In the Matter of Merchant Mar*in*er's Document No. Z-549625-D1 and all other Licenses, Certificates and Documents
Issued to: ARTHUR LEWIS MAHOOD

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

903

ARTHUR LEWIS MAHOOD

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 30 August 1955, an Examiner of the United States Coast Guard at Long Beach, California, revoked Merchant Mariner's Document No. Z-54925-D1 issued to Arthur Lewis Mahood upon finding him guilty of misconduct based upon a specification alleging in substance that wile serving as an oiler on board the USNS MISSION SOLANO under authority of the document above described, on or about 24 June 1955, while said vessel was in the port of Sasebo, Japan, he wrongfully assaulted and battered a fellow crew member, Babe E. Collings, with a dangerous weapon, to with: a knife.

Appellant was served with the charge and specification on 12 August 1955. He was directed to appear for a hearing on 16 August 1955. The Investigating Officer testified that, at the time of service of the charge and specification, 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. He was also informed that the hearing would proceed in

absentia if he did not appear. On 15 August 1955, counsel for Appellant telephoned the Investigat*in*g Officer and the hearing date was set for 24 August 1955 in order to give counsel additional time to prepare Appellant's defense. The hearing was conducted in *absentia* when neither Appellant nor his counsel appeared for the hearing on 24 August 1955. The hearing proceeded as though the Examiner had entered a plea of "not guilty" on behalf of Appellant.

The Investigating Officer made his opening statement. He then introduced in evidence the Shipping Articles of the MISSION SOLANO, a certified copy of an entry in her Official Logbook and other documentary evidence including the Master's report of the injury to collings.

At the conclusion of the hearing, having heard the argument of the Investigating Officer and given him 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 revoking Appellant's Merchant Mariner's Document No. Z-549625-D1 and all other licenses, certificates 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 24 June 1955, Appellant was serving as an oiler on board the USNS MISSION SOLANO and acting under authority of his Merchant Mariner's Document No. Z-549625-D1 while the ship was in the port of Sasebo, Japan. Appellant and Babe E. Collings, engine maintenanceman, were on the 2000 to 2400 watch in the engine spaces.

About 2330 on this date, Appellant approached Collins in the boiler room and, without provocation, slashed him across the throat with a knife. Collings grappled with Appellant and forced him to drop the knife. Collings made Appellant go to the engine room where the Junior Third Assistant Engineer was on watch. The latter took Appellant to the Master while Collings sought medical

assistance. Collings was taken ashore to a hospital for treatment. His would required fourteen stitches. At first, Appellant refused to make a statement to the Master concerning the incident. A few minutes later, Appellant said that he "had been ready to kill that punk." The Master immediately ordered Appellant's removal from the ship by the military authorities. Later on the same day, the Master made an entry concerning this incident in the Official Logbook of the ship.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that:

POINT I. There is no evidence in the record that present counsel for Appellant was his "attorney of record" at the time of the hearing or that Appellant was personally notified of the continuance of the hearing from 16 August 1955 to 24 August 1955.

POINT II. The MISSION SOLANO was at sea at the time of the hearing. Hence, even if Appellant had been present at the hearing, he would have been denied due process in that he would have been deprived of the right to be confronted by his accusers and to cross-examine them.

POINT III. The evidence submitted was entirely hearsay and, therefore, it is not sufficient to support the findings or the order. The Master's logbook entry and accident report are inadmissible because the Master had no personal knowledge of the matters recorded therein. These documents were also inadmissible because there is no evidence that the Coast Guard officer who purportedly certified copies of these documents had the right to the custody of the records and the authority to furnish authenticated copies.

POINT IV. The Master ignored Appellant's rights by removing him from the ship prior to making the log entry. Hence, Appellant did not have the opportunity to hear and reply to the charges as entered in the logbook. This did not conform with 46 U.S.C. 702.

In conclusion, it is respectfully submitted that Appellant should not be deprived of his livelihood on the basis of such weak evidence.

APPEARANCES: Messrs. Morse and Selwyn of Los Angeles, California by Herbert E. Selwyn, Esquire, of Counsel.

OPINION

POINT I

The record shows that present counsel telephoned the Investigating Officer on 15 August 1955, stated that he represented the Appellant, and it was agreed that the hearing be held on 24 August instead of 16 August. Counsel does not deny this on appeal. From this, it must be assumed that counsel was acting as Appellant's authorized representative on 15 August. Consequently, it was counsel's responsibility to protect Appellant's rights by keeping him informed of counsel's actions on behalf of Appellant. Moreover, there is nothing in the record to indicate that Appellant appeared for the hearing on the originally scheduled date of 16 August; nor if any such contention mad eon appeal. The record contains Appellant's written acknowledgment that he received notice to be present at a hearing on 16 August. The Examiner acted properly by conducting the hearing in absentia when neither Appellant nor his counsel put in an appearance on 24 August 1955.

POINT II

Any right to confrontation and cross-examination, which Appellant might otherwise have had, was waived by the failure of Appellant or his counsel to appear at the hearing. However, it is noted that it has been held that objection to logbook entries, on

the ground that no opportunity for cross-examination (which is the main purpose of confrontation) has been given should be overruled. The Ariel (C.C.A.2, 1941), 119 F.2d 866. There is no constitutional right to confrontation, as such, except in criminal trials and this is an administrative hearing. The type of hearing under consideration is entirely unrelated to the security program case (Parker v Lester (C.A.9, 1955), 227 F.2d 708) cited by Appellant.

POINT III

Appellant's contention that the entire evidence consists of inadmissible hearsay is without merit. The entry in the ship's Official Logbook is an entry made in the regular course of business and if the entrant is unavailable to appear as a witness, the entry is admissible as an exception to the hearsay rule on the principle of necessity and in accordance with 28 U.S.C. 1732. *Lopoczyk v. Chester A. Poling, Inc.* (C.C.A.2, 1945), 152 F.2d 457; *Wigmore on Evidence* 3d Edition, secs. 1404, 1521, 1641(2). The logbook entry is also admissible under the Official Records Statute (28 U.S.C. 1733) as an official document since it is an entry required by law. *The Ariel*. Supra; *Wigmore on Evidence*, 3d Edition, secs. 1523, 1633a, 1641(2). Title 46 U.S.C. 201(5) requires that the logbook shall contain an entry concerning injuries to members of the crew. The Master's report of the accident was also admissible under 28 U.S.C. 1733 since it was a report required by regulation. *Sternberg Dredging Co. v. Moran Towing P Transp. Co., Inc.* (C.A.2, 1952, 196 F.2d 1002. The above citations show that the courts have not excludedlog entries made by the Master, while acting in his official capacity, despite his lack of personal knowledge concerning the facts related.

It is my opinion that Appellant's attack upon the certification of a copy of the logbook entry by a Coast Guard officer is equally without merit. (The record clearly shows that the accident report submitted was signed by the Master. Certified extracts from the Shipping Articles were signed by the Examiner and substituted for the Shipping Articles which were introduced in evidence at the hearing.) It has been the consistent position of the Commandant that copies of such documents, when certified in proper form by Coast Guard officers performing investigating duties

under the delegated authority of the Commandant, meet the requirements of authentication for the admission of copies in evidence in these administrative proceedings where the technical rules of evidence are not strictly applied. No court decision to the contrary has been brought to my attention and diligent search has revealed none. Such certifications meet the test of satisfactory identification which is the criterion contained in 28 U.S.C. 1732. There is no reason to believe that copies of such documents certified by Coast Guard officers for use in evidence would not be reliable. The purpose of the Best Evidence Rule is to prevent fraud or imposition. *U.S. v. Manton*(C.C.C.A.2, 1938), 107 F.2d 834.

In addition, the ultimate custodian of the Official Logbook did not have possession of it at the time of the certification of the entry because the voyage was still in progress.

POINT IV

The log entry was made in compliance with 46 U.S.C. 702 which requires that the offender, if still on the vessel, shall be given an opportunity to reply to the charges. Appellant had been removed from the vessel by the time the entry was made later on the day of the offense. Nevertheless, Appellant was given the opportunity before his removal to make a statement to the Master. Hence, the logbook entry was not defective because it contained no reply by Appellant. No doubt, the Master considered it necessary to remove Appellant with expediency in view of the vicious nature of his offense.

CONCLUSION

Since the evidence consists of documents which are admissible in evidence as exceptions to the hearsay rule, there is substantial evidence of the alleged offense.

The order of revocation is the only suitable one in the case of a person who has displayed such dangerous proclivities to the detriment of a fellow seaman. Regardless of Appellants prior clear record and the personal hardship involved, other seamen should not be exposed unnecessarily to the danger of such an unprovoked, serious attack as was committed upon Collings by Appellant.

ORDER

The order of the Examiner dated at Long Beach, California, on 30 August 1955, is AFFIRMED.

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

Dated at Washington, D. C., this 21st day of June, 1956.

***** END OF DECISION NO. 903 *****

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