In the Matter of License No. 164172 and Merchant Mariner's Document No. Z-226580
Issued to: RICHARD KLATTENBERG, Chief Engineer

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1008

RICHARD KLATTENBERG

In the Matter of License No. 164172
Merchant Mariner's Document No. Z-226580
Issued to: RICHARD KLATTENBERG, Chief Engineer

License No. 195230
Merchant Mariner's Document No. Z-58293
Issued to: ARTHUR BRUNELLE, First Assistant Engineer

License No. 163169
MERCHANT MARINER'S DOCUMENT No. Z-74361
Issued to: VINCENT E. BELSKY, Second Assistant Engineer

License No. 170162
Merchant Mariner's Document No. Z-445821
Issued to: JOHN HOLOBOSKI, Third Assistant Engineer

License No. 178746

Merchant Mariner's Document No. Z-993643
Issued to: DONALD L. MERCHANT, Fourth Assistant Engineer

These appeals have been taken in accordance with title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By individual orders dated 21 February 1957, an Examiner of the United States Coast Guard at New York, suspended Appellants' seamen documents upon finding them guilty of misconduct. One specification alleges that while serving as the engineering officers, in the capacities indicated above, on board the American SS FLYING CLIPPER under authority of their respective licenses on or about 2 and 3 March 1956, the five Appellants acted in concert with each other to wrongfully prevent the operation of the ship under the Master's orders while the vessel was at a dock in Ponce, Puerto Rico.

In addition, each Appellant was found guilty of a specification alleging wrongful absence from the vessel. As to the First, Third and Fourth Assistant Engineers, the individual specification against the Second Assistant alleges an absence only on 2 March 1956 although the facts show that he was also wrongfully absent from the ship on 3 March. The related specification pertaining to the Chief Engineer alleges that he wrongfully left the vessel on 3 March without proper relief on board, the main plant not having been secured and sea watches still being maintained.

A third specification found proved in the case of the chief Engineer alleges that, on 2 March, he wrongfully refused to obey a lawful order of the Master to continue the vessel's winches in an operational condition. A similar third specification as to the Fourth Assistant Engineer alleges that, on 2 March, he wrongfully refused to permit the ship's electrician to carry out the Master's lawful order to put all cargo winches in operation. There are only

two specifications in the cases of each of the other three engineering officers on the ship.

The hearing was opened on 3 May 1956 at which time all the parties agreed to consolidate the proceedings in the five cases and to conduct a hearing in joinder with a separate decision to be rendered in each case. The Appellants or their counsel were given a full explanation of the nature of the proceedings, the rights to which Appellants were entitled and the possible results of the hearing. The Appellant or his counsel entered a plea of not guilty to the charge and specifications directed against each Appellant.

The Investigating Officer made his opening statement. The Appellants: counsel then made motions to exclude counsel for Isbrandtsen Steamship Company from the hearing and to dismiss the proceedings on the ground that this matter involves a maritime labor dispute over which the Coast Guard has no jurisdiction. Both motions were denied by the Examiner.

The Investigating Officer introduced in evidence the testimony of the Master, Chief Mate, Third Mate and electrician on the ship at the time of this incident. After presenting several documents in evidence, the Investigating Officer rested his case. Appellants: sole evidence consisted of a collective bargaining agreement in effect on 2 and 3 March 1956.

The Examiner denied counsel's several motions to dismiss the charges of misconduct on the grounds that there was a failure of proof, lack of jurisdiction and a good substantive defense consisting of the agreement not to require engineers to cross a picket line.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellants' counsel were heard and the parties were given an opportunity to submit proposed findings and conclusions. The Examiner then announced the decision in which he concluded that the charge and the above respective specifications had been proved as to each of the Appellants. An order was entered suspending all documents of the Chief Engineer for a period of two months outright and four months on eighteen months' probation; all documents of the First and Third Assistants for one month outright and five months on twelve months' probation; all documents of the

Second Assistant for one month outright and five months on eighteen months' probation; and all documents of the Fourth Assistant for two months outright and four months on twelve months' probation.

*FINDINGS OF FACT*

On 2 and 3 March 1956, Appellants were serving as the engineering officers on board the American SS FLAYING CLIPPER and acting under the authority of their respective licenses while the ship was on a foreign voyage. The Appellants had signed Shipping Articles for such a voyage.

The FLYING CLIPPER, owned and operated by Isbrandtsen Company, arrived at Ponce, Puerto Rico at 0700 on 2 March 1956 and moored to a dock where she remained. Sea watches were maintained while the ship was in port. The schedule called for the discharging of approximately 300 tons of cargo and departure at 1900 on the same day. The latter time was posted on the sailing board at 1100 on 2 March.

Approximately fifty stevedores of the International Longshoremen Association commenced unloading cargo at 0800 under the supervision of the Chief Mate. The electric-powered winches on deck were in use. It was customary to keep the power to the winches on at all times even when underway. The switches for this power supply were in the engine room on the main switchboard and under the supervision of the Engineering Department.

Between 0900 and 1000, a picket line of ten to fifteen men formed on the dock about 500 feet from the ship. This picket line was manned by the Brotherhood of International Longshoremen who opposed the use of I.L.A. stevedores on the FLYING CLIPPER. Two or three local police officers remained in the dock area throughout the day and there was no violence as a result of this picketing. The cargo winches were still in operation when the stevedores stopped work at 1200 for lunch.

About 1230, the First Assistant Engineer reported to the Master that instructions had been received by the telephone from Wilbur W. Dickey, President of the Brotherhood of Marine Engineers in New York, to shut down the ship in order to prevent the discharging of cargo by the I.L.A. stevedores while there was a

dispute between the I.L.A. and B.I.L. The First Assistant also told the Master that if he insisted on working the cargo, the engineering officers would demand to be paid off. The Master reminded the First Assistant that he was signed on Shipping Articles for a foreign voyage and warned him against carrying out his plan. Subsequently, no engineering officer asked to be paid off at this port. Appellants were members of the B.M.E. union.

At 1300, the Chief Engineer advised the Master that the winches would be stopped in accordance with Mr. Dickey's instructions and that nothing could be done until he arrived at Ponce on 3 March. The Master immediately wrote out an order directing the Chief Engineer "to continue the winches and the whole plant in an operational condition while under foreign articles and until such time as you receive orders from me to the contrary." The Chief Engineer signed a receipt of this written order. He then went ashore with the First Assistant to make a telephone call to New York.

Also at approximately 1300 when the stevedores returned to work, they told the ship's electrician that there was no power on the winches. A sling of cargo was left suspended in the air. The electrician went below to the engine room and saw that three winch power switches on the main switchboard had been pulled out. The electrician did not see an engineering officer in the vicinity, so he closed the three switches and the stevedores continued unloading the cargo at 1305. On the way out of the engine room, the electrician met the Third Assistant Engineer and reported that the switches had been closed to turn on the power. The Third Assistant, who had the 1200 to 1600 watch, said "okay."

The Master went ashore at 1330 to make a telephone call to Isbrandtsen's New York office. The Chief and First Assistant Engineers were returning to the ship after having made their telephone call. The power to the winches was again cut off at 1335 just after the two engineering officers returned on board. All cargo operations ceased without resumption and the cargo hatches remained uncovered. In a conversation with the Chief Mate, the Chief Engineer admitted that he knew it was serious to turn off the power to turn off the power to the winches.

The engineering officer on watch from 1600 to 2000 was the

Second Assistant. About 1900, the Master and Chief Engineer were called ashore by the ship's agent to talk by telephone with Captain McLaughlin of Isbrandtsen's New York office. The Chief Engineer told the Isbrandtsen representative that the engineers were bound to follow their union's instructions in this matter. The Master and Chief Engineer returned to the ship at approximately 1930. The stevedores had left the ship at 1730 and returned on board by 2000.

The Fourth Assistant relieved the Second Assistant for the next watch shortly before 2000. About the same time, the Master gave the electrician a written order "to put all cargo winches in operation by 2000 to resume the working of cargo in number 1, 2, 3 and 4 hatches." The electrician showed this order to the Chief and First Assistant Engineers. The Chief said that the engineers had their orders and handed back the written order to the electrician. The latter then went to the engine room, and showed the order to the Fourth Assistant and requested permission to switch on the power to the winches. The Fourth Assistant replied that he had his orders and could not grant the permission. The electrician left the engine room and reported this to the Master who verified the information by calling the Fourth Assistant on the telephone.

Immediately after this unsuccessful attempt to resume unloading the cargo, the Master followed his instructions from New York. He ordered the Chief Mate and Chief Engineer to prepare to get underway for Norfolk at 2230 without discharging the remainder of the cargo. Three orders were carried out with the help of the returned stevedores since the Chief Engineer agreed to permit the operation of the winches for the purpose of securing the ship for sea. At 2000, the Chief Mate changed the time posted on the sailing board from 1900 to 2230 on 2 March pursuant to the Master's order. Power to the cargo winches was turned on at 2003.

The Chief Engineer relieved the Fourth Assistant of the engine room watch at 2100. About a half hour later, the Master was informed that the four assistant engineering officers were absent from the ship with the knowledge of the Chief Engineer. The Master issued an order that the four officers were not to be allowed on board. Because of these missing officers, the ship did not get underway at 2230 as scheduled although the local pilot was on board and the ship was otherwise prepared for sea.

None of the four officers returned to the dock until the following day. The Chief Engineer was on watch from 2100 on 2 March until after noon on the following day. All other members of the crew were orderly and performed their duties while the ship was at Ponce. No difficulty with the picket line was experienced by the Master or any of the crew going ashore. It was not necessary to physically cross the picket line when leaving or returning to the ship. The police and stevedores forming the picket line left the vicinity of the dock at approximately 2200 on 2 March. The record does not mention whether the picketing was resumed.

On 3 March 1956, the Fourth Assistant returned to the dock in a taxicab at approximately 1230. The Third Mate, who was on watch, told the Fourth Assistant that he was not permitted to come on board. The Chief Engineer left the ship without the Master's knowledge and drove away with the Fourth Assistant. Before they returned in about 20 minutes, the Master rescinded his order barring the officers from the ship. While the Chief Engineer was ashore, there was no engineering officer on board although the ship's plant was in operation with steam on at least one boiler. Upon returning with the Chief Engineer, the Fourth Assistant was permitted to go on board and he resumed watch in the engine room.

The other three engineering officers returned on board together at 1700 and the ship got underway at 1826.

The collective bargaining Dry Cargo Agreement in effect, at this time, between the Brotherhood of Marine Engineers union and the Isbrandtsen Steamship Company, contained the following provision in Article II titled "Settlement of Disputes":

> "Section 1. There shall be no strikes, lockouts or other work stoppages during the term of this Agreement. .....
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> * * * * *
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> "Section 3. No Engineer shall be required to cross a picket line under conditions which may endanger his health or safety. The brotherhood undertakes to use its best efforts to obtain clearance for such purpose from the Union establishing the picket line."

*BASES OF APPEAL*

This joint appeal on behalf of all five Appellants has been taken from the orders imposed by the Examiner. It is contended that:

1. It was prejudicial error to permit counsel for the employer, Isbrandtsen Company, to be present during the interrogation of the witnesses and to submit a brief as amicus curiae. The employer's interest in having the union-management collective bargaining agreement declared invalid impaired the atmosphere of judicial impartiality which should prevail at a disciplinary hearing where only the Coast Guard and the parties charged should be permitted to participate.

2. The Coast Guard has no jurisdiction to proceed in this case because it involves the taking of sides in a labor controversy with the respect to the "picket line" provision in the collective bargaining agreement in effect. This is a violation of the prohibition contained in 46 "CFR 137.03-10.

3. The contractual provision in the collective bargaining agreement concerning the right not to cross a picket line afforded an absolute substantive defense. See Article II, Section 3 of Dry Cargo Agreement at the end of findings of fact above. The Examiner erroneously disregarded Appellant's rights under this agreement by concluding that the Shipping Articles required by statute constituted the exclusive contract of employment since the Shipping Articles did not refer to the union-management agreement and because the relationship of Master to seaman is entirely different from that of employer to employee on land. Contrary to the Examiner's ruling, the courts have held that the Shipping Articles are subject to modification by lawful collective bargaining provisions which are not referred to in the Shipping Articles. *Clayton v. Standard Oil Co. of N.J.* (D.C.,S.D. Texas 1941), 42 F.Supp. 734. Therefore, the proper inquiry is whether this picket line provision was "contrary to law" or whether it was legally valid and withdrew, by private agreement between the parties, the authority of the Master to issue otherwise lawful orders which conflicted with this provision when only the commercial venture of the employer and not the safety or good order on board the vessel was involved.

This conflict between the authority of the Master and the right of the crew members to refuse to cross a picket line is analogous to the clash between the secondary boycott prohibitions in the Labor Management Relations Act of 1947 ( Taft-Hartley Act, 29 U.S.C. 158(b)(4)) and the same collective bargaining agreement provision in situations ashore. In part, the Act prohibits a labor union from encouraging employees of an employer to engage in a strike or a concerted refusal to perform services in order to "force" their employer to do, or not to do, certain things. There is no doubt that the secondary boycott provisions do not apply to an employee acting individually. The courts have also held that this "respect for the picker line" or so-called "hit cargo" clause is not violative of the secondary boycott provisions and the concerted action of employees protected by a "hot cargo" collective bargaining provision is not an illegal strike or refusal to work which"forces" something on their employer because of the fact that the employer had agreed to such conduct by his employees when the collective bargaining agreement was negotiated. In other words, the employer cannot be "forced" to do what he has already agreed to by the picket line provision.

Similarly, the Appellants were not required to obey the orders of the Master(as agent of the shipowner) to, in effect, cross the picket line when the safety of the vessel was not involved.

4. The additional one-month outright suspension was not warranted in the case of either the Chief Engineer or the Fourth Assistant Engineer. The former left the ship for no longer than twenty minutes on 3 March in order to obtain a relief after having been on watch continuously for more than fifteen hours. Under the circumstances, this absence was not wrongful.

The specification alleging that the Fourth Assistant wrongfully refused to permit the electrician to carry out the Master's order to put power on the winches at 2000 on 2 March was unfair since there was no physical resistance used or threatened to prevent the carrying out of this order. Hence, the Fourth Assistant's verbal refusal to grant the requested permission to switch on the power was merely part of the continuing refusal of the engineers to obey the Master with respect to the winches.

In conclusion, it is respectfully submitted that the order as to each Appellant should be reversed and the charges dismissed.

APPEARANCES: Seymour W. Miller, Esquire, of Brooklyn, New York, by Irving A. Logue and Milton Horowitz, of Counsel.

APPEARANCES AT THE HEARING AS CO-COUNSEL FOR THE CHIEF AND FIRST ASSISTANT ENGINEERS: Messrs. Hagen and Eidenbach of New York City by Henry C.Eidenbach, Esquire, and Kenneth E. Foley, Esquire.

*OPINION*

*POINT 1*

There was no error in permitting counsel for Isbrandtsen Company to be present during the interrogation of witnesses. This hearing was open to the public and there was no participation by counsel for the shipowner except the submission of a brief as amicus curiae addressed solely to matters of law concerning the effect of the picket line clause contained in Article II, Section 3 of the labor-management Dry Cargo Agreement. It is my opinion that the consideration of this brief by the Examiner did not result in any unfair prejudice to the Appellants although the brief was directed against the interests that the Examiner was improperly influenced by this brief in reaching his decision.

*POINT 2*

The jurisdiction of the Coast Guard is questioned in this case on the ground that this is a labor dispute with respect to which the Coast Guard has no authority to act. Title 46 CFR 137.03-10 states that the statutory machinery of the Coast Guard will not be used for the purpose of favoring any party to a labor controversy but appropriate action shall be taken when a violation of existing statutes or regulations is indicated. As stated in the still effective Navigation and Vessel Inspection Circular No. 71 of 30 April 1946, the Coast Guard will invoke its authority in these proceedings when a violation occurs although it might not be a

direct result of a strike or other labor dispute. It is not contested that the difficulties under consideration herein began because of a labor dispute. But for reasons set forth below, I think that the controlling factors in this suspension proceeding go beyond the labor issue and pertain to the standards of discipline required on board ship during the course of a voyage. Such matters are clearly within the jurisdiction of the Coast Guard to consider. Any consequent favoring of a party involved in this labor controversy is an incidental result of the resolution of the primary issues.

*POINT 3*

The one specification common to all five Appellants alleges that each one of them acted in concert with the other officers of the Engineering Department to wrongfully prevent the operation of the vessel under the Master's orders while the ship was at dock in the port of Ponce, Puerto Rico. Although I do nota agree with the contention that the provision is the collective bargaining agreement, which states that no engineer shall be required to cross a picket line so as to endanger his health of safety, is a good defense to the above specification, it is conceded that the Examiner went too far in concluding that the foreign Shipping Articles signed by the crew members constituted the exclusive contract of employment for the voyage for any purpose because it was not referred to or otherwise incorporated in the Shipping Articles. Appellants have cited the case of *Clayton v. Standard Oil Co. of N.J.*, supra as authority for the preposition that the foreign Shipping Articles required by 46 U.S.C. 564 and 713 may be supplemented by collective bargaining agreements as to such matters as wages, hour and working conditions when such terms are not contrary to law. This is so although the Shipping Articles did not refer to the labor-management. I agree with this preposition subject that the recourse of the crew to enforce the terms of the agreement during a voyage is limited to lawful means.

In this particular case, the picket line provision in the agreement was in violation of the Mutiny Statutes (18 U.S.C. 2192-3) to the extent that the provision was intended to permit seamen to resist the Master of a ship in the free and lawful exercise of his authority to command his ship. These two statutes provide:

Section 2192. Incitation of seamen to revolt or mutiny. "Who-ever, being of the crew of a vessel of the United States , on the high seas, or any other waters within the admiralty and maritime jurisdiction of the United States, endeavors to make a revolt or mutiny on board such vessel, or combines, conspires or confederates with any other person on board to make such revolt, or mutiny, or solicits, incites, or stirs up any other of the crew to disobey or resist the lawful orders of the master or other officer of such vessel, or to refuse or neglect his proper duty on board thereof, or to betray his proper trust, or assembles with others in a tumultuous and mutinous manner, or makes a riot on board thereof,or unlawfully confines the master or other commanding officer thereof, shall be fined not more than $1,000 or imprisoned not more than five years, or both."

Section 2193. Revolt or mutiny of seamen. "Whoever, being of the crew of a vessel of the United States, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, unlawfully and with force, or by fraud, or intimidation, usurps the command of such vessel from the master or other lawful officer in command thereof, or deprives hum of authority and command on board, or resists or prevents him in the free and lawful exercise thereof, or transfers such authority and command to another not lawfully entitled thereto, is guilty of a revolt and mutiny, and shall be fined not more than $2,000 or imprisoned not more than ten years, or both."

The facts in this case do not seem to come within the literal wording of the collective bargaining agreement because the appellants were not required to physically cross a picket line in order to maintain the power supply to the winches, and there is no evidence that their health or safety would have been endangered as a result of the picketing if they had complied with the Master's orders. The evidence shows that the picketing was conducted in a peaceful manner. Consequently, Appellants would have defense on the theory that submitting to the authority of the Master would result in grave bodily harm to any of them. Such justification is a good defense to the charge of mutiny *United States v. Reid* (D.C., 1913), 210 Fed. 486. Nevertheless, for the purpose of

discussion, the broadest possible interpretation favorable to the Appellants will be given to this provision. It will be assumed that, as applied to the present circumstances, this provision means that Appellants were not required to perform their normal function of supplying power to the winches for the purpose of discharging cargo when picketing occurred anywhere in the vicinity of the ship.

In the analogy presented by Appellants to justify their conduct on the basis of situations ashore where the courts have reconciled similar picket line clauses with prohibitions in the Labor Management Relations Act of 1947 against strikes or concerted refusals of employees to perform services, Appellants ignore the fact that the same basic situation exists here with the important exception that the Mutiny Statutes apply. Appellants have shown that the courts have held that an employer is not "forced" (as prohibited by the statute) to do something if it results from an employee strike in accordance with a picket line provision to which the employer has agreed through collective bargaining. But in this case the picket line provision cannot prevail to withdraw the authority of the Master, to issue otherwise lawful orders, when the provision is in direct conflict with the Mutiny Statutes which do not apply to the situations ashore. Based on the authority of *Southern Steamship Co.v. N.L.R.B.* (1942), 316 U.S. 31, and *Rees V. United States* (C.C.A. 4, 1938), 95 F2d 784, it is my opinion that the Appellants' conduct, in failing to obey the Master's ordered, was not justified because the picket line provision, as applied to this particular case, cannot be reconciled with the policy or Congress as expressed in 18 U.S.C. 2192-3.

In *Southern Steamship Co. v. N.L.R.B.*, supra, the Supreme Court reviewed a judgment (120 F2d 505) enforcing an order of the N.L.R.B. and concluded that the Circuit Court of Appeals erred in holding that a strike by crew members did not violate 18 U.S.C. 2192-3 because the ship was safely moored to a dock. The strike resulted after the Southern Steamship Company refused to bargain with the union which had been certified as the exclusive bargaining representative of the unlicensed crew members on the S.S. CITY OF FORT WORTH. The ship was docked at Houston, Texas, in the course of a voyage from Philadelphia to Houston and return when the thirteen unlicensed seamen of the crew voted to go on strike co compel the steamship company to recognize their union. the oiler on watch failed to turn the steam "on deck" for use in loading the cargo.

Thereafter, the thirteen seamen remained on the poop deck and refused to obey the Master's orders to return to work but they did nor interfere with the loading of cargo by others. the strike ended after eleven hours and the ship sailed on schedule. Upon returning to Philadelphia, the company discharged five crew members on the theory that they had participated in an unlawful strike.

The Supreme Court upheld the contention of the company that the discharge of the seamen was justified because this strike was in violation of the Mutiny Statutes despite the fact that the ship was at dock in a domestic port and there was no violence involved. The court pointed out that being moored in a safe harbor did not justify the strike because this would ignore the plain Congressional mandate in the statutes that rebellion by seamen on board a vessel on the high seas or "on any other waters within the admiralty and maritime jurisdiction of the United States" is to be punished as mutiny; moreover, a ship is not "safe" if the crew refuses to tend it as the strikers did at Houston; the seamen substituted their will for the will of the Master; They deliberately resisted the Master in the lawful exercise of his command within the meaning of 18 U.S.C. 2193 and conspired to that end in violation of 18 U.S.C. 2192 despite the absence of violence or interference with the work of others. It was also pointed out that the members of the crew signed Shipping Articles prescribed by statute (46 U.S.C. 564, 713) containing the promise "to be obedient to the lawful commands of the said Master . . .and their superior officers in everything relating to the vessel, and the stores and cargo thereof, whether on board, in boats, or on shore. . . .." The latter words emphasize not only the duty to obey the Master but also the fact that this obligation is not diminished when the ship is at a dock.

The court reached the conclusion that the seamen had engaged in an unlawful strike regardless of the fact that the steamship company had indulged in an unfair labor practice by refusing to bargain with the certified union representative for the CITY OF FORT WORTH. The following language was used to distinguish a case where a strike is conducted by seamen on board a vessel away from her home port as opposed to a strike by persons employed ashore:

> "Ever since men have gone to sea, the relationship of master to seamen has been entirely different from that of the

> employer to employee on land. The lives of passengers and crew, as well as the safety of ship and cargo, are entrusted to the master's care. Every one and everything depend on him. He must command and the crew must obey. Authority cannot be divided. These are actualities which the law has always recognized. On the one hand, it has imposed numerous prohibitions against conduct by seamen which destroys or impairs this authority. We shall consider in a moment the nature and scope of the criminal sanctions imposed in case of revolt and mutiny."

In *Rees v.United States*, supra, the question of conviction for mutiny or revolt was directly in issue. The fourteen defendants were crew members of the SS ALGIC who were found guilty of revolt as a result of their concerted action in refusing to obey orders to return to work after they observed strike-breaking stevedores at work loading cargo at Montevideo, Uruguay. The only job of the crew in connection with the cargo operation, was to furnish steam to operate the winches and other machinery. Shortly after the seamen agreed not to work, the steam was turned off at the master valve in the engine room. The striking stevedores encircled the ship in launches, shouting and making threatening gestures at the crew while the ship was anchored about three-quarters of a mile from the dock. The defendants persisted in their refusal to work until the Master called the crew together and they individually agreed to obey the Master's orders. A delay of 24 hours was caused.

In the *Rees* case, the court stated that the defendants' conduct resulted in usurpation of the actual command of the vessel; this was more than a strike in the commonly accepted meaning of the word because the shutting off of the steam constituted as assumption of authority over the ship and its cargo; when Shipping Articles are signed by a crew for a voyage, all bargaining is ended for the duration of the voyage; disorderly vessels are likely to be unsafe vessels; seamen must recognize that the nature of their calling Imposes upon them obligations not common to shore occupations. The court fond that the ALGIC was not anchored in a safe harbor and left the question open as to whether the Mutiny Statutes would apply when a ship is moored to a dock or anchored in a safe port. (As shown above, this question was answered in the

affirmative by the Supreme Court four years later.) Apparently, it was not contended that there was fear of injury to the crew by the striking stevedores. In considering the necessity to maintain vessels in a safe condition during a voyage, the court said:

> "That seamen on a vessel, signed on for a voyage, or work under different conditions from workers on shore and, must of necessity be governed by different rules, with regard to their right to strike, cannot be controverted. The laws of the United States concerning seamen, their rights and their treatment, are more liberal and more favorable to the seamen than the laws of any other country. Great care has been taken by Congress to safeguard their rights and protect them from injustice. They are given every opportunity to secure redress for any grievance they may have on their return from a voyage, and the consular officers of the United States are required by law to give them every protection."

The fourteen defendants were found guilty of endeavoring to make a revolt and conspiring to commit the offense of revolt, both in violation of 18 U.S.C. 483(now 18 U.S.C. 2192 with minor changes). But the court concluded that this was the less serious form of revolt, defined in 18 U.S.C. 2193, which consisted of resisting the Master in the free and lawful exercise of his authority to command rather that the more serious form of revolt which is accompanied by actual force to depose the Master from the command of his vessel. Nevertheless, it was held that there was a plain violation of the statute.

From the two court decisions reviewed above, it is clear that the five Appellants acted in concert to prevent the operation of the ship under the Master's orders and thereby violated the Mutiny Statutes as well as their obligations under the Shipping Articles. The difference, in the case under consideration, that there was the additional factor of a picket line provision in the collective bargaining agreement is not material in view of the clear edit by the Supreme Court in the *Southern Steamship Co.* case that it is unlawful to strike in violation of the Mutiny Statutes. It is equally true that there is no "right" to strike in violation of any of the laws of the United States. The collective bargaining provisions of general labor legislation which would permit this type of conduct ashore are not applicable to seamen manning a ship

because it would be self-contradictory for one federal law to protect conduct which another federal law brands as illegal. There is nothing in the Labor Management Relations Act which indicates that Congress intended to amend the provisions of the Mutiny Statutes. Obviously, the law does not contemplate that strikes shall be used as a cloak for the commission of crime. As was said by the trial judge in the *Rees* case (1937 A.M.C. 1611) in his charge to the jury:

> "There is no right to strike against the laws of the United States by anybody, at any place, for any reason, if the laws are constitutional and valid laws; and the conduct of these men on that boat during the voyage for which they had shipped and signed shipping articles, is governed by the laws of the United States, and not by the laws of any association, voluntary or otherwise, to which they may belong. Their duty on this ship, on this voyage, is governed by the laws of the United States, and by those only."

There is no doubt that the actions of the Appellants constituted a strike. The first of the two court decisions discussed above classified similar behavior as a strike and the *Rees* case stated that the shutting off of the steam to the winches was more than a strike but treated it substantially as such and said it constituted the less serious form of revolt defined in 18 U.S.C. 2193. Hence, Appellants were also guilty of breaching the provision against strikes contained in the Dry Cargo Agreement, Article II, Section 1.

The facts herein show that there was individual as well as concerted action by the Appellants. Both the Chief and First Assistant Engineers told the Master that the winch power would be cut off; the Third Assistant was on watch in the engine room when the power was cut off at 1300 and 1335; the Second Assistant stood the 1600 to 2000 watch while the winches remained inoperative; the Fourth Assistant said he had his orders and refused to grant permission to the electrician to switch on the power to the winches just prior to 2000. At the latter time, the Chief Engineer also said that the engineers had their orders; and he knew that the four assistant engineers left the ship shortly after 2100 on 2 March. The ship could not even leave port without sufficient engineering officers on board to stand watch in the engine room.

Consequently, the Appellants acted in concert to prevent the Master in exercising his authority to command his ship not only while they remained on board but also when four of them departed, apparently with encouragement by the Chief Engineer since he relieved the Fourth Assistant at 2100.

According to the rationale of the Supreme Court, Appellants were guilty of the allegations in the specification common to all of them regardless of whether the Isbrandtsen Company was engaging in an unfair labor practice by hiring stevedores of the I.L.A. or whether it was consistent with the collective bargaining agreement for the Master to order the Appellants to put power on the cargo winches. This agrees with the reasoning in the *Rees* case that all bargaining is ended when the Shipping Articles are signed by a crew for a voyage. The right to strike, even peacefully, is subject to the paramount right of the public, as expressed in the Mutiny and Shipping Articles statuted, to have conditions of safety on ship maintained through-out their voyages by enforcing strict discipline under the authority of the Master and other ships' officers.

*POINT 4*

Three Appellants received outright suspensions of only one month. The additional one month outright suspension as to the Chief and Fourth Assistant Engineers is questioned. There is no substantial issue of fact involved as to any of the findings.

It is my opinion that the order was justified in the case of the Chief Engineer on the basis of his position of responsibility as head of the Engineering Department, his refusal to comply with the direct written order of the Master and his absence from the ship when no other engineering officer was on board.

As to the Fourth Assistant, I am inclined to agree that his conduct was no more serious than that of the other three assistant engineers. Strangely, the First Assistant made the initial report to the Master of instructions received from the president of the B.M.E. The Second and Third Assistants were on watch during the period when the power to the winches was shut off. It was simply fortuitous that the Fourth Assistant was on watch when the electrician appeared with the Master's order to the electrician to

put power on the winches. Undoubtedly, any of the other assistant engineers would have refused to grant permission to the electrician to carry out the order, as was done by the Fourth Assistant. Hence, the outright suspension in his case will be modified to one month.

*Order*

The orders of the Examiner dated at New York, New York, on 21 February 1957, are AFFIRMED; except that the outright suspension against the documents of the Fourth Assistant Engineer is reduced from two (2) months to one (1) month. As MODIFIED, this order is also AFFIRMED.

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

Dated at Washington, D.C., this 12th day of March, 1958.

***** END OF DECISION NO. 1008 *****

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