In the Matter of Merchant Mariner's Document No. Z-889912-D1 and
all other Seaman Documents
Issued to: FRANCIS J. WHITE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1075

FRANCIS J. WHITE

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 26 May 1958, an Examiner of the United States Coast Guard at San Francisco, California, suspended Appellant's seaman documents upon finding him guilty of misconduct. Three specifications allege that while serving as Boatswain on board the United States SS CHOCTAW under authority of the document above described, on or about 16 November 1957, Appellant wrongfully failed to perform his duties because of intoxication; he wrongfully damaged and destroyed ship's property; he deserted the ship.

At the beginning of the hearing, Appellant was given an explanation of the nature of the proceedings and the rights to which he was entitled. Appellant was represented by counsel of his own choice and he entered a plea of guilty to the first specification. Appellant entered pleas of not guilty to the last two specifications.

The Investigating Officer and Appellant's counsel made their

opening statements. The Investigating Officer introduced in evidence the testimony of the Chief Mate and entries in the ship's Official Logbook as well as three photographs of the damaged property referred to in the Second Specification.

In defense, Appellant offered in evidence his sworn testimony, that of another member of the crew and an excerpt from the ship's Official Logbook showing that the estimated cost of damage to the property was deducted from Appellant's wages. Appellant testified that on the morning of 16 November he started on a drinking spree and had no recollection of what happened the rest of the day except vaguely recalling having been on deck at one point; he awoke the next morning in a hotel and made arrangements to ship on another vessel without attempting to rejoin the CHOCTAW.

At the conclusion of the open 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. Five months later, the Examiner rendered the decision in which he concluded that the charge and three specifications had been proved. an order was entered suspending all documents, issued to Appellant, for a period of six months.

The decision was served on 19 June 1958. Appeal was timely filed on the same date.

FINDINGS OF FACT

On 16 November 1957, Appellant was serving as Boatswain on board the United States SS CHOCTAW and acting under authority of his Merchant Mariner's Document No. 889912-D1 while the ship was in the port of Yokohama, Japan.

The sailing board was posted for departure at 1900 on this date. The deck crew was required to be on board at 1700 to secure the ship for sea. Appellant was ashore drinking intoxicating beverages but he returned to the ship in time to perform his duty as Boatswain to direct the work of the deck seamen. At 1720, the Chief Mate went to Appellant's quarters and told him to turn the deck gang to. Appellant's room was in a normal condition at this time. When Appellant had not appeared on deck by 1730, the Chief Mate started the crew working to secure for sea. Appellant came on

deck at 1755 in an intoxicated condition and attempted to direct the work. The Chief Mate observed Appellant's condition and ordered him off the deck. After a brief argument, Appellant went to his room at 1800.

Appellant packed all of his personal belongings in two suitcases except some old work clothes which had little value. He destroyed the lock on a metal clothes locker and twisted the knob out of shape in order to open the door to get some money out of the locker. He had evidently lost the key to the locker. Appellant also damaged the frame of the locker, tore a writing table from the bulkhead, broke the legs of the table, and left the room in a state of considerable disarray. The estimated cost of repairing the damage was charged to Appellant's cash account in the Official Logbook. (The record indicates that at the time of the hearing Appellant had not attempted to obtain the release of the balance of his wages which had been deposited with the U. s. District Court by the Shipping Commissioner.)

At 1910, Appellant left the ship, with his two suitcases, staggering down the gangplank which was taken on board a few minutes later. The Chief Mate saw Appellant but did not attempt to stop him. On the dock, one of Appellant's suitcases came open and clothing fell out. Appellant repacked his belongings in the suitcase. He stood on the dock and watched the ship get underway about 1920 without having made any attempt to return on board.

At 2030, the Chief Mate discovered the condition of the room formerly occupied by Appellant and took photographs of the damaged property. The absence of practically all of Appellant's personal belongings was also noted. At the next port, the Master declared that Appellant was a deserter. The Shipping Articles list Appellant as such.

After the ship departed from Yokohama, Appellant left his suitcases in a barroom, which served as an unofficial shipping hall, and went to sleep at a hotel. The next morning Appellant went to get his gear and then remained in Yokohama for about a week until he arranged to work on another vessel on which he returned to the United States. During this period of delay, there is no indication that Appellant made any attempt to rejoin the CHOCTAW by contacting her local agent or otherwise.

Appellant's prior disciplinary record consists of having failed to join four other ships since 1950. The most severe order imposed for any of these offenses was a probationary suspension in 1952.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that he was not guilty of desertion or destruction of property. Appellant's misconduct was not willful or intentional but was due to his intoxicated condition. The Chief Mate should have prevented Appellant from leaving the ship in this condition. Appellant's mind was so irrational that he lacked the ability to form the intent to desert the ship. Restitution was made for the damaged property. Under these circumstances, the order of six months' suspension is excessive.

OPINION

Appellant's contentions are considered to be completely without merit. He admits that he damaged ship's property and that he was in no condition to perform his duties as Boatswain because of his intoxicated condition. In order to escape the charge of desertion on the ground of inability to form the intent to do so, Appellant emphasizes his drunkenness to the extent of claiming that his only recollection of what happened, between a time prior to his return on board on 16 November and when he awoke in a hotel the next morning, is vaguely remembering being on the deck of the ship while engaged in argument.

As to the First Specification, Appellant failed to perform his duties at a time when his services were badly needed. As Boatswain, it was his duty, under the Chief Mate, to supervise the securing of the deck gear when preparing to get underway. Since Appellant was not able to do this, the Chief Mate was required to take direct charge of this work.

The proof is adequate to show that Appellant destroyed and damaged ship's property as alleged in the Second Specification. Photographs of the damage were submitted in evidence and Appellant

admits that he must have done it although he does not remember doing it. Even if Appellant's absence of recollection is conceded, he was still at fault because a person is responsible for what he does during periods of voluntary intoxication. The matter of restitution for the damage was taken into consideration by the Examiner even though this factor has not deprived Appellant of any part of his wages due if this entire amount were forfeited as a result of his desertion.

The most serious offense is the one of desertion alleged in the Third Specification. Appellant testified that he had no recollection of the material facts set out above concerning this specification. But the Examiner, who was in the best position to judge the credibility of the witnesses, stated that he did not believe Appellant's denial that he had knowledge of having left the ship with his personal gear. The Examiner was also of the opinion that Appellant formed the intent to leave the ship after he was relieved of his duties by the Chief Mate and ordered off the deck. The findings of fact support the position of the Examiner that Appellant had the ability to, and did, formulate the intent to abandon the voyage for which he was engaged to complete. This is a necessary element of the offense of desertion.

It was stated in the *Petition of Larson* (D.C.Va., 1957), 152 F. Supp. 252, 1957 A.M.C. 2073 that:

> "While the burden rests upon the party asserting desertion to prove the requisite intent, where drunkenness is offered as an excuse, there is an equal burden upon the alleged deserter to establish his condition to such an extent that the ability to formulate the intent to desert is essentially negatived."

There are several factors which indicate that Appellant knew what he was doing. He returned on board in time to start securing the vessel for sea, he went on deck at 1755 to perform this work, he remembered having left some money in the locker which was damaged, he was rational enough to pack all of his belongings except old work clothes, he went off the ship with his gear, and he repacked the suitcase that fell open on the dock. The next morning, Appellant was able to locate his suitcases in the barroom presumably because he remembered where he had left them the night

before.

In addition to indicating that Appellant was not as intoxicated as he would have it believed, two of the above factors are good evidence that Appellant had formed the necessary intent to desert by the time he left the ship. He took most of his personal effects with him and he took affirmative action to get off the ship just prior to the time of her departure. This is considerably different from cases where seamen have missed their ships because they did not return on board after having became intoxicated while ashore. If Appellant was in such a condition that he could not have formed the intent to desert, then there is no apparent reason why he packed his gear and left. The fact that Appellant got off the ship in this manner is indicative both that he knew what he was doing and that he did so with the intention of abandoning the ship. The Chief Mate was not bound to restrain Appellant with force, if necessary, as Appellant contends. The Chief Mate was busy doing his work as well as Appellant's. The latter then stood on the dock and watched the ship depart without making any motion to get back on board.

Under these circumstances, it is my opinion that Appellant's actions unmistakably support the burden of proving his willful intention to desert the CHOCTAW. Such an intent may be formed while a person is under the influence of intoxicants and it need not be while in a rational state of mind.

Appellant's conduct during the week or so that he remained in Yokohoma is further evidence in support of the conclusion that he intended to desert prior to leaving the ship. Alternatively, this conduct is sufficient to show that Appellant formed the intent to desert after he left the CHOCTAW, if he was incapable of doing so earlier. This adequate proof of desertion. *Petition of Larson*, *supra*; *Petition of Murphy* (D.C. SDNY, 1947), 73 F.Supp. 710. The record discloses that Appellant sought employment on another ship without making any effort to locate the CHOCTAW or contact her agent in Yokohama. The conclusion that Appellant was guilty of desertion is inescapable.

In view of the seriousness of these offenses and Appellant's prior record of four offenses of failure to join, the six months' suspension imposed herein is considered to be lenient rather than

excessive as Appellant contends. Consequently, it will not be modified.

ORDER

The order of the Examiner dated at San Francisco, California, on 26 May 1958, is AFFIRMED.

J. A. Hirshfield
Rear Admiral, United Stated Coast Guard
Acting Commandant

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

***** END OF DECISION NO. 1075 *****

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