

704 3 2 1 Capt. Fleegeer, master of the S/S SAN PEDRO, was mystified. Upon docking at New Orleans, he was asked about labor problems with the crew. Capt. Fleegeer knew nothing of any labor problems and was shocked to discover that a radio message had been sent from the ship while at sea to New Orleans inquiring about the telephone number of the National Labor Relations Board.

Several times Capt. Fleegeer ordered Dunleavy, the radio officer, to provide the details of the radio transmission. The SAN PEDRO sailed New Orleans bound for San Juan. Dunleavy repeatedly refused to say who sent the message or who authorized the message. Then, Capt. Fleegeer ordered Dunleavy to send another message; this to New Orleans requesting a replacement radio officer at San Juan.

Next, Capt. Fleegeer logged Dunleavy and advised Dunleavy that he had not yet been discharged and that the request for a replacement would be cancelled if Dunleavy would talk. Dunleavy refused and was punished. Dunleavy was not happy.

46 U.S.C. § 11501(5) provides: "For continued willful disobedience to lawful command . . . at sea, the seaman, at the discretion of the master, may be confined, on water and 1,000 calories, with full rations every 5th day, until the disobedience ends, and on arrival in port forfeits, for each 24 hours' continuance of the disobedience . . . , not more than 12 days pay or, at the discretion of the court, may be imprisoned for not more than 3 months.

As can be expected, the NLRB found that this interrogation and punishment of Dunleavy was unlawful as interfering with Dunleavy's rights under the labor laws. In considering the NLRB's request to

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enforce its order, the Fifth Circuit Court of Appeals found that "the transmission of the message inquiring as to the telephone number of the Labor Board was in flat violation of the master's lawful orders. No message was to be sent without the express authority of the master. The court reviewed federal statutes providing that a ship's radio station is under the supreme authority of the master. Then, reviewing federal regulations requiring a system of priority of communications and balancing these concerns with the concerns of the labor laws, NLRB's requested enforcement was denied.

More next week on The Admiralty Docket. Until then, remember your rights and responsibilities may change as you approach the shore and may God Almighty grant you pleasant sailing. 704

NLRB v. Sea-Land Service, Inc., 837 F.2d 1387, 1988 AMC 2144 (5th Cir. 1988).