

In the Matter of Merchant Mariner's Document No. Z-740686
and all other Seamen Documents
Issued to: ANTHONY O'REILLY

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1038

ANTHONY O'REILLY

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 undated order subsequent to 19 April 1955, an Examiner of the United States Coast Guard at Seattle, Washington suspended Appellant's seaman documents upon finding him guilty of misconduct. Four specifications allege that while serving as fireman-water tender on board the American SS SEAGLAMOR under authority of the document above described, Appellant did: (1) On or about 2 August 1953 at Kunsan, Korea wrongfully leave his watch and duties in the engine room without permission; (2) Wrongfully offer to fight the First Officer; (3) Wrongfully threaten the Master; and (4) On or about 9 September 1953 wrongfully threaten to kill a fellow crew member, to wit: one Edward G. Warrington, at Pusan, Korea.

At the beginning of the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own choice, Appellant elected to waive that right and act as his own

counsel. He entered a plea of not guilty to the charge and each specification except the second to which he plead guilty.

The Investigating Officer and Appellant made their opening statements. The Investigating Officer introduced in evidence a consular report as received by the State Department, which contains a statement by a Vice Consul at the American Embassy, Pusan, Korea, concerning his investigation of this case and which included extracts from the ship's Official Logbook and statements made under oath by the Master, Chief Mate, Chief Engineer, Third Assistant Engineer, Edward G. Warrington, fireman-water tender and the Appellant. Appellant was offered the opportunity to object to their admission and stated that he did not wish to do so; thereupon these documents were admitted into evidence. Also admitted without objection was a statement by Edward G. Warrington attached to the logbook and an extract of an entry made in the log by the Consul and Master relating to paying off the Appellant in Korea.

Prior to completion of the Government's case, Appellant was permitted to take the witness stand and present his version of the facts. The case was adjourned to permit the Government to prepare interrogatories, to take depositions and to permit Appellant to prepare cross-interrogatories with the assistance of the District legal officer. During the proceedings the Examiner advised the Appellant that he was "badly in need of counsel" but Appellant again elected to proceed without assistance. As a result of Appellant's objection, one question in the interrogatories was stricken. By 1 November 1954, all interrogatories were returned and the Examiner informed Appellant by registered mail, at his last two known addresses, of the forthcoming proceedings. Both letters were returned marked "Addressee Unknown", nor was the address of a witness for Appellant found to be correct. At the hearings on 1 and 2 December 1954, Appellant was not present. It was agreed that additional efforts would be made to locate Appellant and the hearing was adjourned until 19 April 1955 at which time nothing having been heard from Appellant, the hearing proceeded to conclusion without him. At this part of the hearing, the Investigating Officer introduced the deposition of the Master, First Officer and Chief Engineer of the SEAGLAMOR on the voyage in question as well as the deposition of the crewman allegedly threatened.

At the conclusion of the hearing, the Examiner found that the charge and four specifications had been proved. An order was entered suspending all documents, issued to Appellant, for a period of 12 months. Appellant failed to communicate with the Examiner but ultimately his whereabouts was determined.

The decision was served on 6 January 1958. Appeal was timely filed on 28 January 1958.

FINDINGS OF FACT

On 2 August and 9 September 1953, Appellant, a resident alien, was serving as fireman-water tender on board the American SS SEAGLAMOR and acting under authority of his Merchant Mariner's Document No. Z-740686. The ship was in the port of Kunsan, Korea on 2 August and at Pusan, Korea on 9 September.

On 2 August 1953, Appellant was assigned to the 2000 to 2400 watch in the engine room. At 2300 he left his watch, entered the Chief Engineer's office without an invitation and inquired about the Chief Engineer from his wife who was in an adjoining bedroom. Alarmed by Appellant's presence, she raised her voice to attract the attention of the ship's officers. The First and Second officers arrived on the scene and ordered the Appellant to go below. He refused to obey and invited the First Officer to step out on the dock for a fight. The Master arrived on the scene and Appellant threatened to beat up the Master on the dock. Appellant was removed from the vessel by the military police and confined locally for a few days, after which he was permitted to rejoin his vessel.

During Appellant's absence Edward G. Warrington was assigned to Appellant's former watch and Appellant was given a watch which was less desirable from the standpoint of overtime. On 9 September, Appellant's hostility toward Warrington culminated in a threat against Warrington to kill him before the voyage was over and a promise that he would "cut his guts out."

As a result of this incident and threats to other members of the crew, Appellant was ultimately removed from the vessel by the American Vice Consul at Pusan, Korea on request of the Master. Appellant's prior record consists of an admonition in 1952 for

failure to properly perform his duties and for using insolent language to a First Assistant Engineer.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is based on the grounds that Appellant was not represented by counsel so as to adequately prepare a valid defense on the facts as he knew them to be; that he was deprived of sufficient right to cross-examine inasmuch as he did not have the legal ability to defend himself; that the Government is guilty of laches in waiting almost three years to effectuate service of the order; that Appellant was not given an opportunity to present facts in mitigation or subpoena witnesses inasmuch as he did not understand the terminology used at the hearing; that the order of suspension is excessive.

Appearance on appeal: Irving Zwerling, Esquire, of New York City, of Counsel

OPINION

The evidence in this case shows the Appellant to be a man of such quarrelsome nature as to represent a threat to the maintenance of discipline on any vessel on which he might be serving. The evidence tends to show that he was an undesirable shipmate. He wrongfully left the engine room during his watch, he entered the office of the Chief Engineer without invitation, while the Engineer's wife was present, and he resisted attempts of the ship's officers to remove him, offered to fight the First Officer, threatened the Master and later threatened the life of a fellow crewman.

Although apparently provided with ample funds, Appellant did not bother to procure a lawyer for the hearing, to attend most of the sessions, to arrive on time for all those which he did attend, to inform the Examiner of his whereabouts, or to show enough interest to inquire as to the results. He was given ample opportunity to consult a lawyer, and specifically informed by the Examiner midway in the proceedings that he really needed one. He was given every opportunity by way of postponement and adjournments over a period of six months unexplained absence to contact the

Examiner. At every step of the proceedings when he was present, careful explanation of the proceedings were made, and assistance was furnished Appellant at one point by the district legal officer.

CONCLUSION

Every effort was made to safeguard the rights of Appellant; his failure to be represented by counsel; his failure to take advantage of the rights afforded; and his failure to appear at the hearings were his own omissions. The delay in completing the hearing was occasioned by the Examiner affording the Appellant the maximum opportunity to appear. The delay in serving the decision of the Examiner was due to Appellant's failure to advise the Government of his whereabouts and is not the result of laches on part of the Government but of negligence on the part of the Appellant. These circumstances and the serious effect which these types of offenses may have on the safety of life and property at sea tend to emphasize that the order of twelve months' suspension is not excessive.

ORDER

The order of the Examiner dated at Seattle, Washington on 19 April 1955 is AFFIRMED.

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

Dated at Washington, D. C., this 22nd day of May 1958.

***** END OF DECISION NO. 1038 *****

