

In the Matter of Merchant Mariner's Document No: Z-593390
Issued to: JULIO OLIVERA RODRIGUEZ

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

452

JULIO OLIVERA RODRIGUEZ

This appeal comes before my by the virtue of Title 46 United States Code 239(g) and 46 Code of Federal Regulations Sec. 137.11-1.

On 23 May 1950 an Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z-593390 issued to Julio Olivera Rodriguez upon finding him guilty of "misconduct" based upon one specification alleging in substance, that while serving as Officer's Messman on the American S. S. SANTA TERESA, under authority of the document above described, on or about 14 April 1950, he wrongfully had in his possession a quantity of marijuana, to wit, six marijuana cigarettes; the ship then being in the port of New York.

Even though Appellant had studied English in Porto Rico, and had served in American Ships for 5 years, he was accompanied to the hearing which commenced on 16 May 1950 by a friend who volunteered to act as interpreter for Appellant. The Examiner was not satisfied that Appellant or his friend would intelligently understand the language to be employed during the proceedings, so he adjourned the hearing to await the appearance of another interpreter. When the latter arrived, the hearing proceeded. A

careful and detailed explanation was made by the Examiner respecting the nature of the proceedings, and the possible consequences. Each statement of the Examiner was translated to Appellant. The transcript records no indication that Appellant did not understand, in any stage of the proceedings, what was transpiring.

Appellant was fully advised of his right to be represented by counsel of his own selection; he voluntarily elected to waive that privilege, and announced an intention to act as his own counsel. The Record shows that the interpreter stated: (R.3):

"He doesn't want an attorney. He'd rather go along on his own."

The charge and specification were then read and interpreted to Appellant and he was asked to plead thereto. Through the interpreter, Appellant stated he wished to plead "guilty with an explanation". This plea was rejected by the Examiner, and a plea of "not guilty" was entered.

Upon entry of the plea of "not guilty" by the Examiner, the Investigating Officer pleaded "surprise"; so a further adjournment was announced until 23 May 1950.

When the hearing reconvened on said date preliminary statements were made by the Investigating Officer and Appellant, through the interpreter; the Investigating Officer introduced in evidence the original log book of the S.S. SANTA TERESA; the testimony of a Customs Inspector; the record of the Court of Special Sessions, City of New York, in the case entitled "People vs. Julio Rodriguez" and thereupon rested his case.

In defense, Appellant offered nothing beyond a statement that he was not guilty.

At the conclusion of the hearing, having heard the statements of the Investigating Officer and Appellant, the Examiner found the charge "proved" and entered an order that Merchant Mariner's Document Z-593390 issued to Julio Olivera Rodriguez, as well as all other documents, certificates and licenses issued to said Rodriguez be, and the same are, revoked.

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

- "1. That the hearings held on May 16th and May 23rd, 1950 were improperly had in that appellant could not speak or understand the English language and the interpreter used at said hearing was not an 'official' interpreter within the meaning of the law and that by reason thereof appellant did not fully understand the charges against him nor could he fully and properly explain the defense thereto.
- "2. That the decision of the Hearing Examiner was arbitrary and capricious and further that the order based upon the findings of the said Hearing Examiner were too harsh and extreme under the circumstances."

APPEARANCES: Herman Panitch, Esq., of New York City for Appellant.

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

FINDINGS OF FACT

Appellant was serving under his certificate aboard the American vessel SS SANTA TERESA, as officers' messman, on 14 April, 1950.

While so serving, he was arrested by a Federal Officer and found to have marijuana cigarettes in a shirt in his locker aboard said vessel.

A larger quantity also belonging to him was found in Appellant's home.

The person charged had been smoking marijuana for about three years prior to this event.

OPINION

Appellant contends on appeal:

- (a) He could neither speak nor understand the English language.

The transcript reporting Appellant's statements satisfies me that Appellant was fully cognizant of all that transpired, and his own responses to the Examiner's questions at page 1 refutes this contention.

- (b) The interpreter employed, was not an "official" interpreter within the meaning of the law. Appellant raised no objection to the interpreter's employment; nor did Appellant seek to revise any part of the Record as every portion thereof was translated to him. Nowhere did he indicate his inability to understand the proceedings. This point is without merit.
- (c) The Examiner's decision was "arbitrary and capricious".

I find nothing in this Record to support such a contention. I find it very hard to visualize more perfect protection of a merchant seaman's rights than has been accorded by this Examiner.

- (d) Finally, Appellant contends he may become a public charge because of his inability to earn a living. I am not impressed by such argument. His age is certainly not against him respecting other employment.

It should now be well known that the Coast Guard considers merchant seamen who use or possess marijuana are undesirable in the Merchant Service because of the menace they present to their shipmates and the property entrusted to their care.

CONCLUSION

I find no good reason has been assigned by any point on this appeal for my interference with the action taken in this case.

ORDER

The Order of the Coast Guard Examiner dated at New York, New York, on 23 May 1950 is AFFIRMED.

Merlin O'Neill

Dated at Washington, D. C., this 2nd day of August, 1950.

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***** END OF DECISION NO. 452 *****

[Top](#)