

UNITED STATES OF AMERICA
U.S. DEPARTMENT OF HOMELAND SECURITY
UNITED STATES COAST GUARD

UNITED STATES COAST GUARD

Complainant

vs.

HEATH SPENCE

Respondent.

Docket Number: CG S&R 04-0509
CG Case No. 2197901

DECISION AND ORDER

Issued: February 9, 2005

Issued by: Peter A. Fitzpatrick, Administrative Law Judge

Appearances:

For Complainant

ENS Jon D. Lane
Jerry Crooks
U.S. Coast Guard
Marine Safety Office Hampton Roads
200 Granby Street
Norfolk, VA 23510-1888

For Respondent

Mr. Spence Did Not Appear

I.
PRELIMINARY STATEMENT

This case began when the Coast Guard filed a Complaint against the Respondent under the statutory authority contained in 46 U.S.C. § 7703 and the Coast Guard regulation codified at 46 C.F.R. 5.27. Mr. Spence is the holder of a Coast Guard issued Merchant Mariner's Document. In the Complaint the Coast Guard alleged that “. . . on 20 June 2003 the respondent: wrongfully disobeyed the orders of the master while at sea aboard the S/S ARGONAUT by failing to remain seated and silent during a crew meeting and ultimately failing to return to his quarters when ordered.” The Coast Guard sought the Outright Suspension of Mr. Spence's Merchant Mariner's Document for three months and an additional three months suspension remitted on twelve months probation. The Respondent's Answer denied all Jurisdictional and Factual Allegations of the Complaint. The case was assigned to this Judge and the hearing was scheduled at Norfolk on January 5, 2005.

The hearing convened as scheduled and the Investigating Officers were present. The Respondent did not appear. At the outset I reviewed the notice provided Mr. Spence regarding the time and place of the hearing. The case was assigned for hearing on January 5, 2005 in the Order dated October 29, 2004. It was served on Mr. Spence at his Barataria, Port of Spain, Trinidad, West Indies address. That address was provided by the Respondent in his Answer.

Mr. Spence wrote an undated letter received November 25, 2004 requesting a continuance and change of venue of the hearing. Those requests were denied by Order dated December 9, 2004. Finally, the Respondent called the undersigned's office on January 4, 2005 requesting a continuance. That request too was denied. (Transcript, TR 14).

The Investigating Officer stated at the hearing that he tried to contact the Respondent a number of times after Mr. Spence was served with the Complaint but those efforts were

unsuccessful. (TR 11). The day before the hearing Mr. Spence called the Coast Guard Marine Safety Office Hampton Roads and told one of the officers that he (Spence) was sick and would not attend the hearing. (TR 12). No such representation was made by the Respondent to the undersigned's office in the other telephone call that same day. (TR 14).

It is clear from the record here that Heath Spence was aware of the date and place of the hearing but chose not to attend. Good cause has not been shown to justify his absence.

Accordingly, it was announced that the hearing would proceed as scheduled and it would be conducted *in absentia* pursuant to 33 CFR § 20.705. A default judgment was not entered however and the Investigating Officer was advised that despite the Respondent's absence, the Coast Guard continued to have the burden of proving the elements of the Complaint. (TR 15).

The Coast Guard presented three witnesses including LT Gonzales, Captain Bruno Ravalico, Master of the SS ARGONAUT, and Robert James Peterson, Second Mate aboard the SS ARGONAUT. Ten exhibits were offered and admitted on the record. They are identified on Attachment B.

At the conclusion of the Coast Guard's case, the Investigating Officer presented his closing statement. (TR 68-74). Thereafter, I announced that the elements of the Complaint were proved by the preponderance of the evidence and that the sanctions proposed by the Investigating Officer – that the Respondent's Merchant Mariner's Document be suspended for six months including three outright and three remitted on one year probation – would be adopted. (TR 77-79).

II. **FINDINGS OF FACT**

1. Heath Spence is the holder of a Merchant Mariner's Document last renewed by the Coast Guard on February 7, 2002. It authorizes him to serve as Able Seaman aboard U.S. vessels. (Coast Guard, CG Exhibit 1).

2. On April 16, 2003 Mr. Spence signed Articles of Agreement to serve aboard the ARGONAUT as Able Seaman - Bosun. (CG Exhibits 2, 3, 5). Captain Bruno Ravalico signed the agreement for the vessel. (CG Exhibit 4).

3. The ARGONAUT (Official No. 601377) is a freighter 585 feet in length, which displaces 17,902 gross tons. (CG Exhibit 8). The vessel is owned by Argonaut Vessel Trust of Wilmington, DE. (*Id.*). The manning requirements of the ship, as pertinent here, include six Able Seaman. (*Id.*).

4. On June 20, 2003 the ARGONAUT was at sea returning to Salerno, Italy from the Middle East. (TR 30). On that day the Master called a safety meeting of the entire available crew to discuss routine items (slippery decks, faulty rails, etc). (TR 37). Near the end of the meeting the crew was given the opportunity to voice their concerns and Mr. Spence asked why the fact that the sole female crewmember aboard was sleeping with another member of the crew was not "brought up." (TR 38). Captain Ravalico responded that the matter was not an appropriate issue for that meeting and would not be discussed.¹ Bosun Spence persisted and the Captain repeated his position that it was not an appropriate topic for discussion. (TR 38). Spence repeated his demands three more times until the Captain ordered Spence to leave the

¹ Previously, Captain Ravalico had contacted the Coast Guard and requested that an investigation of sexual harassment against the female crew member mentioned be conducted. The Coast Guard had completed that investigation prior to this meeting. (TR 37, 38). Captain Ravalico had relieved some members of the crew who were involved in that prohibited activity. (TR 43). Those activities included making catcalls at her in the mess hall,

meeting. (TR 39). The Bosun refused to leave and stood up. The Captain also rose and the situation became “. . . more and more heated.” (TR 39). Next, the Captain told Spence he was relieved of his duties and again he was ordered to leave the meeting, go to his room and remain there until further notice. (*Id.*). Mr. Spence refused and the Captain and Spence approached one another. (*Id.*). At that point the officers stood in support of the Captain and some of the crew members responded in kind to support the Bosun. (*Id.*)

5. At that point the female crewmember was in tears and was “breaking down hollering and screaming.” (TR 39, 40, 59-60). The other crewmember mentioned was visibly embarrassed. (TR 60). Again, the Captain ordered Spence to leave the room. Finally, the Master ordered the Chief Engineer and Chief Mate to escort Spence from the room. (TR 60). This time the Bosun finally left the meeting. (TR 60). The Bosun was relieved of his duties, confined to his room, and fired when the vessel returned to Salerno, Italy. (TR 44, 46).

6. Mr. Spence was Discharged for Cause (Sexual Harassment) on June 24, 2003. (CG Exhibit 5).

III. **STATUTES AND REGULATIONS INVOLVED**

1. This proceeding is governed by the Administrative Procedure Act , which is incorporated into these proceedings under 46 U.S.C. 7702, which reads:

§ 7702. Administrative procedure

- (a) Sections 551-559 of title 5 apply to each hearing under this chapter about suspending or revoking a license, certificate of registry, or merchant mariner's document.

putting her laundry on the deck on display, and constant complaints that she was receiving favorable treatment. (TR 38).

2. 46 U.S.C. §§ 7701-7705 are the relevant portions of the Federal statute governing the suspension and revocation of merchant mariners' licenses and documents. 46 U.S.C. § 7703 reads in pertinent part:

§ 7703. Bases for suspension or revocation

A license, certificate of registry, or merchant mariner's document issued by the Secretary may be suspended or revoked if the holder--

(1) when acting under the authority of that license, certificate, or document--

(A) has violated or fails to comply with this subtitle [[46 USCS §§ 2101](#) et seq.], a regulation prescribed under this subtitle [[46 USCS §§ 2101](#) et seq.], or any other law or regulation intended to promote marine safety or to protect navigable waters; or

(B) has committed an act of incompetence, misconduct, or negligence;

3. The term Misconduct which is involved here, is defined at 46 C.F.R. 5.27 as follows:

§ 5.27 Misconduct.

Misconduct is human behavior which violates some formal, duly established rule. Such rules are found in, among other places, statutes, regulations, the common law, the general maritime law, a ship's regulation or order, or shipping articles and similar sources. It is an act which is forbidden or a failure to do that which is required.

**IV.
CONCLUSIONS OF LAW**

1. The Respondent was acting under the authority of his Merchant Mariner's Document when he was serving aboard the ARGONAUT on June 20, 2004 when the incident giving rise to the Complaint here occurred.

2. The Coast Guard has jurisdiction in this case under the provisions of 46 U.S.C. § 7703.

3. The allegations of the Complaint are PROVED by a preponderance of the evidence.

V.
OPINION

A. General

1. This matter is within the jurisdiction of the Coast Guard pursuant to 46 U.S.C. § 7703, which authorizes the Coast Guard to suspend or revoke a Coast Guard issued license or Merchant Mariner's Document for, among other thing, acts of Misconduct. In these proceedings, the Coast Guard has the burden of proving the allegations in the Complaint by a preponderance of the evidence. 33 C.F.R. §§20.701 and 20.702; Appeal Decisions 2468 (LEWIN), 2477 (TOMBARI). See also Dept. of Labor v. Greenwich Collieries, 512 U.S. 267 (1994); Steadman v. SEC, 450 U.S. 91, 100-103 (1981). This proceeding is conducted under the provisions of 33 C.F.R. Part 20, and 46 C.F.R. Part 5, and the Administrative Procedure Act, as amended and codified in 5 U.S.C. § 551 et seq.

In the Complaint dated September 20, 2004, the Coast Guard alleged that Mr. Spence committed Misconduct by wrongfully disobeying the orders of the Master while at sea aboard the SS ARGONAUT by failing to remain seated and silent during a crew meeting and ultimately failing to return to his quarters when ordered. The term Misconduct is defined in Coast Guard regulations as human behavior that violates a formal duly established rule. Such rules are found in statutes, regulations, the common law, the general maritime law and in a ship's regulations or orders and similar sources. (46 CFR § 5.27). It is an act which is forbidden or the failure to do an act that is required. (*Id.*).

It is now well established at law that good order and discipline aboard ship and the safety of the crew requires mariners to obey the lawful orders of the Master. Appeal Decision 2616 (BYRNES), p. 10. As the Commandant has recognized, the orders of the Master of a vessel are

accorded “special recognition and protection” in this nation as well as the international community. (*Id.*). The Master has the great responsibility for ensuring the safety of his vessel and its crew and the law recognizes that duty as the basis for his authority to issue orders. (*Id.*). See also 46 U.S.C. § 11501. Over one hundred years ago the Supreme Court stated in this regard in The Styria, 186 U.S. 1, 22 S.Ct. 732 (1901):

The Master of a ship is the person who is entrusted with the care and management of it, and the great trust reposed in him by the owners, and the great authority which the law has vested in him, require on his part and for his own sake, no less than for the interest of his employers, the utmost fidelity and attention.

Moreover, the shipping articles here, (Articles of Agreement between Master and Seaman in the Merchant Service of the United States) signed by Mr. Spence and Captain Ravalico on April 16, 2003 require the seaman to conduct himself in an orderly manner and to be obedient to the lawful commands of the Master. (CG Exhibit 4). As the Commandant has stated in Appeal Decision 2150 (THOMAS), (p. 2): “A seaman who is bound by legally constituted articles of agreement may not fail to obey lawful orders during the existence of the lawfully incurred obligation.” There is no question therefore that Heath Spence, the Bosun on the ARGONAUT on June 20, 2003, was obligated to obey the lawful orders of Captain Ravalico, the Master of that vessel.

Next, it is necessary to review whether the orders involved here were lawful. See (Appeal Decision JOHNSON), (pp.2-3). In this instance, Captain Ravalico had convened a routine safety meeting for the crew while the ARGONAUT was returning to Salerno, Italy from the Middle East. Near the end of the meeting, the Bosun Spence accused the single female crewmember of having sexual relations with another member of the crew. As Second Mate Peterson testified at the hearing, Spence’s accusation was totally inappropriate at this public

safety meeting and it served no purpose whatsoever to air this matter at that meeting. (TR 61). Peterson continued that it was “ridiculous and foolish” to make these statements in public to the crew. (TR 62). The Second Mate testified that it “made sense” for the Captain to cut off the discussion of this topic by ordering the Bosun to sit down and stop. (TR 62). When Spence refused, the Master ordered Spence to leave the room and return to his cabin. (*Id.*) After more refusals to obey, Spence was relieved of his duties and ultimately escorted from the room. (TR 60).

These orders were lawful and appropriate to the situation. (TR 61). Both Captain Ravalico and Second Officer Peterson testified at the hearing to the increasingly heated confrontation by the Bosun toward the Master. Captain Ravalico testified that in all his over 30 years of sailing, he had never experienced a situation like the one involved here. (TR 46). The Bosun’s behavior created a chaotic and confrontational atmosphere which nearly resulted in “blows” between some of the crew and the officers. (TR 43-44). When the Bosun brought up the alleged sexual relationship of the two crewmembers the Master ordered him to sit down and be quiet. (TR 58). The Bosun refused and replied that he had something to say and wasn’t going to sit down until he was finished. (TR 59). The Master ordered him to desist a number of times but the Bosun persisted and refused to obey. (TR 42, 59). At that point Captain Ravalico ordered the Bosun to leave the meeting and return to his room. (TR 59). Again, the mariner refused to obey. (TR 59-60). Finally, Captain Ravalico relieved Spence of his duties, ordered him to leave the meeting, confined him to his cabin and had him escorted out of the meeting. (TR 59-60). These were lawful and indeed reasonable and necessary orders under the circumstances.

The Commandant has held that the second consideration in determining whether the offense of disobedience to a lawful order has been committed is whether the mariner had knowledge of the order. See Appeal Decision JOHNSON, *supra* at 2. Captain Ravalico and Second Officer Peterson testified that they were certain that Spence heard and understood the Master's orders but he refused to obey. (TR 42, 61). This testimony is very credible that the Bosun was fully aware of the orders involved but intentionally refused to comply.

The third element of the offense is whether the mariner had a duty to obey the order. The evidence in this case as recited earlier, reveals that Mr. Spence signed Articles of Agreement to serve as Boson-Able Bodied Seaman aboard the ARGONAUT on April 16, 2003. Captain Ravalico too signed that Agreement. The Articles specifically required Spence to obey the lawful orders of the Master. Spence's behavior here violated the express terms of that Agreement as well as the long standing law of the sea which imposed upon him the duty to obey. See BYRNES *supra* at 11. This element of the offense is present in this case.

Finally, the review must examine whether the mariner failed to obey the Master's orders. Both Captain Ravalico and the Second Officer testified that Spence continued to verbally confront the Master after he had been ordered repeatedly to sit down and be silent. (TR 38, 58-59). Next, when the Bosun refused to obey he was ordered to leave the room and return to his cabin. (TR 39-44, 59-61). Again the Bosun refused to obey. It was only when the Captain ordered the Chief Engineer and the Chief Mate to escort Spence to his room that he finally complied. (TR 60). Clearly, Mr. Spence disobeyed the numerous orders issued by the Master.

Moreover, when asked whether there were any reasons why the Respondent could not have complied with the Master's order, the Second Officer responded "No" as follows:

No. The orders were simple and very easy to comply with. He was asked to either first sit down and stop talking, you know, discontinue this topic of conversation or this topic of meeting. So that was very simple to comply with. And it would have been wise as well easy for the bosun to just remove himself from the room when he was told to do so. Either of those were straightforward and easy enough for him to follow through.

(TR 63)

Mr. Spence's disobedience here is particularly egregious since he, as Bosun, is the leading member of the deck crew and is responsible for supervising less experienced mariners. He is the one who sets the example to the other members of the deck crew. Mr. Spence's behavior must have been very damaging to the crew morale and to good order and discipline on the vessel.

For all of the foregoing reasons, the Jurisdictional and Factual Allegations of the Complaint are **PROVED**.

VI. **ORDER**

The Investigating Officer is seeking an Order suspending Mr. Spence's Merchant Mariner's Document for six months; three month as Outright Suspension and three months to be remitted on twelve months probation. (TR 78-79). That request is reasonable under the circumstances of this case. Accordingly,

IT IS HEREBY ORDERED THAT all elements of the Complaint filed against Heath Spence on September 20, 2004 are **PROVED**.

IT IS FURTHER ORDERED THAT the Merchant Mariner's Document and all other credentials issued by the U.S. Coast Guard to Heath Spence are **SUSPENDED OUTRIGHT** for **THREE** months commencing on the date they are in the possession of the Coast Guard. In addition, Mr. Spence's credentials are suspended for an additional **THREE** months but that

suspension will not become effective provided he does not violate any law or regulation relating to marine safety or to the illegal use of drugs or alcohol during the 12 months period immediately following the end of the period of Outright Suspension.

IT IS FURTHER ORDERED THAT Heath Spence is to tender his Merchant Mariner's Document and all other credential issued by the Coast Guard immediately to the nearest Coast Guard Marine Safety Office or mail those credentials to the following office.

ENS Jon D. Lane
Marine Safety Office Hampton Roads
200 Granby Street
Norfolk, VA 23510-1888

IT IS FURTHER ORDERED THAT Heath Spence is hereby prohibited from serving aboard any vessel requiring a Merchant Mariner's Document issued by the U.S. Coast Guard until the suspension described herein is served.

PLEASE TAKE NOTICE that service of this Decision on the parties and/or parties' representative(s) serves as notice of appeal rights set forth in 33 CFR 20.1001 – 20.1004. (Attachment A).

**PETER A. FITZPATRICK
ADMINISTRATIVE LAW JUDGE
U.S. COAST GUARD**

Done and dated on this February 9, 2005
Norfolk, Virginia

ATTACHMENT A

NOTICE OF ADMINISTRATIVE APPEAL RIGHTS

33 CFR 20.1001 General.

- (a) Any party may appeal the ALJ's decision by filing a notice of appeal. The party shall file the notice with the U. S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022. The party shall file the notice 30 days or less after issuance of the decision, and shall serve a copy of it on the other party and each interested person.
- (b) No party may appeal except on the following issues:
 - (1) Whether each finding of fact is supported by substantial evidence.
 - (2) Whether each conclusion of law accords with applicable law, precedent, and public policy.
 - (3) Whether the ALJ abused his or her discretion.
 - (4) The ALJ's denial of a motion for disqualification.
- (c) No interested person may appeal a summary decision except on the issue that no hearing was held or that in the issuance of the decision the ALJ did not consider evidence that that person would have presented.
- (d) The appeal must follow the procedural requirements of this subpart.

33 CFR 20.1002 Records on appeal.

- (a) The record of the proceeding constitutes the record for decision on appeal.
- (b) If the respondent requests a copy of the transcript of the hearing as part of the record of proceeding, then, --
 - (1) If the hearing was recorded at Federal expense, the Coast Guard will provide the transcript on payment of the fees prescribed in 49 CFR 7.45; but,
 - (2) If the hearing was recorded by a Federal contractor, the contractor will provide the transcript on the terms prescribed in 49 CFR 7.45.

33 CFR 20.1003 Procedures for appeal.

- (a) Each party appealing the ALJ's decision or ruling shall file an appellate brief with the Commandant at the following address: U.S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022, and shall serve a copy of the brief on every other party.
 - (1) The appellate brief must set forth the appellant's specific objections to the decision or ruling. The brief must set forth, in detail, the --

- (i) Basis for the appeal;
 - (ii) Reasons supporting the appeal; and
 - (iii) Relief requested in the appeal.
- (2) When the appellant relies on material contained in the record, the appellate brief must specifically refer to the pertinent parts of the record.
- (3) The appellate brief must reach the Docketing Center 60 days or less after service of the ALJ's decision. Unless filed within this time, or within another time period authorized in writing by the Docketing Center, the brief will be untimely.
- (b) Any party may file a reply brief with the Docketing Center 35 days or less after service of the appellate brief. Each such party shall serve a copy on every other party. If the party filing the reply brief relies on evidence contained in the record for the appeal, that brief must specifically refer to the pertinent parts of the record.
- (c) No party may file more than one appellate brief or reply brief, unless --
- (1) The party has petitioned the Commandant in writing; and
 - (2) The Commandant has granted leave to file an added brief, in which event the Commandant will allow a reasonable time for the party to file that brief.
- (d) The Commandant may accept an *amicus curiae* brief from any person in an appeal of an ALJ's decision.

33 CFR 20.1004 Decisions on appeal.

- (a) The Commandant shall review the record on appeal to determine whether the ALJ committed error in the proceedings, and whether the Commandant should affirm, modify, or reverse the ALJ's decision or should remand the case for further proceedings.
- (b) The Commandant shall issue a decision on every appeal in writing and shall serve a copy of the decision on each party and interested person.

ATTACHMENT B

WITNESS AND EXHIBIT LISTS

WITNESS LIST

COMPLAINANT'S WITNESSES

1. LT John Gonzales
2. Bruno P. Ravalico
3. Robert J. Peterson

EXHIBIT LIST

COMPLAINANT'S EXHIBITS

CG Exhibit 1 - Merchant Mariner Document File

CG Exhibit 2 – Merchant Mariner's Renewal Document

CG Exhibit 3 – Copy of Merchant Mariner's Document

CG Exhibit 4 – Articles of Agreement

CG Exhibit 5 – Particulars of Engagement/Discharge

CG Exhibit 6 – Certificate of Discharge

CG Exhibit 7 – Crew List

CG Exhibit 8 – Certificate of Inspection

CG Exhibit 9 – Certificate of Documentation

CG Exhibit 10 – Logbook Excerpt