

In the Matter of Merchant Mariner's Document No. Z-366469-D4 and
all other Seaman Documents
Issued to: ANDRES F. RIVERA

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1020

ANDRES F. RIVERA

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 30 August 1957, an Examiner of the United States Coast Guard at New York, New York, suspended Appellant's seaman documents upon finding him guilty of misconduct. Four specifications allege that while serving as an electrician on board the American SS ROBIN TRENT under authority of the document above described, in July 1957, Appellant failed to join his vessel on two occasions and he was wrongfully absent from his duties on three other different dates.

When Appellant failed to appear at the hearing as directed, the Examiner entered pleas of not guilty on behalf of Appellant. The Investigating Officer introduced in evidence certified copies of extracts from the Shipping Articles and entries in the Official Logbook of the ROBIN TRENT. After considering the evidence, the Examiner concluded that the charge and four specifications had been proved. An order was entered suspending all documents, issued to Appellant, for a period of two months outright and four months on

twelve months' probation.

The decision was served on 17 September 1957. Appeal was timely filed on 30 September 1957.

FINDINGS OF FACT

From 9 May to 22 August 1957, Appellant was serving as an electrician on the American SS ROBIN TRENT and acting under authority of his Merchant Mariner's Document No. Z-366469-D4 while the ship was on a foreign voyage.

On 6 June 1957, Appellant failed to join his vessel when it sailed from Capetown, South Africa. He rejoined the ship on 10 June.

On 3 July 1957, Appellant was absent from his duties without permission while the ship was in the port of Mombasa, Kenya. On 5 July, Appellant failed to join his ship upon her departure from this port. He rejoined the ship on 8 July.

On 19 and 22 July 1957, Appellant was absent from his duties without authority while the ship was at Lourenco Marques, Mozambique.

Appellant was logged one day's pay for each of these five offenses. When given an opportunity to reply to these loggings, Appellant's answer with respect to each offense was, "No reply."

Appellant's prior disciplinary record consists of an admonition in 1948 for failure to join; an admonition in 1952 for absence without leave; a four months' suspension in 1955 for assault and battery.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner Appellant states that he failed to appear at the hearing because he was ill from a gum infection.

On the merits, Appellant contends that these offenses occurred

because he was ashore attempting to send money to his family because his wife's allotment was stopped after Appellant failed to join his ship at Capetown on 6 June.

In conclusion, Appellant urges that this order of suspension creates a personal hardship.

OPINION

There is no indication that Appellant was justified in failing to appear at the hearing. Appellant received written notice on 26 August 1957 to be present at the hearing on 29 August. He did not appear on this date and he did not contact the Coast Guard to explain his absence.

On the merits of the case, Appellant's contentions are not persuasive. If his conduct on later dates had anything to do with the stopping of his wife's allotment after he failed to join his ship on 6 June, then this was the result of his own misconduct on 6 June. Hence, it did not justify his subsequent absences from duty and failure to join. It is noted that Appellant did not use this as an excuse when given an opportunity to reply to the loggings for these offenses.

The misconduct herein and Appellant's past record adequately support the suspension imposed by the Examiner. The order will be sustained regardless of the personal hardship to Appellant which may result.

ORDER

The order of the Examiner dated at New York, New York, on 30 August 1957, is AFFIRMED.

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

Dated at Washington, D. C., this 10th day of April, 1958

***** END OF DECISION NO. 1020 *****

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