

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-446317-D2 AND ALL  
OTHER SEAMAN'S DOCUMENTS  
Issued to: Thomas F. HENDRICKS

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1681

Thomas F. HENDRICKS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 27 July 1967, an Examiner of the United States Coast Guard at Long Beach, California, suspended Appellant's seaman's documents for six months outright plus six months on 18 months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a fireman/watertender on board the United States SS MANDERSON VICTORY under authority of the document above described, on or about 8 and 9 June 1967, Appellant failed to stand four sea watches because of intoxication while the vessel was at Honolulu, Hawaii.

Appellant did not appear for hearing. The Examiner entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence voyage records of MANDERSON VICTORY.

At the end of the hearing, the Examiner rendered written

decision in which concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of six months outright plus six months on 18 months' probation.

The entire decision was served on 2 August 1967. Appeal was timely filed on 17 August 1967. Although Appellant was furnished a transcript of proceedings at his request, on 28 August 1967, no further perfection of his Appeal was made beyond the original notice.

On 8 and 9 June 1967, Appellant was serving as a fireman/watertender on board the United States SS MANDERSON VICTORY and acting under authority of this document while the ship was in the port of Honolulu, Hawaii. On these dates, Appellant failed to stand four sea watches.

#### *BASES OF APPEAL*

This appeal has been taken from the order imposed by the Examiner. The sole contention of Appellant is that "to this date, 14 August 1967, I have not received a subpoena to appear for a hearing on 25 July 1967."

APPEARANCE: Appellant, *pro se*.

#### *OPINION*

In his *initial* notice of appeal, Appellant declared that he had never received a "subpoena" to appear for a hearing. Despite the fact that he was provided with a transcript of the complete proceeding, Appellant has not elaborated upon his original statement.

It may be stated first that proceedings such as these are instituted by a notice that a hearing is to be held. Since the person charged is not a compellable witness, a "subpoena" is not appropriate process for service upon him as it is for service upon a witness.

When Appellant speaks of a "subpoena," I take it that he means

that he had recieved no notice of hearing; when it was to take place and what the subject matter of the hearing was to be. If there was no notice of hearing served upon Appellant, no valid hearing could take place.

When Appellant did not appear at the time and place specified, the Examiner took the steps necessary to proceed in *absentia* as provided for by 46 CFR 137.20-25. Sworn testimony tending to prove that all the procedural requirements of service of the notice had been met was received. An authorized Investigating Officer testified to personal service of the charges upon Appellant.

It would obviously take much more than an unsworn, unsupported, and unpursued statement of Appellant that he had no "subpoena," to require consideration of any disturbance of the Examiner's findings and order in this case.

*ORDER*

The order of the Examiner dated at Long Beach, California, on 2 August 1967, is AFFIRMED.

W. J. SMITH  
Admiral, U. S. Coast Guard  
Commandant

Signed at Washington, D. C., this 5th day of March 1968.

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