

In the Matter of Merchant Mariner's Document No. Z-613782-D2
and all other Seaman Documents
Issued to: HAROLD HELLER

DECISION OF THE COMMANDANT
UNITED STATES COSTA GUARD

1016

HAROLD HELLER

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 28 July 1954, an Examiner of the United States Coast Guard at Philadelphia, Pennsylvania revoked Appellant's seaman documents upon finding him guilty of misconduct. Two specifications allege that while serving as Chief Pumpman on board the American SS GULFSTREAM under authority of the document above described, on or about 20 July 1954, Appellant assaulted two union officials with a knife.

The Examiner entered pleas of not guilty on behalf of Appellant when he failed to appear at the hearing on 23 July 1954 as ordered on 20 July 1954. The Investigating Officer introduced in evidence the testimony of three union officials, including that of the two officials allegedly assaulted, and the testimony of a member of the crew. After considering the evidence, the Examiner announced the decision in which he concluded that the charge and two specifications had been proved. An order was entered revoking all documents issued to Appellant.

The decision was served on 9 September 1957 and notice of appeal was filed on the same date. No supplemental brief has been received from Appellant or his counsel.

On 20 July 1954, Appellant was serving as Chief Pumpman on board the American SS GULFSTREAM and acting under authority of his Merchant Mariner's Document No. Z-613782-D2 while the ship was at a dock in the port of Philadelphia, Pennsylvania.

At approximately 1000 on 20 July 1954, three National Maritime Union officials were in the crew's messhall conducting routine union business. These men were Business Agent Martin, Patrolman Curran and Patrolman Jackson. While they were so engaged, Appellant entered the messhall and inquired of Curran as to the outcome of recent union elections. Curran replied that it was none of Appellant's business because he was no longer a member of the union. Insulting words were exchanged between the two men but there were no threats or attempted physical violence up to this point. As Curran turned away, Martin saw Appellant holding a knife, with a blade about six inches long, pointed toward Curran's back at a distance of not more than a few feet. When Martin shouted a warning, Curran turned and saw the knife. The three union officials grappled with Appellant but he broke away and ran from the messhall while still in possession of the knife.

Shortly thereafter, Appellant returned to the messhall holding a fireaxe in both hands and using threatening language directed toward the three union officials. Appellant departed temporarily before the Master and Chief Mate arrived to inquire about the commotion. While Martin was trying to explain the situation to the Master, Appellant returned. He moved to a position behind the Master and Mate just inside the entrance to the messhall. Appellant then pushed the Mate aside and lunged from a crouched position at Martin with the knife held in Appellant's right hand; the fire axe was in his left hand. Martin jumped back as the point of the knife nicked his belt. Appellant hurried to the nearby fantail where he surrendered the axe to the Master. The knife was not then in sight. Appellant was not searched in an attempt to locate it.

Appellant's prior record consists of a probationary suspension

in 1945 for failure to perform his duties and an admonition in 1947 for using abusive language toward the ship's officers and two Coast Guard inspectors.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the findings of the Examiner are not true and the excessive order of revocation constitutes an abuse of discretion by the Examiner.

Appearances on appeal: Benjamin R. Donolow, Esquire of Philadelphia, Pennsylvania, of Counsel

OPINION

Appellant waived his right to present his version of the true facts when he failed to appear at the hearing as directed. The findings of the Examiner, as substantially set forth above, are based on the testimony of the three union officials and a crew member who witnessed the assault upon Martin. There is no reason to reject this testimony which is mutually corroborative as to all material facts and constitutes substantial evidence in support of the specifications.

It is clear that Appellant assaulted Patrolman Curran by brandishing a knife in a threatening manner and assaulted Business Agent Martin by attempting to stab him with a knife. In fact, the point of the knife came into contact with Martin's belt. Both of these offenses were vicious assaults with a deadly weapon for which there was no justification. There might well have been serious injuries in either case. Consequently, the order of revocation is not considered to be excessive. It is the usual action taken in cases of this nature.

In view of the blanket character of this appeal and in the absence of clear error, further comment is not necessary. See *Commandant's Appeal* Nos. 939, 940, 1005.

ORDER

The order of the Examiner dated at Philadelphia, Pennsylvania, on 28 July 1954, is AFFIRMED.

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

Dated at Washington, D.C., this 4th day of April, 1958.

***** END OF DECISION NO. 1016 *****

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