

In the Matter of Merchant Mariner's Document No. Z-338482-D3 and
all other Seaman Documents
Issued to: HENRY E. FESTING

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1012

HENRY E. FESTING

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 3 June 1957, an Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended Appellant's seaman documents upon finding him guilty of misconduct. Four specifications allege that while serving as an able seaman on board the American SS CARROLL VICTORY under authority of the document above described, on or about 1, 2 and 3 May 1957, Appellant failed to perform his duties; on 3 May 1957, Appellant directed foul and abusive language toward the Chief Mate.

The hearing was conducted in *absentia* after Appellant failed to appear as directed and the Examiner entered pleas of not guilty on behalf of the Appellant. After considering the evidence which consisted of the testimony of the Chief Mate, the Examiner announced the decision in which he concluded that the charge and four specifications had been proved. An order was entered suspending all documents, issued to Appellant, for a period of six months.

The decision was served on 12 June 1957. Notice of appeal was timely filed on 14 June 1957 and nothing has been received to supplement this blanket appeal.

FINDINGS OF FACT

On 1, 2 and 3 May 1957, Appellant was serving as an able seaman on board the American SS CARROLL VICTORY and acting under authority of his Merchant Mariner's Document No. Z-338482-D3 while the ship was in the port of Trieste, Trieste Free Territory.

On these three dates, Appellant failed to perform his assigned duties. He did not have permission to neglect his work on any of these regular working days.

On 3 May, Appellant went to the Chief Mate's room in an intoxicated condition to borrow some money. When the Chief Mate refused Appellant's request, he said that he would get the Chief Mate. At the same time, Appellant also addressed the Chief Mate with foul and abusive language.

Appellant's prior record consists of an admonition in 1947 for being absent from his duties without permission; one month's outright suspension plus five months on 18 months' probation in February 1952 for taking ship's property and for failing to perform his duties; six months' suspension in November 1954 for failing to join his ship in November 1952. The prior record presented to the Examiner indicated that the six months' suspension was for failure to perform duties; and it did not show that five of the six months' suspension in November 1954 was the result of Appellant's violation of eighteen months' period of probation ordered in February 1952.

OPINION

Appellant's notice of appeal merely states that he desires to appeal. Although counsel for Appellant was given a copy of the hearing transcript in July 1957, no specific grounds for appeal have been submitted. Under these circumstances, it is sufficient to state that the findings and conclusions of the Examiner are affirmed in the absence of any error of law in the record.

Nevertheless, the order of suspension will be modified because the Examiner was not informed that the six months' suspension in November 1954 resulted directly from a single offense of failure to join and included a prior five months' probationary suspension. Hence, the Examiner may have been led to believe that the suspension was so severe because it was based on a series of offenses of failure to perform duties by Appellant. If this is so, then it is likely that the Examiner's order herein would have been less severe if he had known the circumstances connected with the prior six months' suspension.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 3 June 1957, is modified to provide that Merchant Mariner's Document No. Z-338482-D3, and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority, are suspended outright for a period of three (3) months. Appellant's documents are further suspended for an additional three (3) months which shall not become effective provided no charge under R.S. 4450, as amended (46 U.S.C. 239), is proved against Appellant for acts committed during the period of the outright suspension or within six (6) months of the termination of the outright suspension.

As so MODIFIED, said order is AFFIRMED.

A. C. Richmond

Vice Admiral, United States Coast Guard

Commandant

Dated at Washington, D.C., this 26th day of March, 1958.

***** END OF DECISION NO. 1012 *****

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