

In the Matter of Merchant Mariner's Document No. Z-825276-D2 and
all other Seaman Documents
Issued to: JOSEPH L. LeFRANC

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

988

JOSEPH L. LEFRANC

In the Matter of
Merchant Mariner's Document No. Z-825276-D2
and all other Seaman Documents

Issued to: JOSEPH L. LEFRANC

AND

Merchant Mariner's Document No. Z-399801-D1
and all other Seaman Documents

Issued to: LEO F. DINGMAN

These appeals have been taken in accordance with Title 46

United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By separate orders dated 27 May 1957, and Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended Appellants' seamen documents upon finding him guilty of misconduct. The respective specifications allege that while serving as firemen-watertenders on the American S/T WILLIAM S. SMITH under authority of the documents above described, on or about 12 May 1957, Appellant failed to join said vessel in a foreign port.

At a hearing held in joinder, Appellants were given a full explanation of the nature of the proceedings, the rights to which they were entitled and the possible results of the hearing. Both Appellants entered a plea of not guilty to the charge and specification.

The Investigating Officer made his opening statement and introduced in evidence the testimony of several officers from the ship.

In defense, the Appellants offered in evidence their sworn testimony. The gist of Appellants' combined testimony is that they left the ship between 1940 and 2130; they were not told to return on board at any particular time; the Master said the ship would be at the dock for 5 or 6 hours; the vessel was gone when appellants went to the dock shortly before 2400. Also submitted in evidence was the provision of the agreement between the union and the steamship companies that the sailing time would be posted. A union representative testified in behalf of the Appellants.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellants' counsel were heard and the parties were given an opportunity to submit proposed findings and conclusions. The Examiner then announced the decisions in which he concluded that the charge and specification had been proved as to each Appellant. Identical orders were entered suspending all documents, issued to Appellants, for a period of one month on six months' probation.

The decisions were served on 27 May 1957. Notices of appeal were filed on 28 May and a single brief was submitted on behalf of

both Appellants on 24 July 1957.

FINDINGS OF FACT

On 11 and 12 May 1957, Appellants were in the service of the American S/T WILLIAM S. SMITH and serving as firemen-watertenders under the authority of their respective Merchant Mariner's Documents Nos. Z-825276-D2 and Z-399801-D1.

On the evening of 11 May 1957, the vessel arrived at Maracaibo, Venezuela, and anchored while waiting for a docking pilot. the Master gave both Appellants special permission to do ashore on leave in the launch which brought the pilot to the ship. Before Appellants left the ship at approximately 1845, the Master told both of them that the vessel would depart from the dock at 2300 that night. The Appellants went ashore in the launch and the ship proceeded to a pier where she remained until getting underway at 0002 on 12 May.

No sailing board had been posted while the ship was anchored or secured at the dock. A provision of a current agreement between the union and the steamship companies specified that "the sailing time shall be posted at the gangway on arrival when the vessel is scheduled to stay in port 12 hours or less." Since the Appellants had not returned on board by the time the ship left port, they were flown back to the United States. The two Appellants and one other seaman were logged by the Master as having failed to join the ship at 0002 on 12 May 1957 at Maracaibo, Venezuela.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Counsel states that the Examiner failed to give proper weight to the contract of employment requiring the sailing time to be posted upon arriving in port. This provision of the contractual agreement was a condition of employment. Hence, the failure to post the sailing time upon anchoring excused the Appellants for missing the vessel and the case should be dismissed.

APPEARANCE: George Smill, Esquire, of New Orleans, Louisiana,
of Counsel.

OPINION

I do not agree with Appellants' contention that they were justified in terminating their employment on the ship as a result of the failure to post the sailing time.

Assuming that the requirement to post the sailing board applied at the time Appellants went ashore while the ship was at anchor, it is my opinion that, in the absence of a sailing board, it is pertinent to determine what verbal notice Appellants were given as to the sailing time. This is so because the Appellant had obligated themselves to serve as firemen-watertenders for the entire foreign voyage when they signed the Shipping Articles. In *Rees v. United States* (C.C.A.4, 1938), 95 F2d 784, the court stated that "when articles are signed by a crew for a voyage . . . a contract is made, binding both owner and seaman . . . and should be lived up to scrupulously." The Shipping Articles constitute individual contracts between the owners of the vessels and the crew. *Peninsular and Occidental S. S. Co. v. N.L.R.B.* (C.C.A.5, 1938) 98 F2d 411. After the voyage commences, the Master of the ship is in charge and his words must be followed. *Rees v. United States*, supra.

The Master testified, at the hearing, that he told both seamen that the departure time would be 2300 on 11 May. This was corroborated by the testimony of the Chief Engineer (R.26) and accepted by the Examiner. The Appellants' testimony, that they were not told to return on board at any particular time or that the Master said the ship would be at the dock for 5 or 6 hours, affords no adequate basis for rejecting the corroborated testimony of the Master on this point. In addition to the fact that the Examiner, who saw and heard the witnesses, accepted the very definite testimony of the Master, there is considerable doubt as to the accuracy of Appellant's testimony concerning this factor because of their equally confused testimony as to when they left the ship (one said 1940, the other said at 2130) and their poor estimate that they returned to the dock before 2400. As to the latter, the accepted testimony of the Master was that the ship got underway at 0002 on 12 May. This was corroborated by the Second Mate (R.23) as well as the Official Logbook entry which was signed by the Master and witnesses by the Chief Mate (R.57).

Both of the Appellants has actual notice that the scheduled departure time was more than an hour earlier than when the ship actually got underway. They were informed of this by the Master. Consequently, it is my opinion that they were guilty of misconduct when they failed in their duty to serve as provided for in the Shipping Articles - their individual agreements with the Master as agent of the shipowner. Even if the sailing board should have been posted before Appellants went ashore, they were bound by the Master's words as to when the ship would leave.

Despite the unconvincing nature of Appellants' vague and indefinite testimony as to when they were required to return on board, it might be useful to comment on the matter of seamen going ashore on leave. It is my opinion that the burden is placed upon the individual seaman to take positive action, before going ashore, to find out from the proper authority when the ship is scheduled to sail or when the ship is scheduled to sail or when he is supposed to return on board for some other reason.

In addition to the above, it does not seem that the provision to post the sailing time "on arrival" had any application in this case. The Appellants had special permission to go ashore before the time when regular shore leave commenced. The ship was at anchor and a docking pilot had come on board just before Appellants left. The Master testified that his interpretation of the word "arrival," as used in the agreement, was when the engines had been secured. This was not the case here since the ship was ready to get underway to the dock. The fact that the sailing time was not posted after the vessel was at the dock had no bearing on Appellants' conduct because they would not have seen it. Hence, this would not have accomplished the purpose of this provision which was, as stated by Appellants' witness, a union representative, to avoid misunderstandings of verbal statements concerning the sailing time.

The orders of the Examiner will be sustained since the Appellants were not justified in failing to join their ship.

ORDERS

The orders of the Examiner dated at New Orleans, Louisiana, on

27 May 1957, are

AFFIRMED.

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

Dated at Washington, D. C., this 7th day of November, 1957.

***** END OF DECISION NO. 988 *****

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