

In the Matter of Merchant Mariner's Document No. Z-775611-D1 and  
all other Seaman Documents  
Issued to: James N. Bryant

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1118

James N. Bryant

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 22 January 1959, an Examiner of the United States Coast Guard at Baltimore, Maryland suspended Appellant's seaman document for three months upon finding him guilty of misconduct. Two specifications allege that while serving as an able seaman on the United States SS MADAKET under authority of the document above described, on or about 16 December 1958, Appellant both failed to join and deserted his vessel at St. Nazaire, France.

At the hearing, Appellant voluntarily waived his right to counsel and acted as his own counsel. He entered a plea of guilty to the specifications alleging failure to join and not guilty to the allegation of desertion. The Investigating Officer introduced in evidence certified copies of excerpts from the Shipping Articles and an entry in the ship's Official Logbook.

In defense, Appellant offered in evidence his sworn testimony. Appellant stated that he left the ship in his dress clothes and

without permission in order to help his shipmate Webb, who had taken his gear ashore earlier, bring Webb's gear back to the ship. Appellant added that he thought they had enough time to go the few blocks necessary and return before the ship went through the locks; but she had departed before they returned.

At the conclusion of the hearing, the Examiner rendered the decision in which he concluded that the charge and two specifications had been proved. An order was entered suspending all documents, issued to Appellant, for a period of three months.

#### *FINDINGS OF FACT*

On 16 December 1958, Appellant was in the service of the United States SS MADAKET as able seaman and acting under authority of his Merchant Mariner's Document No. Z-775611D1.

The ship was scheduled to depart St. Nazaire, France at 2100 and proceed to sea. Appellant was on board at this time and assisted in the undocking operations while wearing his work clothes. The accommodation ladder had been raised to a horizontal position. At 2155 the ship was secured in the lock, waiting to pass through, when it was reported to the Master that the accommodation ladder was lowered to the landing position. The Master looked over the side and observed Appellant and two other members of the crew, all able seamen, going ashore. Appellant had changed to his dress clothes, he was carrying luggage and he had not obtained permission to leave the ship for any reason. The ship departed without these three seamen. An inspection of their quarters disclosed that they had taken all of their usable personal effects. The three seamen were declared deserters by the Master and logged as such. Appellant returned to the United States by plane at his own expense.

Appellant has no prior record.

#### *BASES OF APPEAL*

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the decision of the Examiner is not supported by reliable, probative and substantial evidence.

The only evidence against Appellant is an ambiguous logbook entry. On the other hand, Appellant's explanation was perfectly logical and there is nothing in the record to justify the conclusion that he was not telling the truth. On the basis of this evidence, the Examiner should not have decided such a serious charge as desertion against Appellant until he was permitted to obtain counsel and the testimony of witnesses.

The Examiner failed to make a finding of fact that Appellant had the intention of not returning to the ship. Appellant could have stayed ashore earlier if he had intended to desert. No reason appears in the record as to why Appellant would desert.

The order of three months' suspension is too severe for the offense of failure to join.

It is submitted that the finding of desertion should be reserved and the order modified accordingly.

APPEARANCE: Sol C. Berenholtz of Baltimore, Maryland by  
Solomon Kaplan, Esquire, of Counsel.

#### *OPINION*

The Examiner's order will be affirmed on the basis of the specification alleging desertion since it is my opinion that the logbook entry constitutes substantial evidence in support of this offense. The entry contains the statement made by the Master that he personally saw the three seamen going ashore with luggage almost an hour after the scheduled departure time. The implication, in the log entry, that they had no permission to leave was verified by Appellant's testimony. The probability that Appellant took luggage ashore, although denied by him, is bolstered by the fact that the log entry further states that no "usable personal effects" of the three men were left in their quarters on the ship. Also, Appellant supplied the damaging evidence that before going ashore, he changed into his dress clothes.

Under these circumstances, the Examiner was entirely justified in concluding that Appellant's version did not wholly represent the truth of the matter. The Examiner emphasized the significance of the fact that Appellant left the ship, at a time like this, without permission and indicated that he did not think a seaman would do this if he intended to return to the vessel.

In addition to the above reasons why Appellant's often repeatedly denials of intent to desert should have been rejected, the Examiner was in the best position to judge Appellant's credibility since the Examiner heard Appellant and observed his demeanor while he was testifying. These are important matters which do not appear in the cold report.

As indicated in the preceding paragraph, the issue of the necessary intent to desert was kept in the foreground of the hearing by the Appellant. Therefore, Appellant's persistent denials of intent were effectively rejected by the Examiner when he found Appellant guilty of desertion even though the Examiner did not make a specific finding of fact that Appellant had the intention of not returning to the ship. It was not necessary to produce evidence as to the possible reason which Appellant might have had for deserting.

Another important factor is that Appellant changed from his work clothes to his dress clothes solely for the purpose, so Appellant testified, of going a few blocks away in order to help his shipmate Webb take his gear back to the ship. Appellant's only explanation, as to why he went to the trouble of putting on his dress clothes to go a short distance and then return immediately to the ship, was that his work clothes were dirty. This seems to be an inadequate excuse. Also, Appellant testified that it took the ship at least an hour to pass through the locks but he did not explain why he was unable to go a few blocks and return within that period of time.

With respect to Appellant's lack of counsel, he definitely stated at the beginning of the hearing that he did not want counsel. As to witnesses other than himself, Appellant clearly stated, "I have none." Considering the evidence presented and these statements by Appellant, I do not think that his cause was unfairly prejudiced, in any manner, by the failure of the Examiner

to give Appellant additional time to obtain counsel and witnesses before ruling on the allegation of desertion.

Since the two specifications are multiplicitious, the findings with respect to Appellant's failure to join is reversed and the specification is dismissed. The remaining offense of desertion in a foreign port justifies the suspension of three months even though Appellant's prior service has been unblemished. The seriousness of this offense by an individual seaman is emphasized in this case where the ship proceeded to sea shorthanded to the extent of three able seamen.

*ORDER*

The order of the Examiner dated at Baltimore, Maryland, on 22 January 1959, is AFFIRMED.

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

Dated at Washington, D. C., this 5th day of October, 1959.

\*\*\*\*\* END OF DECISION NO. 1118 \*\*\*\*\*

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