

In the Matter of License No. 152852 Merchant Mariner's Document No.
BK-127898-D1 And All Other Seaman Documents
Issued to: JOHN ALLEN DUSTIN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1126

JOHN ALLEN DUSTIN

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 18 November 1957, an Examiner of the United States coast Guard at Norfolk, Virginia suspended on probation appellant's seaman documents upon finding him guilty of inattention to duty and misconduct. The four specifications found proved allege that while serving as Chief Mate on board the United States SS EARL A. BLOOMQUIST under authority of the license above described, on or about 5 September 1956, Appellant failed to report the shortage of lifeboat davit handles to the Master (inattention to duty); on or about 27 September 1956, Appellant wrongfully had grog in his possession on the ship (misconduct); on or about 29 September 1956, Appellant failed to enter in the rough deck logbook routine matter pertaining to his watch (inattention to duty); on or about 30 September 1956, Appellant was wrongfully lying on the settee in his quarters while in charge of the watch (misconduct).

At the hearing, Appellant was represented by counsel of his own choice. He entered a plea of not guilty to the charge and each

specification.

The Investigating Officer introduced in evidence the testimony of the ship's Master and entries made in the Official Logbook. Appellant testified in his behalf and produced several other witnesses.

At the conclusion of the taking of testimony on 19 October 1956, the oral arguments of the Investigating Officer and Appellant's counsel were heard and both parties were given an opportunity to submit proposed findings and conclusions. On 18 November 1957, the Examiner rendered the decision in which he concluded that the charge and above four specifications had been proved. Two other specifications were found not proved. An order was entered suspending all documents, issued to Appellant, for a period of three months on twelve months' probation. The decision was not served on Appellant until 17 October 1958.

FINDINGS OF FACT

Between 31 August 1956 and 17 October 1956, Appellant was serving as Chief Mate on board the United States SS EARL A. BLOOMQUIST and acting under authority of his License No. 152852. The ship had not been in active service for some time prior to this voyage.

The ship was at a dock in the Bethlehem Shipyard at Brooklyn, New York, when the Master and Appellant joined her on 31 August 1956. The vessel was being equipped and inspection by the Coast Guard had begun. On 4 September, the Master told Appellant to order all additional equipment which was required. Appellant requisitioned numerous items including eight lifeboat davit handles since only eight of these handles were on board. (The ship had four boats which required two davit handles for each fore and aft davit, making a total of sixteen handles.) There was considerable confusion as these supplies continued to come on board late on the afternoon of 5 September.

The Master returned on board with the Certificate of Inspection from the Coast Guard at approximately 1830 on 5 September and prepared to get underway. Appellant told the Master that many items of lifesaving equipment were not yet on board. Appellant did not specify what any of these items were and he did not know that the davit handles had not been delivered because he had not checked all of the requisitioned supplies which had come on board. The ship got underway about 1930 on the evening of the same day. Appellant first missed the handles at the fire and boat drill on the next day en route to Norfolk, Virginia but he did not report the matter to the Master until several days after departure from Norfolk on 7 September.

While the ship was in the port of Rouen, France on 27 September 1956, Appellant had seven bottles of whiskey in the clothes locker in his quarters.

Appellant had the 0800 to 1600 watch while cargo was being handled on 29 September at Rouen. Appellant was eating lunch when the Master noticed that the rough deck logbook did not contain any entries for the 0800 to 1200 watch relative to routine information such as cargo operations. At 1225, the Master requested Appellant to make these entries. When they had not been entered in the logbook by 1300, the Master asked Appellant to make the entry as to when the stevedores stopped working in order to eat lunch but he declined to do so until some later, undetermined time. The Master relieved Appellant of his duties until 0800 on 30 September and logged him for two days' pay amounting to \$43.04.

On Sunday, 30 September, Appellant had the 0800 to 1600 watch while the ship was at a dock in the same port. At 1330, he was lying on the settee in his quarters when the Master entered. Appellant was not asleep. There is a wide range of tide at Rouen but, at this time, the water was slack.

Appellant has had no prior record during twenty-six years of service at sea.

BASES OF APPEAL

This appeal has been taken from the order imposed by the

Examiner. Appellant submits that since the Examiner found that the Master had made several false logbook entries and because it is apparent that the charges are due to the Master's personal dislike for Appellant, the Master's testimony is entitled to no weight whatsoever and all of the specifications should be dismissed.

As additional reasons for dismissal, Appellant contends that:

1. As evidence by the issuance of the Certificate of Inspection by the Coast Guard, Appellant could not reasonably have been expected to realize that the davit handles were missing in view of his multifarious duties at the time. Appellant discharged his duty in this respect when he ordered the handles. The Master should have observed that the handles were missing during the fire and boat drill on 6 September.
2. There was no substantial violation on 27 September for possession of whiskey in the absence of any finding that Appellant was intoxicated.
3. Appellant made the logbook entries for the 0800 to 1200 watch on 29 September later in the day on this date in accordance with prevailing custom and practice.
4. There is no evidence of any tidal condition on 30 September which required Appellant to be on deck continuously and prohibited him from resting while on watch.

APPEARANCE: Jett, Sykes and Howell of Norfolk, Virginia by
Henry E. Howell, Jr., Esquire, of Counsel

OPINION

Although the Master admitted having made several false entries in the Official Logbook, the belief of his testimony is not essential to proof of the specifications because Appellant concedes substantially all of the above findings of fact concerning three specifications and he tacitly admitted the wrongful possession of whiskey when he did not deny it. However, on the basis of the Master's falsification in the logbook and Appellant's apparently more credible testimony, several issues left unresolved by the

Examiner have been determined in favor of the Appellant. The finding that Appellant reported to the Master, on 5 September, that many items of lifesaving equipment were not yet on board is based on Appellant's uncontested testimony. I have also found that Appellant was awake while on the settee on 30 September, as he testified, rather than that he was asleep as indicated by the Master. The Examiner did not make any findidng on the latter point. Also, Appellant's testimony is accepted that there was slack water at 1330 on 30 September. One issue not resolved in my findings of fact is when Appellant made the log entries for the 0800 to 1200 watch on 29 September. Appellant testified that it was done later on the same day and the Master said it was not done until a later date.

The Master's personal dislike for Appellant is not material so long as the alleged offenses have been proved. The question of the Master's fault with respect to the false logbook entries is not in issue in this proceeding.

The four additional contentions on appeal which each relate to one of the specifications, will be discussed individually.

Point 1.

Concerning Appellant's failure to report the shortage of lifeboat davit handles to the Master prior to departure on 5 September, it has been found that Appellant did tell the Master that many items of lifesaving equipment were missing. The regulation stating that "the master shall assign to one or more officers the duty of seeing that the lifeboats and life rafts are at all times ready for immediate use" (46 CFR 97.15-45(a)(2) has some significance because, according to the Master, it was not until 4 September that he told Appellant to order all the additional required equipment for the ship; but traditionally it is the duty of the Chief Mate to assume the initial responsibility for deck gear including lifesaving equipment. Nevertheless, he did not order a considerable number of items until directed to do so by the Master. Consequently, he had less time to check the equipment as it came on board than he should have had. Regardless of this, observation of the boat davits would have made it obvious that each one had only one handle and that a diligent search should have been made for the other handles in order to be able to report the

shortage of such essential lifesaving equipment to the Master before departure if the handles were missing.

Despite the confusion attending the equipping of a ship going back into active service, it is evident that Appellant did not discharge his duty merely by ordering the davit handles. Under these circumstances, it is my opinion that Appellant reasonably should have known that the handles were missing. Therefore, he was guilty of inattention to duty for not having made such a report to the Master, rather than simply a general report on 5 September that many items of lifesaving equipment were not on board. The finding that this specification was proved is affirmed without condoning the Master's failure to require a detailed report after he was put on notice that some equipment was missing.

Even if the Master had noticed that the handles were missing during the fire and boat drill on 6 September, this would not have relieved Appellant of the responsibility for having failed to report the shortage before going to sea on the preceding day. On the other hand, the offense by Appellant was continued by his failure to make the required report when he missed the handles on 6 September and by his failure to get some davit handles at Norfolk before crossing the Atlantic Ocean.

It is noted that the issuance of a Certificate of Inspection on 5 September is not considered to be relevant to any fault on the part of the Master or the Appellant. The certificate does not warrant that a ship and her equipment are continuously maintained in satisfactory condition at all times after particular items are inspected prior to the issuance of the certificate. Also, 46 CFR 97.15-45 (a)(1) makes it clear that a Certificate of Inspection does into relieve the Master and other responsible officers of their duties to see that all required fittings and equipment are provided, maintained and replaced as indicated. Specifically with respect to lifeboats and life rafts, this regulation states:

"It shall be the duty of the master or person in charge to see that the lifeboats and life rafts are properly maintained at all times * * * "

See also 46 CFR 97.15-45 (a)(2) above.

Point 2.

The Shipping Articles prohibit having grog on board. Grog is commonly defined as any intoxicating liquor. It is not necessary to find that the owner of the liquor was intoxicated. In the absence of proof to the contrary, the only reasonable conclusion is that the whiskey in Appellant's locker on 27 September belonged to him and that such possession was wrongful. See Commandant's Appeal Decision NO. [1107](#). The finding that this specification was proved is affirmed.

Point 3.

Appellant was standing a port watch from 0800 to 1600 on 29 September. Since there is no convincing evidence that the log entries for the 0800 to 1200 watch were not made on the same day, Appellant will be given the benefit of the doubt. Consequently, it cannot be said that he violated the prevailing practice as to the time of making such entries. The finding as to this specification is reversed and the specification is dismissed.

Point 4.

Appellant's action of lying on the settee in his room while on watch on 30 September cannot be condoned even though he was not asleep. Appellant was required to stand his eight hours' port watch in a reasonably alert condition and to be prepared to meet emergencies which might arise. Although not required to be continuously on deck, it is my opinion that it was not proper for him to be in a prone position under circumstances where he might readily fall asleep. The finding as to this specification is affirmed.

CONCLUSION

The charge of misconduct has been proved on the basis of two specifications and the charge of inattention to duty is supported by one specification. The probationary suspension imposed will be affirmed because it is not considered to be excessive for these three specifications. Appellant's otherwise unblemished record for twenty-six years has been taken into consideration in rendering

this decision.

ORDER

The order of the Examiner dated at Norfolk, Virginia, on 18 November 1957, is AFFIRMED.

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

Dated at Washington, D. C., this 14th day of December, 1959.

***** END OF DECISION NO. 1126 *****

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