

In the Matter of Merchant Mariner's Document No. Z-128183-D5  
Issued to: THOMAS BASIL SCULLY

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

719

THOMAS BASIL SCULLY

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 26 August, 1953, an Examiner of the United States Coast Guard at Port Arthur, Texas, suspended Merchant Mariner's Document No. Z-128183-D5 issued to Thomas Basil Scully upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as an able seaman on board the American SS MORMACDAWN under authority of the document above described, on or about 23 June, 1953, he failed to join said vessel prior to its departure from a domestic port.

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 counsel of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer and Appellant made their

opening statements and the Investigating Officer introduced in evidence a certified copy of extracts from the Shipping Articles of the MORMACDAWN and a certified copy of a log entry in the official logbook of the ship.

In defense, Appellant testified under oath in his own behalf. He stated that his wife came to New York from Boston and he was worried about his wife because she had heart trouble. For this reason, Appellant said that he tried to get discharged by the Mate and then by the ship's agent but they told him to see the Master of the ship. The Master was not on board and Appellant could not find the Master. Consequently, Appellant stated that he told the Mate and the agent that he was not going to make the trip to west coast.

At the conclusion of the hearing, having given both parties an opportunity to submit argument and proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-128183-D5, 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. This order included a two-month probationary suspension imposed by an order dated 23 October, 1952, but not served on Appellant until 24 August, 1953.

From that order, this appeal has been taken, and it is urged that Appellant thinks the six-month suspension is rather severe due to the fact that the Mate was notified of sickness in Appellant's family at the time he failed to join. Appellant also feels that the suspension should be mitigated in view of his war record.

Based upon my examination of the record submitted, I hereby make the following

#### *FINDINGS OF FACT*

On 23 June, 1953, Appellant was in the service of the American SS MORMACDAWN as an able seaman and acting under authority of his Merchant Mariner's Document No. Z-128183-D5. Appellant had signed on the Shipping Articles in the Port of New York on 22 June, 1953.

On 23 June, 1953, Appellant failed to join the MORMACDAWN when she sailed from New York.

In addition to the two months suspension on twelve months probation which was imposed by an order dated 23 October, 1952, for failure to join a ship at a domestic port, Appellant's prior record consists of a 30-day suspension in 1943 for absence from vessel and duty, a two months suspension in 1945 for failure to perform duties because of intoxication and absence from vessel and duties, and a three months suspension in 1945 for failure to perform duties.

#### *OPINION*

Appellant was not justified in failing to join the MORMACDAWN on 23 October, 1953. Although a single offense of failure to join in a domestic port is not serious when a replacement can be readily obtained, Appellant's prior record shows that he has become a chronic offender with respect to failures to join and offenses of a similar nature. The cumulative effect of these infractions of discipline is to brand Appellant as a seaman who has little regard for the obligation to perform certain duties on board ship which he undertakes when he is employed to serve during the course of a voyage.

Nevertheless, the six months suspension will be modified to exclude the two months suspension which is based on the prior order dated 23 October, 1952. Title 46 C.F.R. 137.09-80 requires that the Examiner shall deliver the original of his decision to the person charged at the time the order is announced. Since the decision (including the order) 23 October, 1952, was not served upon Appellant until 24 August, 1953, it was not effective before the latter date. Consequently, the present offense of 23 June, 1953, was committed prior to the beginning of the twelve months probationary period imposed by the order dated 23 October, 1952, but not effective until 24 August, 1953.

#### *ORDER*

This order of the examiner dated at Port Arthur, Texas, on 26 August, 1953. is modified to read that Merchant Mariner's Document No. Z-128183-D5, and all other licenses and documents issued to

Appellant by the United States Coast Guard or its predecessor authority, are suspended for a period four (4) months.

As so MODIFIED, said order is AFFIRMED.

Merlin O'Neill  
Vice Admiral, United States Coast Guard  
Commandant

Dated at Washington, D.C., this 31st day of December, 1953.

\*\*\*\*\* END OF DECISION NO. 719 \*\*\*\*\*

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