In the Matter of Merchant MARINER'S Document No. Z-111923
Issued to: BASILIDES RAMOS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1052

BASILIDES RAMOS

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 26 December 1957, an Examiner of the United States Coast Guard at New York, New York, revoked Appellant's seaman document upon finding him guilty of misconduct. Two specifications alleged that while serving as Deck Steward Utilityman on board the American SS SANTA ROSA authority of the document above described, on or about 30 August 1957, Appellant wrongfully placed his hands on the person of a female passenger; and he wrongfully addressed the same female passenger with improper and suggestive language. The latter specification was found not proved by the Examiner.

At the beginning of the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of the serious nature of the charge and his right to be represented by counsel of his choice, Appellant elected to waive that right and act as his own counsel. Appellant answered in the negative when asked if he desired an interpreter. He entered a

plea of not guilty to the charges and each specification.

The Investigating Officer made his opening statement. He then introduced in evidence certified extracts of the Shipping Articles of the SS SANTA ROSA, certified extracts of two Official Logbook entries, and the written depositions of the passenger and her father.

In defense, Appellant offered in evidence his own testimony under oath. He admitted touching the girl passenger but asserted that it was an accident.

At the conclusion of the hearing, the oral argument of the Investigating Officer was heard. The Examiner announced the decision in which he concluded that the charge and the first specification had been proved. An order was entered revoking all documents issued to Appellant.

FINDING OF FACT

On 30 August 1957, Appellant was serving as Deck Steward Utilityman on board the American SS SANTA ROSA and acting under authority of his Merchant Mariner's Document No. Z-111923 while the ship was at sea.

During the afternoon, the Appellant approached Miss Jean Leary, a thirteen year-old passenger, and two young female companions. After some conversation in front of the novelty shop concerning a lost child, Appellant brushed his hand across Miss Leary's breast. She thought the gesture was accidental and left the area.

About an hour later, the three girls accompanied the Cabin Steward to the ship's dog kennel. Appellant was feeding one of the dogs. The Cabin Steward left and the girls entered the kennel. Appellant again touched Miss Leary without her permission, brushing the back of his hand across her breast. Miss Leary backed away and left. She sought out her parents and told them what had happened. Her father informed the Chief Steward who summoned the Appellant. When the girl's father attempted to question Appellant, he said, "

I don't want to talk about that," and fled.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. The grounds are as follows: incompetent evidence was received; the decision is against the weight of the credible evidence; the Appellant was not fully advised of his right; failure to provide an interpreter and counsel was a denial of Appellant's right to due process of law; the order of revocation is excessive.

APPEARANCES ON APPEAL: Alan H. Buchsbaum for Standard, Weisberg, Harolds, and Malament of New York City, of Counsel for the Appellant.

Appellant has raised two objections to the competency of the evidence admitted at the hearing. In considering these, it is essential to consider that this was an administrative hearing and that strict adherence to the rules of evidence was not required. The Examiner is directed by law to follow the rules of evidence as closely as possible, but to base his findings on reliable, probative and substantial evidence. 46 CFR 137.21-5. This standard of proof permits him to accept evidence which in his judgement will lead to a full and fair determination of the truth and to escape from the technical strait jacket of judicial rules of evidence.

Both depositions are challenged. Appellant contends that the one taken from Miss Leary is inadmissable because she was an infant of thirteen and the Examiner failed to require an affirmative showing that her youth did not make her an incompetent witness. Most courts of law refer to the common law rule that there is no presumption of competency in a child of less than fourteen. But these same courts hold that an objection to competency must be raised at the hearing or trial level, or not at all. Essentially, this is a matter left to the discretion of the trier of the facts. In the instant case the Examiner considered this young lady's credibility and found her depositive testimony to be "explicit, convincing," and as having "the ring of truth about it." I am of the opinion that Appellant waived any right to object to the

admissibility of this deposition, and that the Examiner was well within his discretion in admitting it into evidence.

The deposition given by the girls's father establishes proof of the two facts. First, it shows that she complained to her father immediately after the second incident. That part of the cross-interrogatory which narrated details of the incident was properly stricken as hearsay. The testimony of the complaint itself, without details, is proof analogous to a fresh complaint in a rape case which is a recognized exception to the hearsay rule. Even if it is not within this exception, its reliable and probative nature permitted the Examiner to admit the evidence of the complaint.

The rest of this deposition is evidence that the Appellant fled from the young lady's father when he, in company with the Chief Steward, attempted to question the Appellant. It was within the Examiner's discretion to admit this evidence as indicative of an implied admission by flight. At the hearing Appellant had full opportunity to offer some other explanation for his flight, and the Examiner gave weight to this part of the father's deposition only when he had fully evaluated the rest of the evidence and only as corroboration, not as primary proof.

Appellant believes that the findings mare against the weight of the evidence In my opinion all evidence adduced at the hearing was admissible and there is substantial evidence to support the Examiner's decision. Since it is my duty to affirm his findings unless they are clearly erroneous. I find this objection of the Appellant to be without merit.

Appellant objects to the fact that the Examiner did not, on his own initiative, provide an interpreter. The record shows that at the hearing, on 25 September, Appellant expressly waived this. He had five days to reconsider before the interrogatories were prepared. He had over two months more in which to review his choice before the hearing on the merits was held. He cannot now complain that the hearing was a nullity because his language difficulties created some ineptness in the conduct of his defense when this resulted from his own free choice. The Examiner acted in Appellant's behalf in drafting cross-interrogatatories and exercised commendable care in overcoming whatever difficulties

Appellant had at the hearing. I am of the opinion that Appellant was accorded full due process of law in this respect.

Appellant contends he was denied a fair hearing because the Examiner permitted him to conduct his own hearing when he obviously lacked the skill to do so. Appellant's rights were explained to him fully, verbally and in writing, in English and in Spanish by the Investigating Officer; and were again explained by the Examiner. After each explanation he chose to defend himself. During the hearings the Examiner exercised care in assisting Appellant in presentation of a full defense. In view of Appellant's free and repeated waiver of his right of counsel when faced with a very serious charge and the solicitous conduct of the Examiner, I cannot find any denial of due process of law in this respect. Furthermore, in light of the entire record, I do not believe that a rehearing, with counsel, would gain the Appellant any advantage.

Appellant charges a violation of due process because the Investigating Officer was not required to present all available evidence. Since the evidence he refers to is the depositive testimony of the two young ladies of tender years and the independent investigative report of the Master, it is apparent that this objection is patently inconsistent with his contention that depositive testimony of infants is incompetent and that of persons, not eyewitnesses, is heresay. Be that as it may, the basic purpose of administrative tribunals is to permit a fair and expeditious hearing. To promote this efficiency Congress has adopted substantial evidence as the standard of the burden of proof. When the Investigating Officer presents a prima facie case in the light of that standard, as he did at this hearing, the burden of going forward with the evidence shifts to the other party. Appellant had every fair opportunity to obtain additional evidence. He did not choose to avail himself of this opportunity. I will not reverse a decision based on substantial evidence on the mere speculation that these other witnesses would have given testimony adequate to overcome the prima facie case against Appellant.

For over a century our law has held that a passenger's right to personal privacy should be inviolate. When a seamen molests a female child passenger, revocation is the only appropriate order.

ORDER

The order of the Examiner dated at New York, New York, on 26 December 1957,is AFFIRMED.

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

Dated at Washington, D. C., this 16th day of July, 1958.

***** END OF DECISION NO. 1052 *****

Top