

In the Matter of Merchant Mariner's Document No. Z-53633-D4 and all
other Licenses, Certificates and Documents
Issued to: JUAN SOTO

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

896

JUAN SOTO

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 17 February 1956, an Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z-53633-D4 issued to Juan Soto upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as a fireman-watertender on board the American SS MARINE SNAPPER under authority of the document described above, on or about 21 January 1956, while said vessel was in the port of Oakland, California, he wrongfully damaged a door on the ship; and he wrongfully created a disturbance.

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 each specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence a certified copy of an entry in the Official Logbook of the MARINE SNAPPER.

In defense, Appellant offered in evidence the testimony of a member of the crew who had seen Appellant arguing with his roommate prior to the time of the alleged offenses. Appellant stated that he desired to remain silent rather than to testify.

At the conclusion of the hearing, having heard the argument of the Investigating Officer and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and specifications had been proved. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-53633-D4 and all other licenses, certificate and documents issued to Appellant by the United States Coast Guard or its predecessor authority.

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

FINDINGS OF FACT

On 21 January 1956, Appellant was serving as a fireman-watertender on board the American SS MARINE SNAPPER and acting under authority of his Merchant Mariner's Document No. Z-53633-D4 while the ship was docked at Oakland, California.

On the night of this date, Appellant was in an intoxicated condition when he had an argument with his roommate, an oiler. As a result of this difficulty, the oiler later locked Appellant out of his room. Appellant obtained a blunt object and used it to tear the locking device off the door. Appellant then grappled with his roommate. Both the struggle with the door and the one with the oiler caused a disturbance on the ship. Appellant paid for the damage to the door.

Appellant's prior record consists of an admonition in 1945 for inattention to duty; an admonition in 1948 for failure to stand a watch; a probationary suspension in 1949 for failure to perform his

duties due to intoxication and for using abusive language to the Master and Chief Engineer; a probationary suspension in March 1953 for failure to perform his duties due to intoxication and for creating a disturbance. The latter four months' suspension on probation was made effective in June 1953 for Appellant's failure to join his ship.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant pleads for mercy on the grounds that the order of revocation is not consistent with the seriousness of the offenses in view of Appellant's thirty-years loyal service in the Merchant Marine; this is a hardship on Appellant and his family because he cannot find other employment at the age of 53; and Appellant paid for the damage to the door. Appellant requests another trial or the return of his document.

OPINION

Appellant does not contest the clear proof of the two specifications. His appeal is simply a request for clemency.

It is my opinion that the facts in this case do not justify the severe order of revocation despite Appellant's prior record. Although the willful destruction of ship's property is not condoned, the fact that Appellant forced his way into his own room is a factor to be considered in mitigation but not as justification for the act.

ORDER

Merchant Mariner's Document No. Z-53633-D4, and all other licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority are suspended outright for a period of six (6) months. Appellant's documents are further suspended for an additional six (6) months which shall not become effective provided no charge under R.S. 4450, as amended (46 U.S.C. 239), is proved against Appellant for acts committed during the period of outright suspension or within twelve (12) months from the date of the termination of the outright suspension.

As so MODIFIED, said order is

AFFIRMED.

J. A. Hirshfreed
Rear Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 23rd day of May, 1956.

***** END OF DECISION NO. 896 *****

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