In the Matter of Merchant Mariner's Document No. Z-401013-D2 and all other Seaman Documents
ISSUED TO: MUKHTAR ABDALLA MUKHTAR

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1107

MUKHTAR ABDALLA MUKHTAR

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 9 September 1958, and Examiner of the United States Coast Guard at Galveston, Texas suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as an oiler on board the United States SS LONE STAR STATE under authority of the document above described, on or about 3 September 1958, Appellant wrongfully had liquor in his possession.

At the hearing, Appellant was represented by counsel of his own choice. He entered a plea of not guilty to the charge and specification. The Investigating Officer introduced in evidence the testimony of two witnesses and several documentary exhibits. No evidence was submitted in behalf of Appellant.

At the conclusion of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. An order was entered suspending all documents,

issued to Appellant, for a period of six months on twelve months' probation.

FINDING OF FACT

On 3 September 1958, Appellant was serving as an oiler on board the United States SS LONE STAR STATE and acting under authority of his Merchant Mariners Document No. Z-401013-D2 while the ship was in the port Galveston, Texas.

About 2100 on this date, Appellant gave a bottle, with approximately three inches of gin in it, to the cook when he took some ice to Appellant's room. The bottle had a Gordon's Gin label on it. The cook put it in his room. Twenty minutes later, the cook was in the messmen's room when Appellant entered and asked the cook for his [Appellant's] "whisky." One of the messmen was in the room. The cook went to his room, got the gin bottle (which he had not opened) and returned it to Appellant.

Appellant's prior record includes a suspension in 1945 for failure to perform duties due to intoxication.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the findings of the Examiner are against the weight of the evidence and the order imposed is too severed.

Appearance: Klein, Sardaro and Nolan of New York City by Walter J. Klein, Esquire, of Counsel.

OPINION

Appellant's contentions are without merit. The finding of the Examiner that the specification was proved is supported by the evidence in the record. The order is not considered to be too severe because possession of intoxicating liquor on board ship by members of the crew militates against proper order and discipline. Commandant's Appeal Decision No.321.

The evidence supports, as the only reasonable inference, the fact that the clear liquid in the bottle was gin although the cook did not taste or smell it. Both the cook and the messman who was present when the cook returned the bottle to Appellant testified that the bottle had a Gordon's Gin label on it. The messman also testified that Appellant referred to the contents of the bottle as "gin" when it was returned to him by the cook. This was an admission by Appellant which was properly received in evidence. In the face of this uncontradicted testimony, it would be completely illogical to conclude that the clear liquid in the gin bottle was anything other than gin. Appellant's request for his "whisky" further supports the conclusion that it was an intoxicating liquor. Appellant undoubtedly had wrongful possession of the intoxicant after it was returned to him by the cook regardless of whether or not it belonged to Appellant at the earlier time when he gave it to the cook.

ORDER

The order of the Examiner dated at Galveston, Texas, on 9 September 1958, is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 17th day of August, 1959.

***** END OF DECISION NO. 1107 *****

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