

In the Matter of License No. 232186 and all other Seaman Documents
Issued to: IRVING G. CLARK

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1257

IRVING G. CLARK

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 November 1960, an Examiner of the United States Coast Guard at Galveston, Texas, suspended Appellant's seaman documents upon finding him guilty of misconduct. The three specifications found proved allege that while serving as Third Mate on board the United States SS STEEL SURVEYOR under authority of the license above described, on 18 July 1960, Appellant created a disturbance and failed to stand his watch due to intoxication; on 19 July 1960, Appellant had a bottle of gin in his possession.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and each specification except the one alleging possession of a bottle of gin.

Appellant made a lengthy opening statement claiming that the Master consistently indulged in diatribes maligning unions, union members and numerous other things. Appellant stated that during his 2000 to 2400 bridge watch on 18 July, the Master was delivering

his "customary prolix harangue," praising himself and the shipowner, when Appellant made some remarks about the shipowner and was relieved by the Master. Appellant emphatically denied that he was intoxicated.

The evidence against Appellant consists of the Master's testimony and log entry made by him. The Master testified that while the ship was maneuvering in a narrow channel departing the port of Tsukumi, Japan, Appellant was intoxicated; he bothered the pilot and helmsman by ranting and raving about shipowners; Appellant failed to perform his duties of operating the telegraph and passing orders from the pilot to the helmsman. This evidence was obtained in answer to leading questions by the Investigating Officer.

Before and during the testimony of the Master, Appellant kept insisting that a medical certificate, supposedly issued by a Dr. Suetsuma after examining Appellant on 19 July, be put in evidence (R. 12,13,16). This was not done.

Appellant did not testify. He states, on appeal, that he believed his opening statement would have the force and effect of a sworn statement, and he is ready to swear to the truth of his allegations.

Appellant repeatedly requested that the testimony of the helmsman, Joseph W. Kisten, be obtained. (R. 21,22,23,24,25). The Examiner told Appellant that the testimony would be obtained by deposition if Appellant submitted interrogatories. Since Appellant did not comply, the deposition was not obtained. Appellant had repeatedly stated, at the hearing, that all he wanted was the helmsman's story of what happened on the bridge. After Appellant left Galveston before the completion of the hearing, he replied, to a request for the interrogatories, by telegram which states, in part: "Will stipulate Kisten own word version without interrogatories on my part." No attempt was made to obtain the deposition.

OPINION

Title 46 CFR 137.09-52 provides that the party desiring a

deposition "may" submit interrogatories and that depositions may be taken upon the initiative of the examiner.

Considering the regulations and the fact that the testimony against Appellant was obtained in answer to leading questions, the Examiner should have obtained the testimony of the helmsman. The case will be remanded for this purpose and also to procure other material evidence, if practicable, such as the testimony of the Chief Mate (R. 16), the testimony of able seaman Gaspard (R. 9), deck logbook entries of 18 July (R. 17) and 19 July (Appellant's telegram of 16 October 1960), and the medical certificate (R. 16-7). The hearing transcript should be checked for errors in view of Appellant's contention that it contains inaccuracies and omissions.

The findings and conclusions that Appellant was guilty of two offenses on 18 July 1960 are set aside.

ORDER

The order of the Examiner dated at Galveston, Texas, on 22 November 1960, is VACATED. The record is REMANDED for further proceedings not inconsistent with this decision.

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

Signed at Washington, D. C., this 9th day of August, 1961.

***** END OF DECISION NO. 1257 *****

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