

In the Matter of Merchant Mariner's Document No. Z-511718 and all
other Seaman Documents
Issued to: RAFAEL F. MOLINA

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1042

RAFAEL F. MOLINA

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 12 November 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. Two specifications allege that while serving as a fireman-watertender on the American SS AMERICA under authority of the document above described, on or about 19 August 1957, Appellant committed the indecent act of onanism with a male German citizen; and that he failed to join his vessel at Bremerhaven, Germany.

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. Appellant was represented by counsel of his own choice. He entered a plea of not guilty to the charge and each specification.

The Investigating Officer made his opening statement. He then introduced in evidence an abstract from the Shipping Articles of SS

AMERICA for the voyage in question, a certified copy from the logbook of the SS AMERICA, and a Penal Order from a German Court in Bremerhaven, with a translation thereof.

In defense, Appellant testified in his own behalf.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant's counsel were heard and both parties were given an opportunity to submit proposed findings and conclusions. The Examiner then announced the decision in which he concluded that the charge and specifications had been proved. An order was entered revoking all documents issued to Appellant.

The decision was served on 12 November 1957. Appeal was timely filed on 20 November 1957.

FINDINGS OF FACT

On 19 August 1957, Appellant was serving in the service of the American SS AMERICA as a fireman-watertender and acting under authority of his Merchant Mariner's Document No. Z-511718 while the ship was in the port of Bremerhaven, Germany. Upon the vessel's arrival shortly after midnight, Appellant went ashore and visited several bars. At approximately 0300, he and a German male acquaintance obtained a hotel room. After ordering several drinks they commenced, in Appellant's words, "playing with each other", They later went to sleep in the single bed which was in the room. At approximately 0600 German detectives took both men into custody, and Appellant was charged with committing onanism with the German. On advice of counsel, he pleaded guilty in the German County court at Bremerhaven and on 24 August 1957 a Penal Order was issued by the Court Department for Penal Matters, finding Appellant guilty and sentencing him to two months in jail which was suspended and Appellant was placed on probation for three years. As a result of Appellant's arrest, he failed to join his ship when it sailed from Bremerhaven on 9 August 1957.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner on the following grounds:

(1) The two specifications should have been incorporated into one since Appellant was detained against his will;

(2) The order of revocation is too severe;

(3) 46 CFR 137.03-5 does not apply to this case as "moral turpitude" applies only to offenses included in American common law as statutory criminal law;

(4) The Hearing Examiner erroneously determined Appellant had first been charged with homosexuality;

(5) The Hearing Examiner's reference to Corpus Juris Secundum were erroneous as that reference includes only State and United States laws;

(6) The offense occurred on foreign soil and not on an American vessel, thereby depriving the Coast Guard of jurisdiction; and

(7) The Hearing Examiner should not be allowed to impose his own high moral standard, and his discretion should be limited in cases of this nature.

Appearances: Messrs. Gordon and Miller of New York, New York, by
Murray A. Miller, Esquire, of Counsel

OPINION

There is no reason why the two specifications should have been joined in a single specification. Each alleged a different offense resulting from the same incident. As long as the offenses are separate it is proper to set them forth in separate specifications.

The Examiner did not erroneously determine that Appellant had first been charged with homosexuality when arrested. The Examiner merely stated that Appellant had so testified (R.25).

Appellant's contention that the Coast Guard has no

jurisdiction because the offense occurred on a foreign shore is without merit. It is well established that Coast Guard jurisdiction extends to offenses committed on foreign shores by seamen who are serving aboard vessels under authority of their seamen's documents. The test is not the place of the offense but the seaman's relationship to the ship on which he is employed.

The major basis of Appellant's appeal is that 46 CFR 137.03-5, which states, *inter alia*, that misconduct includes offenses constituting moral turpitude, is not applicable. This contention is founded upon the argument that moral turpitude applies only to offenses punishable under American common or statutory law. That argument is not supported by any definition of the phrase moral turpitude. "Turpitude" is defined as inherent baseness or vileness of principle, words or actions, or shameful wickedness or depravity, whereas "moral" describes conduct that conforms to the generally accepted rules which society recognizes should govern everyone in his social and commercial relations with others, regardless of whether those rules constitute legal obligations. Moral turpitude implies something in itself whether punishable by law or not. *State ex rel Conklin V. Buckingham*, Nev. 84 P.2d 49.

There is no doubt that the offense committed by the Appellant involved moral turpitude. The Hearing Examiner did not apply his own high standards; he applied the generally accepted standards of American society.

The Coast Guard has a duty to protect lives and property at sea. This extends to protection against immorality and moral perversion. The only suitable order for such an act of moral baseness is one of revocation in order to prevent the offender's malignant influence from affecting other seafarers.

ORDER

The Order of the Examiner dated at New York, New York, on 12 November 1957 is AFFIRMED.

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

Dated at Washington, D.C.. this 2nd day of June, 1958.

***** END OF DECISION NO. 1042 *****

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