

In the Matter of Merchant Mariner's Document No. Z-151134(R) and
all other Licenses, Certificates and Documents
Issued to: JOSEPH ALLEN DE CHALUS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

820

JOSEPH ALLEN DE CHALUS

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.

On 13 April 1955, an Examiner of the United States Coast Guard at New Orleans, Louisiana, revoked Merchant Mariner's Document No. Z-151134(R) issued to Joseph Allen De Chalus upon finding him guilty of misconduct based upon four specifications alleging in substance that while serving as a messman on board the American SS ALASKAN under authority of the document above described, on or about 14 October 1954, while said vessel was in the port of Kure, Japan, he assaulted and battered the Chief Steward; on or about 16 January 1955, while the vessel was in the port of Yokohama, Japan, he failed to turn to and perform his duties from 0600 to 1000, from 1100 to 1300 and from 1600 to 1800.

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 each specification proffered against him.

Thereupon, the Investigating Officer and Appellant made their opening statements and the Investigating Officer introduced in evidence the testimony of three witnesses. Appellant then testified under oath in his 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 charge had been proved by proof of the four specifications. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-151134(R) and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

This appeal is a plea for clemency based on Appellant's prior good conduct as indicated by several documents attached to the appeal. It is also contended that the order is harsh because it prevents Appellant from earning a livelihood at the only trade he knows and which he has followed for 30 years.

APPEARANCES: Joseph Pinckney, Esquire, of New York City, of counsel.

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

FINDINGS OF FACT

On 16 January 1955, Appellant was serving as a messman on board the American SS ALASKAN and acting under authority of his Merchant Mariner's Document No. Z-151134(R) while the ship was in the port of Yokohama, Japan. On this date, Appellant failed to turn to and perform his assigned duties during the breakfast hours (0600-1000), the lunch hours (1100-1300) and the supper hours (1600-1800). Appellant was not excused from performing his duties during these hours.

OPINION

The specification alleging assault and battery on 14 October 1954 is hereby dismissed because this matter was disposed of by a formal admonition directed against Appellant on 6 January 1955 by an Investigating Officer at Yokohama, Japan. Since no protest was filed by Appellant, this admonition became a matter of official record in accordance with 46 CFR 137.05-5(a)(2) and Appellant should not have been charged with the offense at a later date. At the time of the hearing, it was not brought to the attention of the Examiner that Appellant had been officially admonished for the alleged assault and battery offense.

In view of Appellant's prior clear record and the comparatively minor nature of the offenses on 16 January 1955, the order will be modified to an outright suspension of three months.

ORDER

The order of the Examiner dated at New Orleans, `Louisiana, on 13 April 1955, is modified to provide that Merchant Mariner's Document No. Z-151134(R), and all other licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority, are suspended for a period of three (3) months.

As so MODIFIED, said order is

AFFIRMED.

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

Dated at Washington, D.C., this 28th day of June, 1955.

***** END OF DECISION NO. 820 *****

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