

In the Matter of License No. 222941 Merchant Mariner's Document No.
Z-446219 and all other Seaman Documents
Issued to: JACK B. MACKENZIE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1423

JACK B. MACKENZIE

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 22 March 1963, an Examiner of the United States Coast Guard at Mobile, Alabama revoked Appellant's seaman documents upon finding him guilty of misconduct. The five specifications found proved allege that while serving as Second Mate on board the United States SS SANTA EMILIA under authority of the Chief Mate's license above described, on 31 December 1962, Appellant wrongfully left the bridge while on watch, he become intoxicated while on watch and had possession of intoxicants; from 28 January through 3 February 1963, Appellant remained absent from the ship without leave; Appellant failed to join the ship upon her departure from Bombay on 3 February 1963.

At 1430 on 18 March 1963 in Mobile, Appellant was served with the charge and specifications and summoned to appear for a hearing in Mobile at 1100 on 19 March. Appellant was informed of his rights including the right to representation by counsel. There is no indication in the record or claim by Appellant on appeal that,

at this time, he voiced his desire to have more time to prepare his defense or requested that the hearing be conducted at Port Arthur, Texas where Appellant lives.

On the following day, Appellant was absent. When nothing had been heard from Appellant by 1140, the Examiner convened the hearing. Herndon H. Wilson, Esquire, was present to represent Appellant. Mr. Wilson stated that he had been informed of the hearing the day before and he had requested Appellant's presence at his office but Appellant did not show up. Mr. Wilson also stated that he called Appellant's union, the Masters Mates and Pilots, on the morning of 19 March and was told that Appellant was supposed to go to Mr. Wilson's office, he waited in vain for Appellant and left his office to go to the hearing at about 1100. It is not clear whether this lawyer was retained by Appellant or by somebody else on behalf of Appellant. The record indicates the probability that Mr. Wilson was requested by the Master Mates and Pilots union to represent Appellant. In any event, it seems clear that Mr. Wilson had not discussed the alleged offenses with Appellant. Under this handicap Mr. Wilson remained at the hearing while it was conducted in absentia, cross-examined the three witnesses (Master, Chief Mate, and Third Mate) called by the Government, and objected to portions of the documentary exhibits which were introduced in evidence.

At the beginning of the hearing, Mr. Wilson protested against proceeding with the hearing since Appellant had received notice of it just one day before it was scheduled to be held. At 1200, the hearing proceeded without Appellant and the Investigating Officer called the three witnesses who had been waiting. At the conclusion of the Government's case, Mr. Wilson stated that he had no witnesses and rested on behalf of Appellant.

On 11 April, the Examiner's decision of 22 March was served on Appellant at the Port Arthur Marine Inspection Office of the Coast Guard. The reason for Appellant's appearance at this office is not stated in the record and there is no indication that Appellant contacted the Coast Guard prior to this time in connection with the hearing. Appellant surrendered his licenses (Chief Mate's and Motorboat Operator's) and Merchant Mariner's Document on 11 April when the decision was served. An appeal was filed on 19 April, Appellant was furnished a copy of the hearing record on 30 April,

and he was granted an extension until 14 August to file additional material in support of his appeal. This was filed on the last day of the extended period.

FINDINGS OF FACT

From 7 December 1962 until 18 March 1963, Appellant was serving as Second Mate on the United States SS SANTA EMILIA and acting under authority of his Chief Mate's license while the ship was on a foreign voyage.

Appellant appeared to be in satisfactory condition on 31 December when he relieved the Third Mate for the 1200 to 1600 bridge watch. The ship was under way in a coastal shipping lane off the coast of Algeria, Africa. At some time prior to 1330, Appellant left the navigation bridge without being relieved or notifying the Master.

At approximately 1330, the Master went to the bridge and found that no officer was on watch. The Master located Appellant in the bunk in his room and smelled whisky on his breath. The Master and Chief Mate could not arouse Appellant by calling him and he stayed in his bunk. One of the other two mates (Chief Mate or Third Mate) completed Appellant's watch.

On the table next to Appellant's bunk, there were three bottles of brandy. One of them had been opened and partially emptied. The Master confiscated all three bottles since Appellant's possession of them violated the Master's posted orders concerning liquor and the prohibition in the Shipping Articles against such possession. Appellant's condition was substantially the same at 1600. there is no evidence in the hearing record that Appellant complained of being ill on this date of 31 December.

From 28 January through 3 February 1963, Appellant was ashore in Bombay, India without permission. He had not complained of illness or given any other indication of poor health before leaving the ship. Efforts to locate him were not successful. The Chief Mate and Third Mate were required to stand Appellant's watches in addition to their own.

Appellant had not returned when the ship departed Bombay on 3

February as scheduled. On 4 February, Appellant reported to the office of the ship's agent in Bombay and complained of a stomach ailment. He was thoroughly examined by a physician and found to be well. Appellant was flown to Aden where he rejoined the ship on 9 February. Appellant was fit for duty when he returned to the ship and subsequently performed his duties very well (Master's testimony, R 21). Appellant signed off the Shipping Articles by mutual consent on 18 March, the date on which he was served with the charges and summoned to appear at the hearing on 19 March.

Appellant's prior record consists of a probationary suspension in 1955 for absence from his duties and failure to join; and an admonition in 1961 for failure to perform his duties due to intoxication.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the Examiner's decision is unjust and the order is unduly severe; the testimony is conflicting on many points; Appellant was deprived of his right to due process of law since he did not have sufficient time to subpoena witnesses and otherwise prepare his defense in less than twenty-four hours; Appellant did not have counsel and was not aware that counsel would be furnished or that he could have asked for a continuance to prepare his defense; Appellant was suffering from a severe mental illness or mental strain at the time of the alleged offenses and consequently, he did not have full control of himself.

With respect to the specification, Appellant claims that, on 31 December, he was intoxicated but suffered a violent attack of diarrhea and stomach cramps, he went to the head, "blacked out," and was not aware of anything until the next day when he was called to sign the Official Logbook entry concerning this incident. The Master and Chief Mate knew that Appellant had several of these attacks of diarrhea during the voyage. Appellant was reluctant to report this illness to the Third Mate, who was in charge of the medical supplies, because he was very surly and unco-operative. It was the practice of the vessel for the watch officers to leave the bridge for short intervals without being relieved.

Concerning the brandy, the crew members could purchase intoxicants from the Master but Appellant had never done so.

While ashore at Bombay, Appellant became extremely ill with diarrhea on 1 February. He went to bed at a hotel and received treatment by a physician until 4 February when Appellant was strong enough to go to the office of the ship's agent. Appellant was not able to contact the ship during this time because of the language barrier.

Appellant thought that "I could automatically have the hearing transferred" to Port Arthur. He requests that the case be dismissed or remanded; and, alternatively, that the order be modified.

Appellant has submitted eleven letters as references as to his good character and ability as an officer.

OPINION

Appellant has submitted no convincing reason why the order of revocation should not be upheld on appeal. In essence, Appellant claims that he was ill, physically and mentally, at the time of the alleged offenses; when charged, he failed to attend the hearing because he was not given sufficient time to prepare his defense; and the evidence is not sufficient to sustain the order of revocation.

The reasons given for Appellant's failure to appear at the hearing are not satisfactory. The excuse that he thought the hearing could be transferred automatically to Port Arthur is too shallow to require discussion since obviously some action by Appellant was required in order to accomplish this change of venue after Appellant had been summoned to appear at a hearing in Mobile. It is apparent that Appellant should have gone to the hearing and requested a continuance if he considered this to be necessary or advisable in order to prepare his defense. It is very probable that the Examiner would have granted such a request.

The record does not show whether Appellant was informed beforehand that there was an attorney present to represent Appellant, but there is no doubt that Appellant would have known this if he had followed the proper procedure of appearing at the hearing as directed. The fact that Appellant did not contact the

Coast Guard until 11 April, although he definitely had been notified by the charge and specifications that the case was pending, is further evidence of Appellant's lack of good faith. Also, there is no indication that Appellant requested subpoenas, for witnesses in his behalf from the Investigating Officer when Appellant was served on 18 March.

Under these circumstances, it is my opinion that Appellant effectively waived his right to present evidence in his defense (see *Commandant's Appeal Decisions* Nos. [778](#), [1250](#) and [1266](#)), there was no denial of due process, and it was proper for the Examiner to conduct the hearing in absentia after entering pleas of not guilty on behalf of the Appellant.

Regardless of some minor inconsistencies, the testimony of the three ship's officers constitutes overwhelming substantial evidence that Appellant was guilty of the alleged offenses. The evidence is convincing that Appellant became intoxicated rather than ill after he relieved the watch at 1200 on 31 December and that he was not ill while ashore in Bombay. Considering Appellant's version presented on appeal, there is nothing to account for how Appellant reached his bunk after he "blacked out" in the head; Appellant's reason for not reporting any of these so-called violent attacks of illness is not persuasive; and the statement that the watch officers regularly left their station on the navigation bridge without being relieved is rather farfetched. Appellant's contention that he was not able to contact the ship until the fourth day of illness in Bombay is of equally dubious value, particularly since the physician who examined Appellant on the fourth day (4 February) concluded that Appellant was not ill.

Also opposed to Appellant's claim of illness, there is no evidence of that in the ship's medical logbook or that Appellant ever complained to anyone on the ship about his illnesses. (His answer to the Official Logbook entry pertaining to the 31 December offenses was, "No comment".) Appellant was apparently perfectly well for several weeks both before and after the ship was at Bombay and he did not request a hospital slip to see a physician when the ship was in this port.

These factors cast considerable reflection on Appellant's claim that his difficulties were due to physical illness and there

is absolutely nothing in the record to support the bare statement that Appellant was suffering from a severe mental illness on this voyage.

The significance of Appellant's statement that intoxicants could be purchased by crew members from the Master escapes me since Appellant also stated that he did not purchase any intoxicants from the Master. Therefore, he possessed the three bottles of brandy in violation of the Master's prohibition against crew members taking intoxicants on board the ship.

The order of revocation will not be modified in view of the seriousness of these offenses committed by a licensed officer. Appellant completely abdicated his responsibilities and his right to be licensed as a Chief Mate when he not only left his station on the bridge while in charge of the ship's navigation but he became inebriated while he was supposed to be on watch. The grave hazard to the safety of the crew and vessel caused by this gross neglect of duty is so evident as not to require further comment. The same result was produced in another manner when Appellant left the ship in Bombay and remained absent for approximately two weeks. During this time, the responsible position of Second Mate was vacant and the other two mates were required to divert considerable time from their own important duties in order to do Appellant's work. This again produced a dangerous situation especially when two officers had to stand all the bridge watches while the ship was under way at sea.

ORDER

The order of the Examiner dated at Mobile, Alabama, on 22 March 1963, is AFFIRMED.

D. McG. MORRISON
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 7th day of October, 1963.

***** END OF DECISION NO. 1423 *****

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