

In the Matter of License No. 134516 Merchant Mariner's No. Z-42672
and all other Licenses, Certificates and Documents
Issued to: ALEXANDER BORA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

973

ALEXANDER BORA

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 20 September 1956, an Examiner of the United States Coast Guard at Baltimore, Maryland, suspended License No. 134516 and Merchant Mariner's Document No. Z-42672 issued to Alexander Bora upon finding him guilty of misconduct. Two specifications allege in substance that while serving as Junior Third Mate on board the American SS AMERICAN ATTORNEY under authority of the license above described, on or about 13 August 1955, while said vessel was in a foreign port, Appellant failed to perform his duties due to intoxication; and he used abusive language toward LCDR H. F. Lusk, U.S.C.G, while and officer was expecting his official duties.

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 counsel of his own choice. He entered a plea of "not guilty" to the charge and both specifications.

The Investigating Officer made his opening statement. He then introduced in evidence the testimony of the Chief Mate of the AMERICAN ATTORNEY, the testimony of a U. S. Public Health Service doctor who had examined Appellant and a certified copy of an entry in the ship's Official Logbook which pertained to this incident. The Investigating Officer also introduced the depositions of the Master of the AMERICAN ATTORNEY, LCDR H. F. Lusk, U.S.C.G., and the ship's Antwerp cargo superintendent, Mr. Roger Frescura. The depositions were taken at Antwerp, Belgium, by interrogatories and cross-interrogatories.

In defense, Appellant offered in evidence the testimony of a doctor as an expert witness concerning Meniere's disease, the testimony of himself, and four U. S. Public Health Service medical reports relating to Appellant. Appellant testified that he had nothing to drink except three beers after going off duty at 2400; he was absolutely sober when he retired shortly after 0200; at 0700, Appellant had a sudden, very severe attack of what he later learned must have been Meniere's disease; he was unable to walk and vomited for an hour before going on duty at 0800 checking cargo; he was weak, unsteady on his feet and had lapses of memory but was capable of performing his duties; Appellant was extremely sick for several hours after the attack; he was righteously indignant when he was accused of being drunk and wanted a lawyer to attest to the fact that Appellant was not drunk.

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 two specifications had been proved. He then entered the order suspending Appellant's License No. 134516, Merchant Mariner's Document No. Z-134516, Merchant Mariner's Document No. Z-42672, and all other licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of three months.

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

FINDINGS OF FACT

On 13 August 1955, Appellant was serving as Junior Third Mate on board the American SS AMERICAN ATTORNEY and acting under authority of his License No. 134516 while the ship was in the port of Antwerp, Belgium.

Appellant went on watch at 0800 on this date to supervise the loading and discharging of cargo in the No. 3 hold. Between 1000 and 1100, the Master observed that Appellant was staggering about the deck and told the Chief Mate, who had just returned on board, to order Appellant to leave the deck since he could not perform his duties properly and apparently was under the influence of intoxicants. The Chief Mate ordered Appellant to leave the deck and go to his room. Appellant asked the reason for this order and refused to obey it. At this time, Appellant's speech was slurred and incoherent. A few minutes later, he joined the Master and Chief Mate on the cabin deck. The Master told Appellant to go to his room. Appellant said he wanted a lawyer and that he was going to make trouble for the Master. Appellant roamed around the decks for the next 20 or 30 minutes although he had been relieved of his duties. He then went to his room.

The Master called the Coast Guard office to request an investigation of Appellant's conduct. Lieutenant Commander H. F. Lusk, U.S.C.G., arrived on board about 1400 on the same day. The Chief Mate went to Appellant's room and told him to go to the Master's quarters. The Chief Mate glanced around Appellant's room but did not see any bottles which contained intoxicants. When Appellant arrived at the Master's quarters in the presence of the Master, Chief Mate and LCDR Lusk, Appellant's sense of equilibrium was poor, his speech was incoherent and the odor of alcohol on his breath was noticed by the Master and LCDR Lusk. While the latter was attempting to explain the nature of the investigation to Appellant, he repeatedly interrupted by demanding a lawyer, stating that this was a "dirty deal." a "raw deal" and a "rotten business all the way round." At one point, Appellant addressed LCDR Lusk as a CBUM.c Since Appellant was obviously not in condition to proceed with the investigation, he was told to leave the Master's quarters. Appellant departed but he returned several times and continued using the abusive language noted above. Also, Appellant jumped from one topic to another in mid-sentence while he was talking. LCDR Lusk remained on board the ship for approximately an hour.

Appellant was logged as having been intoxicated. He admitted that he had lapses of memory as to some of the events which occurred during this time.

Appellant's prior disciplinary record during 18 years at sea consists of an admonition in 1943 for inability to stand his watch due to intoxication. The U.S. Public Health Service records show that Appellant has a history, dating from October 1953, of symptoms which are indicative of Meniere's disease but there is no recorded diagnosis of Appellant's ailment as Meniere's disease until 13 September 1955 which was a month after the incident in question.

Webster's dictionary defines Meniere's disease as follows: "A disease characterized by deafness and vertigo. It is probably due to a hemorrhage into the semicircular canals of the internal ear." There is medical evidence in the record that loss of equilibrium persists to a lesser degree for several hours after a severe attack of Meniere's disease but that the presence of the disease cannot be determined by examination between attacks. There is no record that Appellant was ever examined during an attack. The major symptoms of such attacks are dizziness, nausea, vomiting, buzzing noises in the ears and partial loss of hearing. The sickness results in a strong desire to lie down during the most acute part of an attack. This disease does not affect the mental processes or the ability to think and reason; it does not cause incoherent speech, stupor or amnesia; and it does not cause a person to become abusive or irritable to any greater extent than the average illness. There is no pain; shock or infection connected with Meniere's disease. Obviously, the disease itself would not produce the odor of alcohol during or after an attack.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant urges that the evidence shows his condition was due to the after effects of a severe attack of Meniere's disease rather than being the result of intoxication as was mistakenly assumed. Hence, it is contended that the ultimate findings or conclusions that the two specifications were proved is not supported by the weight of the evidence. Appellant failed to perform his duties due to this illness and he was not responsible for the remarks alleged to have been made by him while he was ill.

Medical testimony in the record shows that the symptoms of Meniere's disease affect a person's conduct so as to cause him to seem intoxicated.

Appellant was able to move about after 0800 since the loss of equilibrium continues for several hours after an attack but to a decreasing degree. There are conflicts in the testimony as to whether Appellant was staggering at 0800 and as when Appellant was able to resume his watch. No evidence of intoxicants was found in Appellant's quarters by the Chief Mate.

The conclusion of the Examiner that Appellant was intoxicated was based entirely on the depositions in which the deponents laid great stress on Appellant's lack of equilibrium in reaching the conclusion of intoxication. Loss of balance due to vertigo or dizziness is a symptom of Meniere's disease and Appellant had a recorded medical history of this disease. Also, these depositions should be given little weight because the deponents were not subject to thorough cross-examination.

Proof of the Second Specification hinges on proof of intoxication as alleged in the First Specification. There is nothing in the record to support the conclusion that Appellant intended to use abusive language. He could not remember all that happened nor control himself due his illness. In conclusion, it is respectfully submitted that the burden of proof by substantial evidence has not been met. The evidence in support of the allegations is contradictory and speculative. There is sufficient doubt concerning the issue of intoxication to reverse the Examiner's findings and dismiss the charge of misconduct.

APPEARANCES: Messrs. Pierson and Pierson of Baltimore, Maryland, by Edward Pierson, Esquire, of Counsel.

OPINION

There are some symptoms which are common to attacks of Meniere's disease and intoxication. These are loss of balance, nausea and vomiting. Regardless of this similarity and also the fact that Appellant has a medical history of Meniere's disease, there are several important factors which lead me to agree with the

Examiner's conclusion that Appellant was under the influence of intoxicants.

The evidence conclusively supports the findings that Appellant's speech was incoherent not only in the morning but also in the afternoon after the Coast Guard officer came on board. The medical testimony in the record is that an attack of Meniere's disease does not affect a person's mental processes or reasoning powers. Hence, such incoherency is a symptom which is only characteristic of intoxication as between the latter condition and Menier's disease. Along the same lines, Appellant's general attitude throughout indicates that his ability to think and reason properly was impaired to some extent. He refused to obey the order to leave the deck, he threatened to make trouble for the Master, and he was extremely uncooperative, rude and abusive when a Coast Guard officer boarded the ship to investigate the situation. It seems only logical that a person suffering from extreme sickness, as Appellant testified, which did not affect his reasoning ability would first request medical attention rather than demanding the right to be represented by a lawyer. Yet, the record does not disclose that Appellant even told anyone that he was ill or requested a physician to treat him.

There was testimony by two deponents that they smelled the odor of alcohol on Appellant's breath at some time after 1400. This was at least 12 hours after the time when Appellant testified that he had 1st of there beers. This odor can hardly be traced back to the three beer by way of the vomiting which Appellant testified had ceased by 0800.

Appellant admitted that he could not remember everything that happened during the course of these events. Since the medical evidence in the case is that Meniere's disease definitely does cause amnesia, these lapses of memory apparently were caused by intoxication.

It is also noted that Appellant's loss of equilibrium, incoherency, abusive attitude and lapses of memory were conditions which continued to exist after 1400 - more than eight hours after Appellant states that he had suffered the severe attack of Meniere's disease. Although some degree of loss of balance might still exist for several hours after a severe attack, there is no

reasonable explanation for these other abnormal conditions as related to Meniere's disease. Consequently, it is my opinion that proof of the two specifications is supported by substantial evidence.

The failure to find intoxicants in Appellant's room and the two minor conflicts in evidence which are mentioned on appeal are not considered to be material to the basic issue.

As indicated above, my findings and conclusions are based on other evidence than merely the deposition which Appellant contends should be given little weight.

With respect to the Second Specification, I agree with Appellant's statement that intoxication was no excuse for the Appellant's conduct.

ORDER

The order of the Examiner dated at Baltimore, Maryland, on 20 September 1956, is AFFIRMED.

A. C. Richmond
Vice Admiral, U. S. Coast Guard
Commandant

Dated at Washington, D. C., this 10th day of July, 1957.

***** END OF DECISION NO. 973 *****

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