

MATTER OF M/T "DONA RITA"

In Fine Proceedings

NYC-10/52.3953

Decided by Board July 30, 1976

- (1) Alien crewman arrived in New York via British Airways and was inspected and admitted into the United States as an alien in transit without a visa enroute to his vessel which was docked in Trinidad. Since his vessel was not in New York, he was taken into custody there by the vessel's owners, and subsequently absconded. The Service then instituted these fine proceedings against the vessel pursuant to section 254(a)(2) of the Immigration and Nationality Act.
- (2) Section 254(a)(2) of the Act is directed against the carrier which, having brought an alien crewman to the United States, fails to detain him on board the vessel after he has been refused a landing permit. Since the M/T "Dona Rita" was not in the United States and was not expected to be in the United States, the fine proceedings were improperly instituted and the fine will be cancelled.

In re: M/T "DONA RITA"; alien crewman involved: Asadulo Hogue

Basis for Fine: Act of 1952—Section 254(a)(2) [8 U.S.C. 1284].

ON BEHALF OF CARRIER: John C. Lane, Esquire
Freehill, Hogan & Mahar
21 West Street
New York, New York 10006

The Acting District Director in New York imposed a fine of \$1,000 upon the carrier, with regard to the vessel M/T "Dona Rita," for a violation of section 254(a)(2) of the Immigration and Nationality Act, and, in a decision dated October 14, 1975, he denied a request for cancellation of the fine. The carrier has appealed from that decision. The appeal will be sustained and the fine will be cancelled.

Section 254(a)(2) of the Act provides in pertinent part as follows:

"The owner, agent, consignee, charterer, master or commanding officer of any vessel or aircraft arriving in the United States from any place outside thereof who fails . . . (2) to detain any alien crewman on board the vessel . . . after such inspection [as set out in section 254(a)(1)] unless a conditional permit to land has been granted such alien crewman . . . shall pay to the collector of customs of the customs district in which the port of arrival is located or in which the failure to comply with the orders of the officer occurs the sum of \$1,000 for each alien crewman in respect of whom any such failure occurs." (Emphasis supplied.)

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The record shows that an alien, a citizen of Bangladesh, was hired in Bangladesh as a crewman on the M/T "Dona Rita," which was docked in Trinidad. A ticket was purchased for him from Bangladesh to New York on British Airways. According to the carrier, the alien was to be flown from New York to Trinidad where he would join the vessel. Upon arrival in New York he was inspected and admitted as an alien in transit without visa through the United States.

In his decision of October 14, 1975 the Acting District Director states that it was the understanding of the Immigration and Naturalization Service and British Airways that the M/T "Dona Rita" was in New York. Upon learning that the vessel was not in New York, British Airways notified the carrier in New York, who thereupon took custody of the alien. The alien subsequently absconded and the Service instituted these proceedings.

Section 254(a)(2) is directed against the carrier which, having brought an alien crewman to the United States, fails to detain him after he is refused a landing permit. Since the M/T "Dona Rita" was not in the United States and was not expected to be in the United States, fine proceedings under section 254(a)(2) were improperly instituted. Accordingly, the appeal will be sustained and the fine will be cancelled.

ORDER: The appeal is sustained; the fine is cancelled.