

In the Matter of Merchant Mariner's Document No. Z-938907-D1 and
all other Licenses and Documents
Issued to: ANTHONY C. KUNINGAS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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ANTHONY C. KUNINGAS

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 22 October 1956, an Examiner of the United States Coast Guard at Baltimore, Maryland, suspended Merchant Mariner's Document No. Z-938907-D1 issued to Anthony C. Kuningas upon finding him guilty of misconduct. The two specifications allege in substance that while serving as Boatswain on board the American SS COLUMBIA HEIGHTS under authority of the document above described, on or about 19 and 24 September 1956, Appellant failed to perform his assigned duties due to intoxication; and on those same dates, he was insubordinate to the Chief Mate.

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, a union patrolman. Appellant entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer introduced in evidence

the testimony of the Chief Mate and rested his case.

In defense, Appellant offered in evidence his sworn testimony and certified copies of entries in the Official Logbook of the ship.

At the conclusion of the hearing, having heard the argument of 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 two specifications had been proved. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-938907-D1, and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of two months.

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

FINDINGS OF FACT

While on a foreign voyage, Appellant was serving as Boatswain on board the American SS COLUMBIA HEIGHTS and acting under authority of his Merchant Mariner's Document No. Z-938907-D1 on 19 September 1956.

At approximately 1500 on 19 September 1956 while the ship was at Valencia, Spain, the Chief Mate was unable to find Appellant. It was Appellant's duty to secure the ship for sea preparatory to getting underway. At 1630, the Chief Mate saw Appellant on deck and asked him where he had been. Appellant was in an intoxicated condition, and he told the Chief Mate it was none of his "damn" business as long as the work was done. Appellant cursed the Chief Mate and refused to go with him to see the Master. The Chief Mate went to see the Master about this matter but he was busy. The Chief Mate told Appellant that he would be logged in connection with this incident. He was logged two days' pay of \$29.73.

On 24 September 1956, the ship anchored at Ceuta, Spanish Morocco, between 0700 and 0800. It was Appellant's job to secure the ship; he arrived on the forecastle smelling of whisky. The Chief Mate told Appellant to stay sober. Appellant staggered on deck while assisting in placing the tarpaulins on the hatches.

Appellant was again in an intoxicated condition and directed insulting language toward the Chief Mate.

At 1300 on 24 September Appellant changed the rigging of the port gangway and told the Chief Mate that the was no damn sailor when the Chief Mate told Appellant it was not necessary to have changed the rigging. Appellant also cursed the Chief Mate and refused to obey his order to leave the deck. when this was brought to the Master's attention, he confined Appellant to his room and logged Appellant two days' pay.

On 26 September 1956, The Master demoted Appellant from Boatswain to able seaman because of his arrogant attitude, his lack of cooperation and his insubordination, all with respect to the Chief Mate.

At the time of the hearing, Appellant had no prior record during fifteen years at sea on vessels of the United States.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends, with respect to 19 September, that he left the ship for only 20 minutes during a period of time when he was personally paying two men to work for him. On 24 September, Appellant asked the Chief Mate not to interfere with the work on deck. The Chief Mate said Appellant was drunk and ordered him off the deck.

Appellant has never cursed at or been insubordinate to any officer of a ship.

The Chief Mate stole ship's property and this indicates, according to an old proverb, that he is also a liar.

The Chief Mate created friction with Appellant by repeatedly interfering with work on deck which it was Appellant's duty as Boatswain to supervise, and by performing overtime work which should have been done, according to the union agreement, by seamen under the direction of the Boatswain.

Appellant has no other livelihood. Since Appellant has an estranged wife and two children to support, reconsideration of the decision is requested with the understanding that Appellant will never again be in trouble.

OPINION

The Examiner heard the testimony of the Chief Mate as well as that of Appellant. The Examiner accepted the version presented by the Chief Mate as substantially set forth in the above findings of fact. No reason is apparent why this choice of the Examiner, who was in the best position to judge the credibility of witnesses appearing before him, should be rejected. There is no support for Appellant's bare contention that the Chief Mate is a thief and liar. On the other hand, the Chief Mate's testimony is corroborated by the fact that Appellant was demoted for the type of conduct which the Chief Mate testified that Appellant was guilty of. Appellant admits, in his appeal, that he left the ship on 24 September and that he was "ordered" by the Chief Mate to leave the deck.

The bad feeling between the two seamen was no justification for Appellant's conduct. Contrary to Appellant's claim that the Chief Mate caused friction by interfering with the work of the deck force, the strong impression gathered from the record is that it was necessary at times for the Chief Mate to take over Appellant's duties due to his intoxicated condition. There is no doubt that Appellant displayed a complete lack of respect for the authority of the Chief Mate. The matter of any overtime work which was not performed in accordance with a union agreement is not relevant to these charges against Appellant.

The personal hardship to Appellant and his family, resulting from this order of two months suspension, is unfortunate but such breaches of discipline must be dealt with severely in the interest of safety at sea. Hence, the Examiner's order will be upheld.

ORDER

The order of the Examiner dated at Baltimore, Maryland, on 22

October 1956, is

AFFIRMED.

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

Dated at Washington, D. C., this 8th day of April, 1957.

***** END OF DECISION NO. 958 *****

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