

In the Matter of License 150156 and All other Licenses
Issued to: THOMAS JOSEPH McSHARRY

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

886

THOMAS JOSEPH McSHARRY

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 25 July 1955, an Examiner of the United States Coast Guard at San Francisco, California, suspended License No. 150156 issued to Thomas Joseph McSharry upon finding him guilty of misconduct based upon one specification alleging in substance that while serving as Junior Third Assistant Engineer on board the American SS SHAWNEE TRIAL under authority of the license above described, on or about 31 May 1955 while said vessel was at sea, he wrongfully was unfit to perform his duties by reason of intoxication.

At 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 voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specification preferred against him.

Thereupon, the Investigating Officer made his opening statement. He introduced in evidence an entry in the Shipping Articles of SS SHAWNEE TRIAL, and the testimony of the Master and the Chief Engineer of that vessel.

In defense, Appellant offered in evidence his sworn testimony.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and specification had been proved. He then entered the order suspending Appellant's License No. 150156 and all other licenses issued to Appellant by the United States Coast Guard or its predecessor authority; the outright period of suspension to terminate three months from the date of deposit of the license with the U. S. Coast Guard, with an additional three months suspension on probation, the period of probation to run until twelve months after the termination of the outright suspension.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 31 May 1955, Appellant was serving as Junior Third Assistant Engineer on board the American SS SHAWNEE TRAIL and acting under authority of his License No. 150156 while the vessel was at sea.

On that date Appellant had been drinking intoxicants in the afternoon while off watch. Chief Engineer Black was disturbed by this and, at 2000, when Appellant assumed the engine room watch, Black went to the engine room to observe Appellant's condition. He determined from Appellant's staggering, incoherence and general appearance that Appellant was intoxicated. He therefore relieved Appellant of his duties and ordered him to leave.

Appellant did not leave until after the Master had been called to the scene. The Master escorted Appellant to his quarters, and

disposed of some intoxicating liquor which was found there.

Appellant has no prior record of misconduct.

BASES OF APPEAL

Appellant contends:

- I that the evidence was insufficient to support the findings;
- II that irregularity in the proceedings prevented Appellant from having a fair trial;
- III that the order is excessive and appears to have been rendered under the influence of passion or prejudice.

APPEARANCES ON APPEAL: Francis J. Solvin, Esquire, of San Francisco, of Counsel

OPINION

The facts adduced at the hearing substantially support a finding that Appellant was intoxicated when he assumed the engineer watch on board SS SHAWNEE TRAIL on the night of 31 May 1955. His intoxication under these circumstances is enough to establish unfitness for duty.

As to Appellant's second basis of appeal, the record of proceedings has been carefully scrutinized. While Appellant made no specific charge of irregularities, it appears from the record that the specification upon which the hearing was had alleged in fact two offenses. By the terms of 46 CFR 137.05-10(b) and 46 CFR 137.09-28, this error should have been corrected prior to arraignment. However, the error is not prejudicial because the Examiner in his Conclusion struck from the specification that matter which might have been alleged as a separate offense, and which the Examiner found not proved. What remained was a valid statement of an act of misconduct - unfitness for duty by reason of intoxication - and the issue was completely covered in the proceedings. I have found nothing else indicating irregularity of

any kind except possibly excess caution on the part of the Examiner and the Investigating Officer to give the Appellant every opportunity for a fair hearing.

Concerning Appellants third point, in view of the responsibility of the Engineer of the watch and the possible disastrous consequences of Appellants condition, effectively precluded by the Chief Engineer's relieving Appellant of his duties, the order is not considered excessive.

ORDER

The order of the Examiner dated at San Francisco, California, on 25 July 1955, is AFFIRMED.

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

Dated at Washington, D. C., this 2nd day of May, 1956.

***** END OF DECISION NO. 886 *****

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