

In the Matter of Merchant Mariner's Document No. Z-62741-D1 and all
other Licenses, Certificates and Documents
Issued to: LUCIANO NEMESIO FERNANDEZ

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

926

LUCIANO NEMESIO FERNANDEZ

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 14 June 1956, an Examiner of the United States Coast Guard at New York, New York, suspended Merchant Mariner's Document No. Z-62741-D1 issued to Luciano Nemesio Fernandez upon finding him guilty of misconduct based upon three specifications alleging in substance that while serving as crew messman on board the American SS SANTA BARBARA under authority of the document above described, while said vessel was in the port of Callao, Peru, he deserted said vessel on 4 January 1956 (First Specification); he wrongfully refused to turn to and perform his assigned duties on 17 January 1956 (Second Specification); and he wrongfully failed to report for his assigned duties on 18 January 1956 (Third Specification). The First specification was found proved to the extent that Appellant was found guilty of the lesser included offense of failure to join.

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. Appellant was represented by nonprofessional counsel of his own choice and a plea of "not guilty" was entered to the charge and each specification proffered against Appellant.

After the Investigating Officer made his opening statement, he introduced in evidence certified copies of entries in the Official Logbook of the SANTA BARBARA and extracts from her Shipping Articles for the voyage in question.

In defense, Appellant offered in evidence his sworn testimony and various letters.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and three specifications had been proved. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-62741-D1, and all other licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of twelve months - four months outright suspension and eight months suspension on probation until twelve months after the termination of the outright suspension. Appellant was issued a temporary document.

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

FINDINGS OF FACT

On 3, 4, 17 and 18 January 1956, Appellant was serving as crew messman on the American SS SANTA BARBARA and acting under authority of his Merchant Mariner's Document No. Z-62741-D1 while the ship was in the port of Callao, Peru.

On 3 January 1956, Appellant went ashore to visit his wife who lived in nearby Lima, Peru. He left his personal belongings on the ship. Appellant knew the ship was scheduled to sail at 2200 on 4 January. At approximately 2230 on 4 January, Appellant returned to the dock where the SANTA BARBARA had been. The ship had departed for other South American ports.

On 17 January, Appellant returned on board the ship when she again arrived at Callao. On this date, Appellant refused to turn to and perform his regular assigned duties at 0800. On 18 January, Appellant failed to report for his assigned duties at 0800. He was properly logged for both of these offenses.

Appellant's prior record consists of desertion from one ship at Buenos Aires in September 1947 and desertion from another ship at Callao in December 1947.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Clemency is requested since employment on ships is Appellant's only livelihood. Loss of his document will result in hardships for Appellant's family during the period of suspension.

OPINION

Appellant's appeal consists solely of a plea for clemency on the ground of hardship. The Examiner aptly pointed out in his decision that Appellant worked a hardship on his shipmates when he contracted to perform certain duties by signing the Shipping Articles and then failing to carry out his obligations; and that such conduct is also disruptive of the discipline required on shipboard.

The Examiner considered all the matters presented by Appellant in mitigation. The order imposed was lenient in view of Appellant's past record of two offenses of a similar nature. Hence, the order will not be modified. This outright suspension for a period of four months might tend to curb Appellant's inclination to forsake his ship and duties after he has agreed to remain on board for a complete voyage.

ORDER

The order of the Examiner dated at New York, New York, on 14 June 1956, is AFFIRMED.

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

Dated at Washington, D. C., this 22nd day of October, 1956.

***** END OF DECISION NO. 926 *****

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