In the Matter of License No. 203685 and all other Seaman Documents
Issued to: JAMES R. McCASLAND

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1009

JAMES R. McCASLAND

This appeal has been taken in accordance wth Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 31 July 1957, an Examiner of the United States Coast Guard at Mobile, Alabama, suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification alleges that while serving as First Assistant Engineer on board the American SS HASTINGS under authority of the document above described, on or about 24 June 1957, Appellant assaulted and battered the Chief Engineer with a wrench.

Appellant was not represented by counsel at the hearing. The only evidence submitted was the Coast Guard record of investigation which was stipulated in evidence by Appellant and the Investigating Officer. After considering the evidence, the Examiner announced the decision in which he concluded that the charge and specification had been proved. An order was entered suspending all documents, issued to Appellant, for a period of twelve months.

FINDINGS OF FACT

On 24 June 1957, Appellant was serving as First Assistant Engineer on board the American SS HASTINGS and acting under authority of his License No. 203685 while the ship was in the port of Bremerhaven, Germany, preparing to get underway.

At approximately 1800, Appellant entered the engine room to increase the vacuum on the main engine and to cut in the port boiler. He remarked to another engineering officer that his (Appellant's) watch was slow and it was later than he had thought it was. While Appellant was standing by the log desk watching the gauges, the Chief Engineer approached and admonished Appellant because he had not taken care of the vacuum earlier in accordance with the policy to start preparing the plant two hors before the scheduled departure time. Appellant grunted a reply and started to walk away with a ten-inch pipe wrench to be used for cutting in the boiler. The Chief Engineer shouted insulting language after Appellant. As a result, Appellant turned and walked back toward the log desk. The Chief Engineer did not advance toward Appellant but shoved him when he got close enough. Although Appellant was pushed off balance, he immediately swung the wrench and struck the Chief Engineer on blow on the head with it. The Chief Engineer fell to the desk, then got up and grappled with the First Assistant who still had possession of the wrench and struck several light blows with it. Both men fell to the desk and the fight stopped as others arrived on the scene. The Chief Engineer was treated for superficial cuts and bruises on his head and face. No bandages or stitches were necessary, and the Chief Engineer returned to duty after receiving medical treatment.

Appellant has been sailing since 1944 has no prior disciplinary record. He was highly recommended by one of his employers after the above incident.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the record of investigation did not fully develop the evidence and is not sufficient to support the conclusions, decision and order of the Examiner; justification for the alleged offense is shown by the testimony of the fireman-watertender who stated that the Chief Engineer shoved

Appellant before he struck the Chief; the minor nature of the Chief's injuries proves that Appellant only used reasonable force to protect himself; the order was too severe in view of the mitigating circumstances such as the language used by the Chief Engineer, Appellant's prior clear record and the high recommendation of Appellant by an employer.

In conclusion, it is respectfully requested that the order be set aside or the case remanded for further hearing.

APPEARANCE ON APPEAL: Messrs. Howell and Johston of Mobile, Alabama,Attorneys for Appellant.

OPINION

It is my opinion that the evidence fully supports the allegations that Appellant assaulted and battered the Chief Engineer; and that there is no adequate reason to remand the case for additional hearing.

The record of investigation was the only evidence introduced at the hearing. This evidence was expressly approved of by Appellant who said that the statements contained therein represented the true facts of the incident. The above finding that the Chief Engineer shoved Appellant is the most favorable view to Appellant's cause, This finding is based on the testimony of the fireman-watertender on watch at the time. Neither Appellant nor the Chief Engineer stated that the latter shoved Appellant before he was struck with the wrench. Appellant's unsworn statement in the record of investigation indicates that he struck the Chief Engineer with the wrench because of the language he was addressing to Appellant. Counsel for Appellant concedes that words are not sufficient provocation for an assault and battery. Furthermore, the shove by the Chief Engineer was not sufficiently hard to constitute such force against Appellant as to justify his use of a deadly weapon in self defense. This is evident from the fact he was not shoved far enough away to prevent him from immediately striking the Chief with the wrench.

It is fortunate for both parties concerned that the injuries to the Chief Engineer were not more serious. However, their minor nature did not justify the means of attack used by Appellant.

Concerning the severity of the order, the Examiner stated that he would consider Appellant's prior good record. In view of the fact that the usual order for assault and battery with weapon is one of revocation, the twelve months' suspension ordered herein is not believed to be excessive despite the other factors submitted for consideration in mitigation.

ORDER

The order of the Examiner dated at Mobile, Alabama, on 31 July 1957, is AFFIRMED.

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

Dated at Washington, D.C., this 12th day of March, 1958.

***** END OF DECISION NO. 1009 *****

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