072

Issued to: CHARLES A SCHUSTER

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

803

CHARLES A. SCHUSTER

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 10 December, 1954, an Examiner of the United States Coast Guard at New York, New York, suspended License No. R-2947-2 and Merchant Mariner's Document No. Z-936072 issued to Charles A. Schuster upon finding him guilty of misconduct based upon a specification alleging in substance that while in the service of the American SS ROBIN GOODFELLOW as Radio Officer and acting under authority of the license and document above described, on or about 22 September, 1954, he wrongfully failed to join his ship upon its departure at 1700 from Dar-es-Salaam, British East Africa.

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 counsel 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 charge and specification

proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of the Master of the ROBIN GOODFELLOW as well as certified copies of entries contained in the Official Logbook.

In defense, Appellant testified under oath. Appellant stated that he made arrangements to go on a trip and told the Master of the ship that he, Appellant, would return to Dar-es-Salaam on 22 September without fail.

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 charge had been proved by proof of the specification. He then entered the order suspending Appellant's License No. R-2947-2 and Merchant Mariner's Document No. Z-936072, 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 three months on nine months probation.

From that order, this appeal has been taken, and it is urged that:

POINT I. The record fails to establish a prima facie case against Appellant. The Master gave Appellant permission to take the trip and to return at any time on 22 September. Appellant was logged for this incident because he refused to agree to pay the wages and expenses of the substitute radio operator. The Master acted improperly in not reporting to the American Consul at Dar-es-Salaam that Appellant failed to join; and in not reporting to the American Consul the hiring of an alien radio operator.

POINT II. The Master tampered with the logbook entries pertaining to this incident. These entries should be viewed with suspicion because they were made at least several weeks after 22 September and one entry was suppressed by the Investigating Officer.

POINT III. Appellant was improperly charged with this alleged offense when he went to the Coast Guard office in New York City to complain about a deduction from his wages and told the Investigating Officer the facts of the incident at Dar-es-Salaam.

POINT IV. Appellant should be found "not guilty" of the offense of wrongfully failing to join his ship.

APPEARANCES: Sidney Salant, Esquire, of New York City, of Counsel.

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

FINDINGS OF FACT

On a foreign voyage including the date of 22 September 1954, Appellant was in the service of the American SS ROBIN GOODFELLOW as a Radio Officer and acting under authority of his License No. R-2947-2 and Merchant Mariner's Document No. Z-936072.

While the ship was at Dar-es-Salaam, British East Africa, Appellant arranged to go on a trip which would take him approximately 50 or 60 miles from the location of the ship. Prior to departing on the morning of 21 September, Appellant discussed his plans with the Master of the ship. Although the ship had originally been scheduled to sail from Dar-es-Salaam on 24 September, the Master told Appellant that there was a possibility that the ship would leave on 22 September and for Appellant to "check" on it. Appellant said that he would be certain to return from his trip on 22 September.

The ship got under way from Dar-es-Salaam at 1700 on 22 September. Since Appellant could not be located, the ship's agent procured the service of a British radio operator before the ship departed.

Appellant returned to Dar-es-Salaam at 1740 on 22 September

and he was informed that his ship had left. The ship's agent made arrangements for Appellant to fly to Lindi, British East Africa, where Appellant rejoined the ship on the following morning and served as Radio Officer for the duration of the voyage.

OPINION

Many of the contentions raised on appeal have no direct bearing on the determination as to whether Appellant was guilty of wrongfully failing to join his ship on 22 September. The logbook entries are supported by the testimony of the Master and there is nothing concrete in the record upon which to base the claim that the entries dated 22 and 23 September were made several weeks later. The so-called suppressed log entry was known to Appellant and could have been introduced in evidence by him.

The record supports the finding that Appellant had notice that the ship might depart from Dar-es-Salaam on 22 September. Under these circumstances, it was Appellant's responsibility to be on board to perform the duties of radio operator which he had contracted to do when he signed the Shipping Articles for the foreign voyage. Therefore, the probationary suspension is not considered to be excessive and it will be sustained.

ORDER

The order of the Examiner dated 10 December, 1954 at New York, New York, is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 2nd day of May, 1955.

***** END OF DECISION NO. 803 *****

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