

In the Matter of Merchant Mariner's Document No. Z-431572-D1
Issued to: EDWARD SYLVIA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

614

EDWARD SYLVIA

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 3 September, 1952, an Examiner of the United States Coast Guard at New York City suspended Merchant Mariner's Document No. Z-431572-D1 issued to Edward Sylvia upon finding him guilty of misconduct based upon: a specification alleging in substance that while serving as a messman on board the American SS ARGENTINA under authority of the document above described, on or about 8 July, 1952, while said vessel was in the port of New York, he wrongfully failed to appear as directed in a subpoena which was duly issued and served upon him; and a specification alleging that while serving as a galleyman on board the American SS IVY under authority of the above document, he did wrongfully desert said vessel at the port of Bremen, Germany, on 19 May, 1951.

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 an attorney of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel.

He entered a plea of "guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer made his opening statement. Appellant offered no explanation as to why he had not obeyed the subpoena but stated that he had left the ship on 19 May, 1951, without any intention of returning on board, for the reason that he had been having trouble with the cook to whom Appellant was responsible for the performance of his duties on the ship.

At the conclusion of the hearing, the Examiner announced his findings and concluded that the charge had been proved by plea to the two specifications. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-431572-D1, and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of six months.

From that order, this appeal has been taken, and it is urged that the order is harsh in view of Appellant's service in the American Merchant Marine for twelve years without any prior disciplinary record; and that the suspension will impose a hardship on himself, his six children, and his wife who is expecting the birth of a child in October, 1952. Appellant supplemented his appeal with a letter in which he stated that the trouble started when he said it was funny that the cook used 22 pots to cook one meal; that Appellant finally left the ship in order to avoid fighting on board; and that Appellant does not understand why "if I fight I'm wrong, when I leave I'm wrong."

FINDINGS OF FACT

On a foreign voyage covering the date of 19 May, 1952, Appellant was in the service of the American SS IVY and acting as a galleyman under authority of his Merchant Mariner's Document No. Z-431572-D1.

As a result of friction which developed between Appellant and a cook named Watkins, Appellant left the ship on 19 May, 1951, at Bremen, Germany, with all his clothing after having said that it was his intention not to return to the ship because that was the only way he could avoid the possibility of doing something wrong in

connection with his difficulties with the cook. Appellant did not see the Master at this time or otherwise attempt to obtain an authorized release from the shipping articles. Appellant did not subsequently return aboard to complete the voyage.

On 7 and 8 July, 1952, Appellant was serving as a messman on board the American SS ARGENTINA and acting under authority of the above document while the ship was in the port of New York. On 7 July, 1952, Appellant was personally served with a subpoena which was issued by a Coast Guard Investigating Officer for Appellant to appear at 80 Lafayette Street, New York City, on 8 July, 1952. Appellant did not put in an appearance in answer to the subpoena or contact the proper authorities and inform them as to the reason for his absence.

OPINION

This appeal is based on the contentions that it was better for Appellant to have left the ship than risk a fight with the cook on board the ship; and that the suspension order is too severe due to Appellant's prior clear record and the hardship on his family.

The offense of desertion is serious, particularly when it occurs in a foreign voyage and presents the Master with the choice of delaying the ship to obtain a replacement which may not be readily available or continuing on the voyage with the vessel in an undermanned condition. In order to prevent this sometimes serious difficulty from arising, seamen are required to sign shipping articles by which they contract to serve on a ship for the duration of a voyage or for a specified length of time. A seaman will be excused from breaching his contract only when he can present concrete evidence that he was justified in doing so.

There is no such evidence in this case. There was mutual personal dislike between Appellant and the cook, and an exchange of words between them on this subject; but there is no evidence of bodily harm to Appellant or that he was in fear of being beaten by the cook. On the contrary, although Appellant described the cook as being "big as a horse" and weighing 325 pounds, Appellant asserted that he wanted to see the cook on the dock so that trouble on the ship would be avoided and since "there's more room on land

. . . .[to] straighten him out." Appellant stated that he told the Master about the trouble while the ship was at Malta but no attempt was made to obtain a release by mutual consent before Appellant deserted the ship at Bremen.

After considering all the circumstances of this case, it is my opinion that the order imposed by the Examiner adequately reflects Appellant's past good record and any hardship which this suspension may cause his family.

ORDER

The order of the Examiner dated at New York, New York, on 3 September, 1952, is hereby AFFIRMED.

A.C. Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 5th day of November, 1952.

***** END OF DECISION NO. 614 *****

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