

In the Matter of Merchant Mariner's Document No. Z-1058176 and All
Other Seaman Documents
Issued to: LAWRENCE H. CHAPMAN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1156

LAWRENCE H. CHAPMAN

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 2 June 1959, and Examiner of the United States Coast Guard at San Francisco, California suspended Appellant's seaman documents upon finding him guilty of misconduct. The three specifications allege that while serving as deck engineer on board the United States SS JOHN B. WATERMAN under authority of the document above described, on or about 12 January 1959, while the ship was at sea, Appellant wrongfully refused to obey the lawful orders of the Chief Mate and First Assistant Engineer to assist in an emergency; Appellant wrongfully directed foul and abusive language towards these two officers; and Appellant wrongfully refused to obey the lawful order of the Chief Mate to leave the deck.

At the hearing on 9 March 1959, 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 professional 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 Chief Mate and First Assistant Engineer. Appellant gave testimony in which he denied having wrongfully refused to obey orders. No other testimony was presented, or requested, on behalf of Appellant. Both parties introduced in evidence relatively unimportant documentary exhibits.

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

FINDINGS OF FACT

On 12 January 1959, Appellant was serving as deck engineer on board the United States SS JOHN B. WATERMAN and acting under authority of his Merchant Mariner's Document No. Z-1058176 while the ship was at sea after departing Eureka, California on 11 January.

At 0800 on 12 January, the Master declared a state of emergency to repair damage caused by severe weather during the night. There was water in the forepeak and the lumber on the main deck had broken loose from its lashings. The Chief Mate passed the word for all hands to assist in removing the water and securing the lumber. The Chief Mate was in charge of this emergency work. Appellant was not personally informed by the Chief Mate about the emergency.

Shortly after 0800 Appellant was on deck examining the deck machinery in line with his regular duties. The First Assistant Engineer told Appellant an emergency had been declared to stow the cargo on the foredeck and to remove the water in the forepeak. The First Assistant told Appellant to turn to with the other men. Appellant walked away and, unknown to the First Assistant, did not help with the emergency work.

At 1015 the First Assistant, who was in charge of one of the gangs working on deck, saw Appellant and told him to relieve one of the men on the lumber detail. Appellant said he was not supposed to do that kind of work. The First Assistant again told Appellant this was an emergency, but Appellant said he did not think it was. The former then gave Appellant a definite order to assist with the abusive language. Appellant did not turn to as ordered.

About this time, the Chief Mate talked with the First Assistant concerning Appellant and then placed a hand on Appellant's shoulder to attract his attention because his back was turned. The Chief Mate ordered Appellant to leave the deck and informed him that the Chief Mate was in charge of the work on deck. Appellant directed foul and abusive language toward the Chief Mate. Appellant walked aft but returned in a few minutes and remained on deck until ordered to leave by the Chief Engineer.

Later, Appellant apologized to both officers for the language he had used.

Appellant was released from the ship at Portland, Oregon on 4 March 1959 by a mutual consent agreement. The voyage was not completed until 8 April 1959.

Appellant has had no prior record during approximately four years at sea.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant states that he had little time to obtain counsel and witnesses for the hearing at San Francisco.

The Examiner was misled as to the true facts by the Investigating Officers opening statement. The Examiner's prejudice against Appellant is shown by the statement that his testimony was "colored" whereas all the testimony of the two officers was accepted as the truth. The Examiner ignored the fact that the Chief Mate laid his hands on Appellant. (See affidavit, submitted on appeal, by Alfred C. Barnett, a member of the crew who could not

be subpoenaed because he left the ship at Portland on 4 March.)

This was not a real emergency since no work was done until 0800 and all hands were not required to participate to correct a situation which was caused by the failure to properly secure the ship for sea upon departure on the preceding day.

The Chief Mate admitted that he did not give Appellant any order to work. Appellant was confused as to whether he should obey the Chief Mate's order to leave the deck or the First Assistant's order to turn to. The Chief Engineer had told Appellant to take orders only from the engineering officers.

For these reasons, Appellant respectfully requests that the case be dismissed.

OPINION

The above findings of fact are based on the testimony of the two officers which was accepted by the Examiner as the truth. There is no indication that the Examiner was influenced by minor details in the Investigating Officer's opening statement which were not supported subsequently by the evidence. No unfair prejudice against Appellant is shown by the Examiner's reference to his testimony as being "colored" in the sense that it naturally was partial to Appellant's cause. Appellant's version indicates that there was a lack of clarity as to what he was told and also a confusion of orders by the two officers. Appellant testified that he was not informed of the emergency until 1005 at which time he was ready to relieve one of the men when the Chief Mate ordered Appellant off the deck; he left the deck and then returned to help with the work as previously ordered by the First Assistant. Appellant stated that he lost his temper and used foul language when grabbed by the Chief Mate; but that he later apologized to both officers for his language to them. The Examiner's omission of evidentiary facts, including the touching of Appellant's person by the Chief Mate, has been remedied in my findings.

Appellant has had adequate experience at sea to realize that when a state of emergency has been declared by the Master of the ship, no member of the crew has a right, by his conduct, to question the necessity for this action by the Master regardless of

the circumstances which brought it about. The fact that some members of the crew are excused, as happened in this case, is no excuse for the others not to participate in the emergency work. If there was any doubt in Appellant's mind that he was required to obey the Chief Mate with respect to work on the deck, this was dispelled when the Chief Mate told Appellant, at the time he was ordered off the deck, that the Chief Mate was in charge. The First Assistant heard this and acquiesced by his silence.

The First specification was proved in part. The Chief Mate testified that he did not give Appellant any order to assist with the emergency work. Although there might possibly have been some misunderstanding by Appellant concerning the order given to him by the First Assistant shortly after 0800, there is extremely little doubt that Appellant fully understood the situation when he was given a "definite order --- to help the men on the lumber pile," in the words of the First Assistant. Yet, Appellant still declined to help and thereby refused to obey this lawful order. It was only after the situation persisted long enough to attract the attention of the Chief Mate and that he approached and talked first with the First Assistant and then with Appellant. Hence, I conclude that the first specification was proved to the extent that Appellant wrongfully refused to obey the lawful order of the First Assistant Engineer to assist in securing the lumber on deck during an emergency.

Concerning the second specification, Appellant not only admitted that he addressed both officers with foul and abusive language, but that he later apologized to both of them. This behavior was not justified by the manner in which the Chief Mate touched Appellant to attract his attention. The Chief Mate testified that he placed a hand on Appellant's shoulder. The First Assistant simply stated that the Chief Mate touched Appellant. This does not indicate the slightest degree of any violence or forcefulness which Appellant claims excused his language. Appellant's testimony is supported only by Alfred C. Barnett's affidavit which states that the Chief Mate grabbed Appellant and shoved him in an angry manner. Since this affidavit was not submitted properly as evidence at the hearing and the Examiner accepted the testimony of the two officers, I am not persuaded to reverse the Examiner on the basis of this ex parte affidavit. The conclusion of guilty as to the second specification is affirmed.

Some of the prefatory discussion in my opinion pertains to the third and last specification. It is clear from this that Appellant should not have returned to the deck, after being ordered off the deck by the Chief Mate, regardless of any preceding order given to Appellant by the First Assistant. Appellant recognized the authority of the Chief Mate by leaving the deck but he refused to continue to obey this lawful order by returning in a few minutes. This conduct was adequate to prove the specification.

CONCLUSION

There is substantial evidence to support the allegations in the three specifications to the extent indicated above. Although Appellant had a limited time in which to prepare his defense, he was represented by a lawyer at the hearing. Neither Appellant nor his counsel requested additional time and they did not mention any desire to subpoena or attempt to locate Alfred C. Barnett or other members of the crew to appear as witnessed in behalf of Appellant. There were other members of the crew on deck at the time of this incident who must have seen what occurred as well as Barnett did. These seamen were on the ship at San Francisco at the time of the hearing in that city.

Appellant deserved a lenient order, such as the one imposed by the Examiner, because he is reputedly a hard worker and a good seaman in most respects. Nevertheless, this was a clear case of insubordination, tempered by a later desire to co-operate. Under these circumstances, the order of four months' suspension on eighteen months' probation is considered to be appropriate.

ORDER

The order of the Examiner dated at San Francisco, California, on 2 June 1959, is AFFIRMED.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D.C., this 6th day of April 1960.

***** END OF DECISION NO. 1156 *****

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