

In the Matter of Merchant Mariner's Document No. Z-304170-D1
And All Other Licenses, Certificates and Documents
Issued to: SAM SOARES

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

848

SAM SOARES

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 31 July 1952, an Examiner of the United States Coast Guard at Portland, Oregon, suspended Merchant Mariner's Document No. Z-304170-D1 issued to Sam Soares upon finding him guilty of misconduct while serving as an able seaman on board the American SS BENJAMIN FISHER under authority of the document above described on or about 30 May 1952.

Appellant was not present at the hearing. He was represented by a union agent who had not been authorized by the Appellant to enter a plea of "guilty." Nevertheless, the union agent did enter a plea of "guilty" for Appellant and no evidence was introduced. The Examiner found the charge proved by plea to the specification and entered the order suspending Appellant's Merchant Mariner's Document No. Z-304170-D1 for a period of six months. This appeal has been permitted at this late date because there is not adequate evidence that the Examiner's decision was served on Appellant prior to 15 July 1955 when Appellant surrendered his document in

compliance with the order of suspension.

OPINION

The Examiner should not have accepted the plea of guilty by nonprofessional counsel on behalf of Appellant *in* this particular case. Since Appellant's representative at the hearing was not expressly authorized to enter the guilty plea, of not guilty should have been entered by the Examiner on behalf of the Appellant in order to assure a fair hearing. See 46 CFR 137.09-35. Thereafter, the Investigating Officer would have been required to introduce sufficient evidence to establish a prima facie case as in an *absentia* proceeding. 46 CFR 137.09-5(f). Since this procedure was not followed, it is my opinion that the order imposed should be set aside. It would be impractical to remand the record for further proceedings looking to a full discovery of the facts at a time more than three and a half years after the date of the alleged offense.

ORDER

The order dated at Portland, Oregon, on 31 July 1952 is VACATED, SET ASIDE and REVERSED.

J. A. Hirshfreed
Rear Admiral, U. S. Coast Guard
Acting Commandant

Dated at Washington, D. C., this 27th day of December, 1955

***** END OF DECISION NO. 848 *****

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