

In the Matter of Merchant Mariner's Document No. Z-83612
Issued to: CHARLES S. ROSS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

723

CHARLES S. ROSS

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 July, 1953, an Examiner of the United States Coast Guard at San Francisco, California, revoked Merchant Mariner's Document No. Z-83612 issued to Charles S. Ross upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a fireman-watertender on board the American SS AMPAC IDAHO under authority of the document above described, on or about 20 March, 1953, he wrongfully had narcotics in his possession. A second specification alleging narcotics addiction was dismissed by the Examiner at the conclusion of the hearing for lack of sufficient evidence.

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. Appellant was represented by an attorney of his own selection and entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer made his opening

statement and introduced in evidence the testimony of four witnesses as well as numerous documentary exhibits.

The Examiner denied counsel's motion to dismiss on the ground of failure to make out a prima facie case against Appellant.

In defense, Appellant offered in evidence documentary exhibits and he also testified under oath in his own behalf. He stated that because of illness he had obtained a prescription containing narcotics from a doctor ashore.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and appellant's counsel 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 one specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-83612.

From that order, this appeal has been taken, and it is urged that the findings and conclusions are not supported by the evidence because it was perfectly legal, and not in violation of 21 U.S.C. 184a, for Appellant to take on board the ship a prescription which he obtained rightfully from a physician. Appellant also contends that the amount of morphine in the prescription was so small that it could not have had any effect on him and, therefore, it could not have been the cause of the disturbance by Appellant. In conclusion, Appellant respectfully submits that the order is excessive since he was only guilty of having created a disturbance in the engine room.

APPEARANCES: Robert E. Burns, Esquire, of San Francisco,
California, of Counsel.

Based upon my examination of the report submitted, I make the following

FINDINGS OF FACT

On a foreign voyage from 26 December, 1952, to 8 June, 1953, Appellant was serving as a fireman-watertender and wiper on board the American SS AMPAC IDAHO and acting under authority of his

Merchant Mariner's Document No. Z-83612.

While the ship was at Kagoshima, Japan, on 20 March, 1953, Appellant complained of a stomach condition to a Dr. Nagayoshi at a Japanese hospital in Kagoshima. The doctor diagnosed Appellant's condition as gastro-convulsion and administered an injection of Pansko, a medicine which contains morphine. Since Appellant still complained of pain, the doctor sold Appellant ten ampoules of Pansko and informed him that this medication contained a narcotic. The doctor told Appellant to inject the contents of one of the bottles if he did not feel well after returning to the ship. The doctor also sold Appellant a hypodermic syringe. The doctor could not speak English very well but he managed to convey this information to the Appellant.

Appellant went to a store and purchased a hypodermic needle which fitted the syringe. He then returned to the ship on the night of 20 March, 1953, with these items as well as the Pansko in his possession. He did not report these articles to anyone on board the ship. Although Appellant had obtained medical attention on other ships, he did not at any time, on this occasion, request the Master for treatment. The latter had narcotics on board to use for medicinal purposes.

Appellant was unable to stand his watch properly on the night of 20 March. He attempted to light off a dead boiler and he permitted the water to drop to a dangerous level in the boiler which was in use. Appellant also wandered around the engine spaces in a dazed condition while he talked incoherently.

On the morning of 21 March, 1953, Appellant became violent and he refused to obey the Master's order to leave the engine room. The Master then shackled Appellant's arms and legs before he was forcefully removed from the engine room. He was taken ashore in a Stokes litter to a hospital.

Prior to his removal from the ship, Appellant used five ampoules of Pansko. He had not eaten a meal since before leaving the ship on 20 March.

Appellant's locker on the ship was locked but it was broken open and searched by the Master. He found a small cardboard box

containing a hypodermic set consisting of five unused ampoules of Pansko, one empty Pansko ampoule, two larger filled ampoules, a hypodermic syringe, two hypodermic needles, an eye dropper and a small object used to open the ampoules. Each of the five unopened Pansko ampoules held fifteen grains or one cubic centimeter of a brown liquid which was subsequently found to contain an opium derivative. Each of the two larger ampoules contained two cubic centimeters of a colorless liquid which did not disclose any narcotic content upon analysis. One of the two needles fitted the syringe properly. The other needle had a larger base but a small cardboard shim had been inserted into the base of this needle so that it would fit tightly over the syringe or the eye dropper which were otherwise too small to use with this needle for the purpose of administering an injection.

Appellant was not permitted to return to the ship till 24 March, 1953. On 22 March, the Master was told by Appellant that he would obtain a prescription from the doctor for the Pansko ampoules which thereafter remained in the custody of the Master for the balance of the voyage. On 23 March, Appellant refused to tell two Japanese narcotics officers the name of the doctor or where he was located. Appellant rejected the offer of assistance by the ship agents and MSTs personnel in obtaining a statement from the doctor explaining Appellant's possession of the Pansko. But on 24 March, with the help of an English speaking native, Appellant obtained a prescription from Dr. Nagayoshi stating that he had given Appellant ten cubic centimeters of Pansko to use on the ship if there was a recurrence of pain. This statement was given to the Master by Appellant. (At the hearing, Appellant testified that he did not trust the agents and MSTs man not to tell the Japanese narcotics officers who the doctor was; and Appellant said he was afraid that if the narcotics officials had the doctor's name they would make trouble for him and prevent Appellant from obtaining a written prescription.)

On 25 March, 1953, the Master demoted Appellant to the grade of wiper because of his neglect of duty and the Master's fear for the safety of the vessel. On the return voyage, Appellant attempted unsuccessfully to persuade the Master to dispose of the hypodermic set which he had confiscated.

When the ship arrived at San Francisco on 8 June, 1953, the

Master turned over the cardboard box and its contents to the U. S. Customs authorities. Appellant told the Customs officials that he used narcotics for injections in his arms after getting sick from not eating as a result of being drunk. At the hearing, Appellant admitted telling this to the Customs authorities but Appellant stated that, in addition, he told them he sometimes used narcotic injections for stomach pains which did not result from drinking. Appellant also testified that he had obtained narcotic tablets and injections from two doctors in the United States for his stomach pains but that he had not been hospitalized for his stomach condition since some time prior to 1947.

By Appellant's own admission, he had periodically used narcotics for approximately thirteen years. At the time of the present incident, Appellant was on parole for a narcotics conviction in New York State in 1951. Before the Customs authorities at San Francisco and at the hearing, Appellant exhibited numerous needle marks on the inside of both of his arms near the elbow. He testified that these marks were the result of blood transfusions when he was selling his blood until 1938; and that the marks were also due to numerous injections he received while he was hospitalized for a venereal disease on different occasions between 1939 and 1945. Nevertheless, it was established by the testimony of one of the Customs officials at San Francisco that some of the needle marks were old and some of them were new marks.

There is no record of prior disciplinary action having been taken against Appellant during approximately 25 years at sea.

OPINION

The basic fact that Appellant had possession of morphine on board the ship is not disputed. Unless the narcotic was legitimately obtained and properly used by Appellant, the possession alone was wrongful and sufficient to require the order of revocation regardless of the amount of the narcotic.

Appellant contends that he was legally in possession of the Pansko ampoules because he rightfully obtained them by means of a physician's prescription; and that, for this reason, his possession of the narcotics on board the ship was lawful possession and not in

violation of 21 U.S.C. 184a because the ship was on a foreign voyage and the narcotics taken on board by Appellant did not constitute a part of the cargo entered in the manifest of part of the ship stores. The Examiner also expressed doubt that Appellant had obtained possession by means of a legitimate prescription from an authorized medical doctor.

It is my opinion that if Appellant was issued a legitimate prescription for narcotics which he did not obtain by fraudulent means and if appellant followed the directions of the doctor who issued the prescription, then Appellant was not in unlawful or wrongful possession of the narcotic and he did not violate 21 U.S.C.184a.

On the basis of Appellant's testimony, there is some indication that the Pansko was not prescribed for Appellant by a physician who acted in good faith and believed that the narcotic was necessary, in the legitimate practice of medicine, for the treatment and relief of pain. The Pansko was prescribed solely on the representations of a complete stranger (in a tongue which was not familiar to the doctor) and without any attempt to secure the facts of the past history of the illness or to give Appellant a physical examination. Appellant's testimony also tends to support the belief that he has good reason to believe that he has not been issued a properly authorized prescription. He stated that the reason he rejected the assistance of the ship agents and MSTs personnel, and refused to divulge the whereabouts or name of the doctor to the Japanese narcotics officers, was because he feared there might be trouble which would prevent him from getting a written prescription from the doctor. Appellant has offered no reason as to why he would be fearful is he though that the prescription was a perfectly legitimate one. If the narcotic was not prescribed in good faith, it was not a legitimately issued prescription within the meaning of the laws of the United States. *Trader v. United States (C.C.A. 3, 1919)*, 260 Fed. 923. With reasonable belief of the fact that it was not a legitimate prescription, Appellant would have been similarly guilty of wrongful possession of narcotics when he took the Pansko on board a vessel of the United States.

But even if we accept the proposition that the ampoules containing morphine were issued to Appellant by a medical doctor

acting in good faith and in the legitimate practice of his profession as a physician, the evidence is even stronger that, as to Appellant, the prescription was not a lawful one. Since a physician's order for morphine is not a lawful prescription when the order is not issued in the course of professional treatment (*Webb v. United States (1919)*, 249 U.S. 96), such an order is not a legitimate prescription when it is in the hands of a person who has obtained it for the purpose of the improper use of narcotics.

The facts present considerable circumstantial evidence upon which to base the conclusion that Appellant acted fraudulently, rather than in good faith, when he purchased the ampoules from Dr. Nagayoshi; and that he intended to use the morphine for his personal pleasure rather than because of any genuine illness which was not induced by his past improper use of narcotics.

In the first place, it is difficult to understand why it was necessary for Appellant to obtain the services of an English speaking native in order to obtain a written prescription from the doctor although no interpreter was present when Appellant went to the doctor and complained of stomach pains which he indicated were severe enough to require the injection of morphine. It seems to me that Appellant, by himself, would have been able to obtain a written recital of the transaction concerning the Pansko as well as he was able to inform the doctor as to the nature of his illness; and that Appellant would be just as concerned about obtaining the proper treatment for a genuine illness as he would be concerned about getting a statement as to the treatment which had been given him by the doctor. In connection with this, it does not appear why Appellant did not request a written prescription at the times he purchased the narcotics if he intended to take the Pansko on board the ship; or why he did not report to the Master that he had on board narcotics which a doctor had prescribed for him. The doctor told Appellant that the Pansko contained a narcotic and Appellant made it known that he was aware of the need for a written prescription - but only after the hypodermic set was found in his locker.

Also of considerable importance is the fact that since Appellant purchased 10 ampoules of Pansko and only 5 such ampoules were found in his locker, he used 5 Pansko ampoules within a period

of about 12 hours after he returned to the ship. This was directly contrary to the doctor's instructions to use only one of the bottles of Pansko if Appellant did not feel well after returning to the ship. The inference that Appellant injected the contents of 5 Pansko ampoules into himself is supported by the conclusion that in addition to the fact that only 5 of 10 ampoules were found in his locker, the excessive use of narcotics is the only reasonable explanation for Appellant's behavior while he was on watch after returning on board the ship. At this time, if not sooner, Appellant's possession of the morphine was devoid of the protection afforded by a doctor's prescription because Appellant did not follow the directions prescribed by the doctor.

Of related significance is the fact that, according to Appellant's own testimony, his condition was similar, on the morning of 21 March, 1953, to what it had been on other occasions when he injected narcotics in his arms. He testified that he had previously injected narcotics after getting sick from not eating as a result of being drunk. Appellant also testified that he had not eaten a meal between the time when he left the ship on 20 March and when he was taken to the hospital on the morning of 21 March. This is another indication that Appellant did not get the Pansko to use for a legitimate purpose.

Appellant denied having any knowledge about the eye dropper which was found in his locker or about the shim (in one of the needles) which was needed in order to use the needle with the eye dropper or the syringe to give an injection. The eye dropper was not obtained ashore and it is very unlikely that Appellant purchased one needle which fit the syringe properly and one which did not. Therefore, the probability is that Appellant had these two items in his possession prior to obtaining the Pansko and other articles; and that he denied any knowledge of them because he had used the needle-eye dropper combination to administer injections in the past. This fits in with Appellant's admissions of prior use of narcotics for 13 years, the presence of numerous needle marks on his arms, and the impossibility that the new needle marks could have been caused by blood transfusions and venereal disease treatments received not later than 1945.

It is also improbable that Appellant would not have received hospital treatment since before 1947 if he was suffering from a

severe stomach ailment over which he had no control. Nor is it probable that Appellant would attempt to persuade the Master to dispose of the hypodermic set if Appellant had a legal right to it and needed it to treat a genuine illness.

The considerable weight of all the evidence leads to the conclusion that Appellant did not obtain the narcotics for a legitimate purpose and, therefore, he did not have a legitimate prescription. This conclusion has not been reached by basing inference upon inference or by drawing unfavorable inferences when equally reasonable inferences may be drawn in favor of Appellant. The result is based upon many independent inferences which all lead to but one common conclusion. It is evident from Appellant's own conduct and words that he did not have a legitimate prescription which made his possession of narcotics lawful on board the ship. Hence, the possession was wrongful as alleged in the specification.

The potential results of seamen on board ships doctoring themselves with narcotics are obvious from this case. Although the use on one ampoule of Pansko, as prescribed by the doctor, would very probably not have had any injurious effect on Appellant, the cumulative effect of five ampoules was considerable. This is mentioned in order to point out the much greater danger which would be present with a man in Appellant's condition on watch in the engine room or fire room while a ship was underway at sea.

ORDER

The order of the Examiner dated at San Francisco, California, on 3 July, 1953, is AFFIRMED.

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

Dated at Washington, D. C., this 2nd day of March, 1954.

***** END OF DECISION NO. 723 *****

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