In the Matter of Merchant Mariner's Document No. Z-338215 "R" and all other Seaman Documents

Issued to: WILLIAM CLAY GARRETT (Able Seaman)

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1095

WILLIAM CLAY GARRET

IN THE MATTER OF

MERCHANT MARINER'S DOCUMENT
No. Z-338215 "R"
AND ALL OTHER SEAMAN DOCUMENTS

Issued to: WILLIAM CLAY GARRETT
(Able Seaman)

MERCHANT MARINER'S DOCUMENT
No. Z-447867-D1
AND ALL OTHER SEAMAN DOCUMENTS

Issued to: DAVID RICHARD MUELLER
(Ordinary Seaman)

MERCHANT MARINER'S DOCUMENT
No. Z-744043-D1
AND ALL OTHER SEAMAN DOCUMENTS

Issued to: CHESTER L. LIGHTBODY
(Oiler)

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 25 April 1958 at New Orleans, Louisiana, an Examiner of the United States Coast Guard revoked Appellants' seamen documents upon finding them guilty of misconduct. In each case, the specifications found proved allege that while serving in the capacities indicated above on board the United States SS LA BREA HILLS under authority of the respective documents above described, on or about 1 February 1958, Appellants incited members of the Deck Department to disobey a lawful order of the Chief Mate to turn to; and Appellants assembled with other members of the crew in a mutinous manner. A third specification found proved in the cases of Garrett and Mueller alleges that, on the same date, they refused to obey a lawful order of the Chief Mate.

All parties agreed to a hearing in joinder rather than to conduct three separate proceedings. At the beginning of the hearing, the Appellants were given a full explanation of the nature of the proceeding , the rights to which they were entitled and the possible results of the hearing. Appellants were represented by counsel of their own choice. Each Appellant entered pleas of not guilty to the charge and specifications.

The Investigating Officer made his opening statement. He then introduced in evidence the testimony of the First and Second Mates, an entry in the ship's Official Logbook relating to the incident in question, and the Shipping Articles for this particular voyage. The Master's testimony was admitted in evidence after his oral deposition was taken as a witness called by the Examiner. A stipulation was entered as to the testimony a union Patrolman would have given if he had been called as a witness.

In defense, counsel for the Appellants offered in evidence only an agreement made on 2 February 1958 between the shipowner and the union tending to exonerate the crew members from blame.

At the conclusion of the hearing, the oral arguments of the Investigating Office and Appellants' counsel were heard and the parties were given an opportunity to submit proposed findings and conclusions. The Examiner rendered the decision in which he concluded that the charge as to each Appellant had been proved by proof of the respective specifications. An order was entered revoking all documents issued to Appellants.

FINDINGS OF FACT

During a voyage commencing on 23 January 1958, Appellants were serving in their respective capacities on board the United States SS LA BREA HILLS and acting under authority of their Merchant Mariners' Documents. On this date, they signed Shipping Articles at Portsmouth, New Hampshire for a foreign voyage to "one or more U.S. ports in the Gulf of Mexico and/or one or more Caribbean ports and such other ports in any part of the world as the Master may direct, and back to a final port of discharge in the United States, for a term of time not exceeding two (2) calendar months".

Included in the Shipping Articles was the statutory requirement (46 U.S.Code 713), under the Scale of Provisions, that each member of the crew would be allowed five quarts of water on every day of the week. This statute also permits that "any other stipulations may be inserted to which the parties agree, and which are not contrary to law". In the blank space provided on the Shipping Articles for any such additional stipulations or agreements between the Master and the crew, there was no reference to the water to be furnished the crew but there was typed in two agreements which pertained to other unrelated matters.

Prior to the signing of the Shipping Articles on 23 January, there was some discussions between the Master and a union Patrolman (as well several crew members) about the installation of electric drinking fountains or water coolers on board the ship. This came about because the water from the old cooler on the ship was not properly cooled since the coil system used for this purpose has

become defective and had to be detached from the ship's refrigeration plant in order not to endanger the effectiveness of the refrigeration system for other purposes. The Master telephoned the ship's agent and he promised to purchase three electric water coolers to be place on board the ship as soon as possible; but the agent stated that he could not say when the coolers would be installed because it was not known which one of two alternative loading ports the ship would go to form Portsmouth. The Master explained this the union Patrolman who was acting as the representative of the crew. In effect, it was understood and agreed between them that the water coolers would be installed on the ship as soon as practicable. This was a completely oral agreement which was not reduced in writing as part of the Shipping Articles or otherwise. After this, the three Appellants and other members of the crew signed the Shipping Articles. In the meanwhile, the Master ordered an extra 600 pounds of ice to cool the drinking water on the ship.

The LA BREA HILLS got underway from Portsmouth with orders to head for Good Hope, Louisiana, unless diverted to the alternate port, in order to load aviation gasoline as Military Sea Transportation Service cargo. No further orders were relayed from M.S.T.S. prior to docking at Good Hope about 2000 on 30 January. The shipowner had purchased the three water coolers in New York. They were not sent to Good Hope because the purchasing agent did not know whether or not the ship would be diverted from this port.

The sailing board was posted showing that the ship was scheduled to depart Good Hope at 2355 on 31 January. No complaint had been received from the crew prior to 2345 on the latter date when the Master told the Chief Mate to call all hands for undocking. The seamen were permitted 15 minutes to go to their stations. The word was passed by a seaman on watch. The three Appellants returned on board at 2400. Since the crew members were not at their mooring stations by 0005, the Chief Mate went aft to the crew's messhall to look for the Boatswain and saw that the Deck Department and other members of the crew were assembled there. Upon inquiring, the Chief Mate was told by Appellant Garrett, an able seaman, who was addressing the crew members, that the crew was having a union meeting and that they would not turn to. The Chief Mate informed the Master of the situation. The Master and the ship's agent went to the messhall at 0010. The Master ordered the crew to turn to. In reply, Appellant Lightbody, an oiler, told the

Master that the crew would decide whether they would sail the ship. The Master said they would be charged if they refused to turn to. At this point, Appellant Garrett, who had been addressing the assembled crew members, made a sarcastic remark to the Master about interfering with the union meeting. Appellant Mueller, an ordinary seaman, was present at this meeting. The Master and Agent then left the messhall.

About 0030, Appellants Lightbody and Mueller and one other crew delegate reported to the Master that the crew refused to sail without running ice water on board. After 30 minutes discussion, the delegates agreed to resubmit the matter for further consideration by the crew members. At 0230, Appellants Lightboby and Mueller reported to the Master that the crew's decision remained unchanged. At 0300, the Chief Mate and Second Mate, acting on orders from the Master, contacted each member of the Deck Department and ordered them individually to turn to without results. Appellants Lightboby and Muller accompanied the two mates and shouted at the seamen not to obey the orders to turn to. In the confusion, the Chief Mate was jostled or pushed by the two Appellants in their eagerness to arouse the crew members against the orders given to them. Appellant Lightbody was the only member of the Engine Department who refused to turn to. Appellant Garrett was standing his 12 to 4 watch on deck but he refused to obey a direct order to turn to at his mooring station.

Shortly before 0400, the Master telephoned the Coast Guard and was told that an investigating officer would be on board at 0800 on 1 February. At 0400, a deck delegate informed the Master that the crew would sail the ship. The Master decided to await the arrival of the investigating officer who arrived as scheduled and commenced the investigation which resulted in these charges.

The Master turned over his command and left the ship on 2 February. The chief Mate also left the ship before her departure on the morning of 3 February. On 2 February, the shipowner entered into an agreement, with the union, which tended to exonerate the three Appellants and provided for payment of their wages for not more than six months in the event their documents were suspended or revoked as a result of this incident. The three Appellants sailed with the ship.

The three electric water coolers were placed on board the ship upon her return to Lake Charles, Louisiana on 21 February 1958.

The Appellants have no prior records with the Coast Guard.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that:

Point I. The Evidence shows that the orders of the Chief Mate to turn to were not lawful orders because the Master had breached the agreement by which he induced the crew to sign the Shipping Articles. The Master promised to obtain water coolers at Good Hope when he knew that the promise would not be fulfilled. This was a fraudulent misrepresentation in violation of 18 U.S.C. 2194 (inducing service of seamen on ships by representations known, or believed, to be untrue) which released the crew from the terms of the Shipping Articles.

Point II. There is no evidence in the record to show that the Appellants either incited any member of the crew to disobey the order of the Chief Mate or assembled in a mutinous manner. The collective decision of the crew not to turn to was made at a meeting which started before the Appellants returned on board at 2400 and the latter three crew members only acted to carry out the decision reached at the meeting.

In conclusion, it is prayed that the orders of revocation be reversed; or, alternatively, modified to a suspension due to the mitigating circumstances.

Appearances: Mandell and Wright of Houston, Texas By Ben N. Ramey, Esquire, of Counsel

OPINION

It is my opinion that the charges and specifications were

properly found proved by the Examiner as to each Appellant, except that Appellant Lightbody was not charged with the offense of refusing to obey a lawful order.

POINT I

Considering the record from the most favorable point of view to the Appellants, I do not think that there is evidence to support the proposition that the Master induced the crew to sign the Shipping Articles by promising to obtain electric drinking fountains at Good Hope when he knew, or believed, that this representation was untrue. Such a fraudulent misrepresentation would constitute a violation of 18 U.S.C. 2194 as Appellants contend. The courts have held that the Shipping Articles constitute the contract of employment by which the ship and crew are bound when the Articles are not in violation of law *(The Seatrain New Orleans* (C.C.A. 5, 1942), 127 F. 2d 878); and that representations made before the Shipping Articles are signed become merged in the Articles so that oral promises can have no legal effect. *Foreman v. J. M. Benas and Co.* (D.C. N.Y., 1917), 247 Fed. 133. This is qualified to the extent that the written contract, as evidenced by the Articles of the ship, can be changed by parol evidence if fraud is clearly established. *The UCAYALI* (D.C. N.Y., 1908), 164 Fed. 897. Hence, in the case under consideration, the promise which the Master made prior to the signing of the Shipping Articles by the crew must be considered to have become merged with the Articles and to have no effect unless it was a fraudulent inducement by the Master.

For two reasons, I do not think that any such deceit was practiced by the Master. First, as indicated in the above findings of fact, the evidence dose not support the contention that the Master specifically promised to have the water coolers put on board at Good Hope. The Master's testimony was that he told the union Patrolman the matter would be taken care of as soon as possible but this, of course, was dependent upon shipping the coolers from New York after it was known where the vessel would be. The stipulation as to what the Patrolman would have given as his testimony reads as follows:

> ". . . before the said Article had been executed by the members of the crew, an agreement was reached between the

> Master, Patrolman Grandy, and the members of the crew, that water coolers would be installed aboard the SS BREA HILLS at the southern end of her voyage."

The meaning of this stipulation is not clear and is further confused by the fact that at the request of the Investigating Officer, the words "and before she went foreign", which appeared at the end of the above stipulation as originally offered by the Appellants' counsel, were deleted. (R. 33-4). Hence, it is reasonable to accept the testimony of the Master on this point, as did the Examiner, since it is not inherentl improbable and there is nothing concrete in the record to the contrary. Even if the stipulation stated what the Appellants contend it means, it would not have to be accepted as conclusive over the Master's testimony. See *Goess v. Lucinda Shops*(C. C.A. 2, 1937), 93 F. 2d 449.

My second reason for believing that there was no fraud involved is that regardless of what precise promise was made as to the water coolers, there is no substantial evidence in the record to show that the Master made a promise which he knew or believed would not be carried out. The Master's contacting of the agent while the ship was at Portsmouth indicates an honest effort to do something about the situation. There was nothing written into the shipping Articles about the water fountains although, as pointed out above, other stipulations were typed in the blank space provided for such purposes on the Shipping Articles form. The Articles merely provide for five quarts of water for each crew member on every day of the week as required by statute (46 U.S. Code 713). The agreement of 2 February between the shipowner and the union cannot be used as an admission of fraud because it was stipulated, without contradiction, that the owner's agent said this agreement was entered into by the owner in order to have the vessel sail on 3 February (R. 34). The removal of the Master and Chief Mate from the ship also indicates only additional efforts on the part of the shipowner to avoid further delays in getting the ship underway.

For these reasons, the promise concerning the water coolers did not have any effect on the terms of the Shipping Articles. Therefore, the orders delivered by the Chief Mate were lawful orders. In the absence of fraud or resulting unseaworthiness the vessel, the crew would have been limited to lawful means to enforce

such a promise as the Appellants contend was made, even if it had been written into the Shippin Articles. See Commandant's Appeal Decision No. 1008, in 958 A.M.C. 1546 at 1558, 156 Thus, the failure to obey orders would not have been justified unless the Articles provided for the termination of the voyage if the promise were not fulfilled.

Point II.

The above findings of fact, which are based on substantial evidence contained in the hearing record, show that the Appellants assembled in a mutinous manner and incite members of the Deck Department to disobey a lawful order.

Although the Appellants did not return on board until 2400, the evidence shows that they were all three present at the union meeting in the messhall when the Master went aft at 0010. The aftermath of this meeting makes it perfectly clear that the union meeting was mutinous assembly to deprive the Master of his authority and command within the meaning of the Mutiny Statutes, 18 U.S.Code 2192-3. The reasons for this conclusion are fully set forth in Commandant's Appeal Decision No. 1008 at 1958 A.M.C. 1546 to 1562. The Appellants concede, on appeal, that they were in full accord with the decision reached at the meeting.

In fact, the evidence shows that the three Appellants were instrumental in urging on the members of the Deck Department to disobey the lawful orders of the Chief Mate. Appellant Garrett was addressing the crew at the union meeting when Chief Mate went aft 0005 after the word had been passed to turn to. Appellant Garrett told the Chief Mate that the crew would not turn to and Garrett still had the floor when the Master went aft a few minutes later. In view of this and his subsequent refusal to obey a direct order to turn to at his mooring station, the only logical conclusion is that Appellant Garrett was exhorting the crew members at the union meeting to disobey the orders of the Chief Mate. At 0300, while Garrett was standing his watch, Appellants Mueller and Lightbody accompanied the Chief Mate when he ordered each member of the Deck Department individually to turn to. At his time, the two Appellants shouted at the seamen not to obey the orders. It is my opinion that these acts by the three Appellants were clear instances of inciting the members of the crew to disobey the lawful

orders of the Chief Mate in violation of 18 U.S.Code 2192. The offense was aggravated by the fact that the Chief Mate was jostled or pushed by the two Appellants who went with him at 0300.

As stated by the Examiner, the Appellants flagrantly disregarded their obligation under the Shipping Articles. The facts show that they not only acted to carry out the unlawful decision reached at the meeting but that they individually were ringleaders either at arriving at the decision or seeing to it that the decision was not changed, or both.

CONCLUSION

The orders of revocation will be modified in view of the Appellants otherwise clear records. Appellant Lightbody's is not considered to be materially less than that of the other two simply because he was not charged with refusal to obey a lawful order.

ORDER

The orders dated at New Orleans, Louisiana, on 25 April 1958, are modified to provide for a suspension of twelve (12) months of the documents of each Appellant. As so modified, the orders are AFFIRMED.

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

Dated at Washington, D. C., this 22nd day of April, 1959.

***** END OF DECISION NO. 1095 *****

Top