

In the Matter of License No. 204491 and all other Seaman Documents
Issued to: WILLIAM K. L. BROCK

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1029

WILLIAM K. L. BROCK

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 9 July 1957, an Examiner of the United States Coast Guard at Boston, Massachusetts, suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification alleges that while serving as Third Assistant Engineer on board the American SS JOSEPH A. BROWN under authority of the document above described, on or about 24 June 1957, Appellant wrongfully created a disturbance on board the ship. Two other specifications were found not proved by the Examiner.

Appellant was represented by counsel at the hearing on 1 July and entered a plea of not guilty. The testimony of witnesses taken before the Examiner on 25 June, due to the impending departure of the ship, was considered as evidence at the hearing. Additional witnesses appeared for Appellant and he testified in his behalf. After rejecting the proposed ruling that Appellant did not cause a disturbance (by asking the Steward for night lunch) and hearing argument, the Examiner concluded that the charge and the above specification had been proved. An order was entered suspending all

documents, issued to Appellant, for a period of one month on six months' probation.

The decision was served on 10 July 1957. Appeal was timely filed on 7 August 1957.

FINDINGS OF FACT

On 23 and 24 June 1957, Appellant was serving as Third Assistant Engineer on board the American SS JOSEPH A. BROWN and acting under authority of his License No. 204491 while the ship was in the port of Boston, Massachusetts.

Appellant returned on board the ship late on the night of 23 June after having been ashore on authorized leave. At approximately 0300 on the following morning, Appellant was in a somewhat intoxicated condition when he knocked on the door of the acting Steward. The latter awoke and asked who it was. Appellant opened the door, placed one foot inside the room and requested some milk to go with the night lunch. The Steward offered the icebox keys to Appellant but he insisted that the Steward get the milk. Appellant refused to leave the room when asked to do so by the Steward. The Steward got up and pushed Appellant into the passageway where he fell down. The Steward helped Appellant up and noticed that he was not injured. The Steward then took Appellant to his room and shoved him into the room. Appellant telephoned the First Assistant and said he had been assaulted by the Steward. The Master and First Assistant came to the scene and found Appellant with his face rather badly battered. He was placed in his bunk and the Master questioned the Steward.

At 0600, Appellant went to the Steward's room with a pocketknife and made a feeble threat to "get" the Steward. The latter disarmed Appellant without difficulty. The Master was summoned again, and Appellant was again placed in his bunk. In the afternoon, Appellant was treated for his head injuries by a physician at the United States Public Health Service Hospital, Brighton, Massachusetts. At this later time, there was no indication that Appellant was intoxicated.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the following findings of the Examiner are contrary to the weight of the evidence:

1. Appellant was intoxicated at the time of the incident in question and also on 25 June.
2. Appellant made two trips to the Steward's room. The second time, Appellant had an opened knife.
3. The Steward had no duty to supply the ship's officers with milk for the night lunch. The Steward was not on duty at 0230.
4. Asking the Steward for milk was an unjustified disturbance. Appellant refused to leave the Steward's room.

For these reasons, it is respectfully requested that the finding that Appellant was guilty of creating a disturbance be reversed.

APPEARANCE: Messrs. Schneider, Reilly and McArdle of Boston, Massachusetts, by I. E. Serlin, Esquire, of Counsel.

OPINION

The issues in this case were largely resolved by the Examiner's acceptance of the Steward's testimony as to what occurred immediately after Appellant knocked at the Steward's door at 0300; and that Appellant returned at 0600. The Steward's version is substantially set out in my findings of fact. Appellant testified that when he asked for the keys, the Steward jumped up and continued to hit Appellant in the face until he had backed down the passageway to his room and was knocked down on a couch. Appellant completely denied the knife episode.

I see no reason to disagree with the basic findings of the Examiner that appellant caused a mild disturbance by awakening the

Steward and then refusing to leave his room; also by later going to the Steward's room with a pocketknife. Not only was the Examiner in the best position to judge the credibility of witnesses who appeared before him, but Appellant's testimony disagrees with that of several other witnesses as to the time when he knocked on the Steward's door and the persons Appellant saw in the early hours of 24 June. The Master and First Assistant Engineer testified, as did the Steward, that the first incident took place about 0300 and that they both saw Appellant. The Chief Engineer stated that he saw Appellant at 0600. Yet Appellant claims that he went to the Steward's room about midnight and that he remembered distinctly everything that happened up to and including the point where he was knocked down on a couch in his room by the Steward. Appellant stated that he did not see any of these officers until considerably later in the day although he was completely sober at all times involved. It is strange that Appellant did not remember seeing the Master and two engineering officers if he could remember everything throughout his alleged beating by the Steward.

The record indicated that Appellant's face was injured either by falling against furniture in his room or by the Steward's fists. The Examiner stated that whether the Steward used excessive force was not in issue. I agree that this is true because Appellant's guilt of causing a wrongful disturbance is predicated primarily on his acts of awakening the Steward and then not leaving his room when requested to depart; secondarily, it is based on the knife episode when Appellant was helpless to carry out his threat to "get" the Steward. Hence, the question of how Appellant was injured is relative only to the question of who was responsible for the disturbance so far as it resulted in the Master and First Assistant being awakened and called to the scene at approximately 0300.

The above discussion covers most of the points raised on appeal. As to whether appellant was intoxicated, it is immaterial to the charge and specification. However, the considerable weight of the evidence is that Appellant had been drinking intoxicants to some extent before the incidents on 24 June. It was much later in the day when Appellant went to the hospital and showed no sign of intoxication. Appellant's condition on 25 June is completely irrelevant to the specification found proved.

Concerning the Steward's duty to prepare the night lunch, this is food which is furnished for the benefit of those seamen on night watch. Appellant was not entitled to night lunch when he returned from shore leave. Consequently, it was an unjustified disturbance for Appellant to awaken the Steward for this reason at an extremely unreasonable hour.

Appellant's contentions are without merit. The probationary suspension of one month will be sustained.

ORDER

The order of the Examiner dated at Boston, Massachusetts, on 9 July 1957, is AFFIRMED.

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

Dated at Washington, D. C., this 18th day of April, 1958.

***** END OF DECISION NO. 1029 *****

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