

In the Matter of Merchant Mariner's Document No. Z-774421 and all  
other Seaman Documents  
Issued to: THOMAS L. TOTH

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1015

THOMAS L. TOTH

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 5 February 1952, an Examiner of the United States Coast Guard at Boston Massachusetts suspended Appellant's seaman documents upon finding him guilty of misconduct. Six specifications allege that while serving as deck maintenance man on board the American SS AMPAC WASHINGTON under authority of the document above described, on 29 November, 1951, Appellant was unable to perform his duties due to intoxication; on 29 November 1951, he destroyed ship's property, to wit: a paint pot and a paint brush; on 2 to 5 January 1952, inclusive, Appellant was absent without leave during his four-hour watch period on each day.

Pleas of not guilty were entered on behalf on Appellant since he did not appear at the hearing on 28 January 1952 as directed on 25 January. After considering the evidence, presented by the Investigating Officer, the Examiner announced the decision in which he concluded that the charge and six specifications had been proved. An order was entered suspending all documents, issued to

Appellant, for a period of three months outright and three months on twelve months' probation.

The decision was not served until 10 October 1957. Appeal was timely filed on 11 October 1957.

#### *FINDINGS OF FACT*

Between 29 November 1951 and 6 January 1952, Appellant was serving as deck maintenance man on board the American SS AMPAC WASHINGTON and acting under authority of his Merchant Mariner's Document No. Z-774421. On 29 November 1951 and 2 through 5 January 1952, the ship was in the port of Buenos Aires, Argentina.

On the afternoon of 29 November 1951, Appellant was assigned to a painting detail on the ship. About 1415, Appellant threw a paint pot and a new paint brush over ship's side. Both of these items were property which belonged to the ship. The Chief Mate took Appellant to the Master. The latter ordered Appellant to stay off the deck for the balance of the day because of his intoxicated condition.

On 2 January 1952, Appellant was absent from the ship without authority and failed to stand his 1200 to 1600 watch. On 3, 4 and 5 January 1952, Appellant was absent from the ship without permission and failed to stand his assigned watch from 0000 to 0400 on each day. He had no other regular duties on these four days because of the holiday season in Buenos Aires. Appellant returned to the ship on 5 January and was logged on the following day for these offenses. Appellant admitted missing the watches and signed the logbook entries without noting any replay.

Appellant has no other disciplinary record with the Coast Guard.

#### *BASES OF APPEAL*

This appeal has been taken from the order imposed by the Examiner. Appellant denies throwing the ship's property over the side and claims that he had permission to go ashore on 2 and 3 January. The Master agreed, at the end of the voyage, to drop all

charges against members of the crew.

The Coast Guard representative, who served Appellant with the charges in Boston on 25 January 1952, authorized Appellant to go to Jacksonville where he would be notified to appear at a hearing in that city.

Since Appellant's record is otherwise clear and he has been sailing regularly since 1952, it is respectfully requested that the order be modified to a probationary suspension.

#### *OPINION*

The offense alleged are adequately supported by the testimony of the Master and Chief Mate as well as by the logbook entries to which Appellant did not see fit to enter any denial. The record shows that Appellant was directed to appear at a hearing in Boston on 28 January 1952. When he failed to do so, he waived opportunity to rebut the evidence against him. Consequently, there is nothing to support Appellant's contentions on appeal relating to the merits of the case.

However, in view of the fact that Appellant has been regularly employed on ships since January 1952 without having any trouble, the order will be modified to a probationary suspension as requested.

#### *ORDER*

The order of the Examiner dated at Boston, Massachusetts, on 5 February 1952, is modified to provide for a suspension of six (6) months. This suspension shall not become effective provided no charges under 46 U.S.C. 239 are found proved against Appellant for acts committed within twelve (12) months of 10 October 1957, the date on which the Examiner's decision was served on Appellant.

As so MODIFIED, the order is AFFIRMED.

A. C. Richmond  
Vice Admiral, United States Coast Guard  
Commandant

Dated at Washington, D. C., this 4th day of April, 1958.

\*\*\*\*\* END OF DECISION NO. 1015 \*\*\*\*\*

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