

In the Matter of Merchant Mariner's Document No. Z-679434 and all
other Licenses, Certificates and Documents
Issued to: JOHN WESLEY WILSON

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

922

JOHN WESLEY WILSON

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 2 May 1956, an Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended Merchant Mariner's Document No. Z-679434 issued to John Wesley Wilson upon finding him guilty of misconduct based upon five specifications alleging in substance that while serving as an ordinary seaman on board the American SS CAPE CUMBERLAND under authority of the document above described on or about 31 January 1955, while said vessel was in the port of Cadiz, Spain, he left his assigned duties without permission (First Specification); he used profane language towards the Boatswain and threatened his life (Second Specification); he used profane language towards the Master (Third Specification); he committed assault and battery upon the Boatswain (Fourth Specification); and he refused to obey a lawful order of the Master (Fifth Specification).

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 "guilty" to the charge and First Specification and "not guilty" to the other four specifications proffered against him.

Thereupon, the Investigating Officer made his opening statement. He introduced in evidence a certified copy of extracts from the Shipping Articles of the CAPE CUMBERLAND for the voyage in question and a certified copy of an entry in the ship's Official Logbook.

In defense, Appellant testified that he was too drunk from drinking brandy to remember what happened after he went to bed except that he was ordered to return to the deck and then the trouble started.

At the conclusion of the hearing, having given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and five specifications had been proved. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-679434 and all other licenses, certificates, and documents issued to appellant by the United States Coast Guard or its predecessor authority, for a period of 12 months - 6 months outright suspension and 6 months suspension on probation until 18 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 January 1955, Appellant was serving as an ordinary seaman on board the American SS CAPE CUMBERLAND and acting under authority of his Merchant Mariner's Document No. Z-679434 while the ship was at Cadiz, Spain, discharging cargo.

At approximately 1435 on this date, Appellant left the deck without permission and went to his quarters in an intoxicated condition. Appellant remained absent from his duties and asleep

until the Boatswain called Appellant at 1515. Appellant addressed the Boatswain with profane language and threatened his life. When the Master told Appellant that he would be logged Appellant used profane language towards the Master.

Appellant returned to deck. A short time later Appellant attacked the Boatswain by kicking him in the groin. The Boatswain was sent ashore for medical treatment. The Master ordered Appellant to go to his quarters but Appellant refused to obey this order.

At 1700 on this date, Appellant was logged two days pay (\$16.28) for being absent from duty between 1435 and 1515; he was logged 4 days pay for refusing to obey a lawful command. Appellant's reply to the charges was that he was drunk. Appellant signed his reply.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the Examiner erroneously neglected to find that Appellant was involuntarily intoxicated and that he lacked the necessary specific intent to commit the acts alleged; there would have been no trouble if Appellant had been permitted to sleep off his intoxication; there is no statement in the logbook that a copy of the entry was furnished Appellant or read to him as required by 46 U.S.C. 702; and the two exhibits in evidence were not admissible as exceptions to the hearsay rule because they were not authenticated by the custodian of the original records.

APPEARANCE: Messrs. Roberts and McInnis of Washington, D. C.,
by Julian P. Freret, Esquire, of Counsel.

OPINION

The entry in the Official Logbook of the CAPE CUMBERLAND made out a prima facie case against Appellant since this entry substantially complies with the requirements of 46 U.S.C. 702 and it is an exception to the hearsay rule as a record made in the regular course of business. 28 U.S.C. 1732. Although the

requirement of a statement in the log that the offender has been given a copy of the entry or had it read to him was not strictly complied with, the fact that Appellant's reply to the charges and his signature appear in the logbook (see Findings of Fact above) show that there was substantial compliance with the spirit and intent of 46 U.S.C. 702 in that the contents of the entry must have been made known to Appellant at the time.

With respect to the certification of this log entry and the extracts from the Shipping Articles, it has long been considered that Coast Guard officers who have been delegated the authority to act as Investigating Officers are empowered to make necessary certifications of documents which are in the custody of the Coast Guard. See previous Commandant's decisions on appeal. The authenticity of these two exhibits is further indicated by Appellant's failure to question or object to them at the time of the hearing.

Specific intent is not an essential element of the charge of misconduct in these remedial, administrative proceedings. According to Appellant's testimony, his intoxication was not involuntary. He testified that he "had been working and drinking all day." Hence, the acts which resulted from his intoxication were due to his own conduct; and he cannot blame others for failing to permit him to sleep during working hours. Appellant's claim that he could not remember any of the offenses except his failure to perform his duties is negated by his testimony that he was ordered to get back on deck. This happened 40 minutes after Appellant had gone to his quarters and just prior to the time of the other offenses.

It is my conclusion that the five specifications have been proved by substantial evidence. The seriousness of these infractions of discipline merit the order imposed by the Examiner. Appellant not only refused to recognize the authority of his immediate superior, the Boatswain, but that of the Master of the ship.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 2 May 1956 is AFFIRMED.

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

Dated at Washington, D. C., this 9th day of October, 1956.

***** END OF DECISION NO. 922 *****

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