

In the Matter of Merchant Mariner's Document No. Z-203537-D3 and
all other Seaman Documents
Issued to: EDWARD J. CAMMACK

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1027

EDWARD J. CAMMACK

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 4 February 1957, an Examiner of the United States Coast Guard at New York, New York, revoked Appellant's seaman documents upon finding him guilty of misconduct. Three specifications allege that while serving as deck maintenanceman on board the American SS EDWARD LUCKENBACH under authority of the document above described, on 1, 4 and 5 October 1956, Appellant was absent from his ship and duties without permission; on 5 October 1956, Appellant failed to join his vessel. Two additional specifications allege that while serving as deck utilityman on board the American SS MAGNOLIA STATE under authority of his document, Appellant was absent from his ship and duties without permission on 3, 5, 6, 7 and 8 December 1956.

The hearing was conducted in *absentia* when Appellant failed to appear. 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

for the two voyages in question and certified copies of entries in the Official Logbooks of the two ships on which Appellant was serving. After considering this evidence, the Examiner announced the decision in which he concluded that the charge and five specifications had been proved. An order was entered revoking all documents issued to Appellant.

Appellant's petition to reopen the hearing was considered by the Examiner and denied on 8 April 1957. Notice of appeal was timely filed on 7 May 1957.

FINDINGS OF FACT

Commencing on 12 September 1956, Appellant was serving as deck maintenanceman on board the American SS EDWARD LUCKENBACH and acting under the authority of his Merchant Mariner's Document No. Z-203537-D3. The Shipping Articles state that Appellant left the ship by mutual consent on 3 October 1956.

While the ship was at Terminal Island, California, on 1 October 1956, Appellant was not on board the ship to perform his duties. He was absent from the ship without authority. This offense was entered in the Official Logbook on 1 October and the entry states that Appellant was fined two days' pay (\$25.01). The logbook states that this entry was read to Appellant on 2 October and his reply was: "No reply." Appellant did not sign his reply but both of these entries were signed by the Master and Chief Mate. There is no statement in the logbook that a copy of the entry of the offense was given to Appellant.

Entries also appear in the Official Logbook stating that Appellant was not on board to perform his duties on 4 and 5 October 1956; and that Appellant failed to join the ship upon her departure from Oakland, California on 5 October 1956. These three entries contain no additional information. They were signed by the Master and Chief Mate. The record does not explain these entries pertaining to dates after 3 October 1956 on which date the Shipping Articles show that Appellant left the ship by mutual consent.

Between 3 and 8 December 1956, inclusive, Appellant was serving as deck utilityman on board the American SS MAGNOLIA STATE and acting under the authority of his document while the ship was

at various foreign ports in Europe. On all of these dates except 4 December, Appellant was absent from his ship and duties without permission.

Appellant's prior disciplinary record consists of one month's suspension on six months' probation in 1944 for failure to join his ship; six months' suspension on twelve months' probation in 1949 for absence without leave, failure to perform duties because of intoxication and insubordination to the Master; four months' outright suspension plus five months on ten months' probation in 1952 for absence without leave and failure to join; twelve months' outright suspension plus twelve months on twenty-four months' probation in 1954 for misconduct on three different ships. The present misconduct violated the latter period of probation.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant claims that part of the evidence on which the order of revocation is based is false. Appellant was attacked by two men on 3 October 1956 when he was returning to the ship. He suffered several fractured ribs and was not fit for duty during two weeks treatment as an outpatient at the U. S. Public Health Service Hospital in San Francisco. While at the hospital, Appellant notified the steamship company to hire another seaman. (Appellant enclosed a document which states that he was treated as claimed from 5 to 15 October 1956.)

In conclusion, it is contended that the order is too severe and will cause Appellant to lose his old age pension. (He is now 43 years old.)

OPINION

With respect to Appellant's alleged absence from his ship and duties on 1 October 1956, the entry in the Official Logbook of the EDWARD LUCKENBACH make out a prima facie case since this entry indicates that there was at least substantial compliance with the requirements of 46 U.S.C. 702. The entry is admissible in evidence, as an exception to the hearsay rule, as a record made in the regular course of business within the meaning of 28 U.S.C. 1732. Although the statutory requirement of a statement in the

logbook that the offender had been given a copy of the entry was not complied with, the alternative requirement that the entry was read to the offender was complied with. (See findings of fact above.) Nevertheless, both such statements would be preferable. Also, Appellant's reply was entered in the logbook as required by the statute. It has been stated that the purpose of the statute is to protect seamen against arbitrary acts and oppression by Masters and "substantial compliance with the true spirit and intent of section 702 of title 46, U.S.C.A." is sufficient to support the defense of desertion in a libel for wages. *The Sharon* (D.C.Va., 1931), 52 F2d 481.

The logbook entry under consideration was made in accordance with the statute. Therefore, it establishes a prima facie case more adequately than the entry considered in *Commandant's Appeal* No. 922 which was upheld as sufficient proof although it did not contain either of the above alternative statements. In that case, the Commandant concluded that the Appellant's reply to the charges and his signature in the logbook showed that there was substantial compliance with the spirit and intent of 46 U.S.C. 702 in that the contents of the entry must have been made known to the Appellant in order for him to reply to the charges.

The findings and conclusions concerning the two specifications alleging offenses on 4 and 5 October 1956 are reversed and the specifications are dismissed because the Shipping Articles state that Appellant left the ship by mutual consent on 3 October 1956. Consequently, Appellant could not have been guilty of offenses after the latter date. It is possible that this entry of 3 October was made on the Shipping Articles at a later date than the entries of 4 and 5 October in the logbook. This is supported, to some extent, by Appellant's claim that he was incapacitated and notified the steamship company from the hospital. If such was the case, the logbook entries of 4 and 5 October should have been canceled; but this was not done so far as the certified copies received in evidence show. In any event, the unexplained contradiction between the logbook entries and the Shipping Articles nullifies the value of the former to prove the two related specifications.

Appellant does not take issue with the findings that he was absent from his ship and duties without permission on five occasions in foreign ports while serving on the MAGNOLIA STATE.

The Official Logbook entries are sufficient to support these findings.

Appellant's prior record and the offenses found proved herein are ample evidence that Appellant cannot be depended upon to carry out his duties and obligations when employed on a ship. In many cases, other members of the crew have had to perform his duties due to his absence. It is apparent from his prior record that outright suspensions and long periods of probation have not remedied this situation. In fact, the record indicates that Appellant's conduct has become progressively worse as the severity of the suspensions imposed has increased. Since every indication is that Appellant would continue to be an unreliable and undesirable seaman if permitted to sail again, it is my opinion that the only appropriate order is one of revocation. The personal losses entailed were brought about by Appellant's own misconduct.

ORDER

The order of the Examiner dated at New York, New York, on 4 February 1957, is AFFIRMED.

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

Dated at Washington, D. C., this 18th day of April 1958.

***** END OF DECISION NO. 1027 *****

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