

In the Matter of License No. 138545 and all other Seaman Documents
Issued to: LINK J. WALTERS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1002

LINK J. WALTERS

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 1 March 1957, an Examiner of the United States Coast Guard at Baltimore, Maryland, admonished Appellant upon finding him guilty of misconduct. The portion of the specification found proved alleges that while serving as Third Mate on board the American SS YOUNG AMERICA under authority of the document above described, on or about 2 February 1957, Appellant was insubordinate toward the Master of the ship. The balance of this specification, alleging belligerence toward the Master, and another specification, alleging disobedience of a lawful command by the Master, were found by the Examiner not to have been proved.

After considering the evidence consisting of the testimony of the Master and Appellant as well as a log entry, the Examiner concluded that the charge and the above part of one specification had been proved. An order was then entered admonishing Appellant.

The decision was served on 8 March 1957. Appeal was timely filed on 11 March and a supporting brief was submitted on 28 August

1957.

FINDINGS OF FACT

On 2 February 1957, Appellant was serving as third Mate on board the American SS YOUNG AMERICA and acting under authority of his License No. 138545 while the ship was proceeding from Philadelphia to Baltimore via the inland route.

At approximately 1955 on this date, Appellant relieved the bridge watch officer. The ship was being conned by a pilot preparatory to anchoring near the entrance to the Chesapeake and Delaware Canal. The Master was also on the bridge. A delay in obtaining clearance to enter the canal was encountered as a result of difficulty in passing the clearance papers to the canal control boat alongside. Consequently, the Master told Appellant to go below to assist in getting the clearance papers to the official in the control boat. Appellant told the Master that there was a Mate below on deck for this purpose and that Appellant was on watch. Appellant did not obey the Master's order to go below until it had been repeated three times directly to Appellant while both seamen were face to face in the wheelhouse. Appellant finally left the bridge and went below. During this time, the YOUNG AMERICA was blocking the channel and another vessel was approaching from astern.

Appellant returned to the bridge a few minutes later after clearance had been granted. The Master was using the telephone to relay the pilot's instructions to the anchor detail on the forecastle. Appellant talked in a very loud voice to the Master and shook a forefinger at him. This interfered with the Master's ability to telephone and to hear the pilot's orders to the helmsman. Appellant's face was so close to the Master's face that he pushed Appellant away. The pilot was then maneuvering the vessel to anchor. The confusion caused by Appellant was so great that the Master relieved Appellant of the watch and ordered him to go below. Appellant obeyed that order.

Appellant's prior disciplinary record consists of an admonition in 1947 for absence without leave and insolence toward the Chief Mate. At the time, Appellant was serving in an unlicensed capacity.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that:

1. The specification found proved is legally insufficient because it is too vague and indefinite to apprise Appellant of the specific offense he is alleged to have committed if the specification is intended to refer to an offense other than that in the dismissed specification alleging disobedience of a lawful command.
2. The finding that Appellant was insubordinate is inconsistent with the conclusion that the other specification was not proved since the two specifications allege identical offenses except that one is in specific and the other is in general terms.
3. Although the burden of proof rested on the Government, the preponderance of the credible evidence shows that Appellant was not guilty of insubordination. The Investigating Officer's only witness was the Master who was prejudiced against Appellant. The Master's testimony was evasive as to whether there Chief Mate's wife was in the wheelhouse at the times in question. She and other available witnesses should have been called to testify. The Master's testimony was completely uncorroborated.

For these reasons, it is respectfully submitted that the finding of insubordination is erroneous and should be set aside.

APPEARANCE: Edward Pierson, Esquire, of Baltimore, Maryland,
of Counsel.

OPINION

It is apparent from the testimony of both the Master and Appellant that the specification alleging insubordination was intended to refer to both of the incidents which occurred on the bridge within a few minutes of each other. There was extended

questioning of both witnesses with respect to these two incidents and no clarification was requested at the time of arraignment or later as to the specific time limitations of the specification. Thus, Appellant had notice of the incidents involved and did not indicate at the hearing that he was prejudiced by any technical deficiencies in the specification. The issue has been raised for the first time of appeal and, therefore, it is considered to be without merit.

As to the wording of the specification, the dictionary definition of insubordinate is, "not submitting to authority; disobedient." It is obvious from this that there can be insubordination without disobeying a command as alleged in the dismissed specification. The two specifications alleged different offenses arising out of the same incidents. Hence, it was not inconsistent to find one specification proved and the other not proved. Appellant seems to have had some idea of the distinction because at one time he testified that he had no intention of being insubordinate and at another point he stated that he did not intend to disobey an order of the Master. In his argument at the conclusion of the hearing, counsel for Appellant recognized the difference between disobeying an order and insubordinately delaying to obey an order. Consistent with this, the Examiner pointed out the distinction that, under the circumstances, the failure to obey an order would be a much more serious offense.

On the merits of the case, the Examiner accepted the testimony of the Master insofar as it conflicted with Appellant's version. Actually, Appellant admitted that he did not leave the bridge to assist with the clearance papers until after the third time the Master told Appellant to go below. The fact that Appellant was on watch did not justify his failure to obey the order the first time it was given. Such an order by a ship's Master automatically relieves an officer from any further responsibility on the bridge after he goes below. Appellant's testimony shows that he did not question the authority of the Master to send Appellant from the bridge without specifically stating that he was relieved of the watch. As to the navigation of the vessel, there was a pilot conning her. Consequently, Appellant was clearly insubordinate for failing to obey the Master immediately.

When Appellant returned to the bridge a few minutes later, his

conduct (as stated in the above findings of fact) was insubordinate in the sense that he did not submit to the Master's authority. Even if there was no disobedience of a direct order given at the time, Appellant obviously was interfering with the safe and orderly navigation of the ship while she was maneuvering to anchor in confined waters. Any seaman should know that under these circumstances any interruption of the Master's activities is a violation of his authority as Master in carrying out his duty to protect his crew and ship against danger.

The fact that the Examiner based his findings on the uncorroborated testimony of the Master is no basis for reversal since no good reason appears in the record why the Examiner, as the trier of the facts, should not have had the choice of accepting the Master's testimony as opposed to that of Appellant. The Master was not evasive as to whether the Chief Mate's wife was in the wheelhouse at the times in question. He merely stated that he did not know if she was present. This is understandable since the Master was deeply preoccupied with getting clearance for his ship and then seeing that she was safely anchored.

As to the contention that the Investigating Officer should have produced other witnesses at the hearing, the record shows that Appellant was given full opportunity to present witnesses who were equally available to him. Counsel specifically stated that his client did not desire to delay the conclusion of the hearing in order to locate the helmsman who was on watch at the time of these two incidents.

For these reasons, it is my conclusion that the specification was sufficient to support the charge and that the specification was sustained by substantial evidence consisting of the Master's testimony.

ORDER

The order of the Examiner dated at Baltimore, Maryland, on 1
March 1957, is AFFIRMED

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 20th day of January, 1958.

***** END OF DECISION NO. 1002 *****

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