

In the Matter of Merchant Mariner's Document No. Z-52296-D1 and all
other Seamen Documents
Issued to: KRISTOS MARKOS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1053

KRISTOS MARKOS

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 31 January 1958, an Examiner of the United States Coast Guard at New York, New York, suspended Appellant's seamen documents upon finding him guilty of misconduct. Three specifications allege that while serving as a fireman-watertender on board the American SS FLYING TRADER under authority of the document above described, on or about 30 September 1957, Appellant wrongfully addressed the engineering watch officer, Second Assistant Engineer Robert E. Bliss, with profane and abusive language; on or about 1 October 1957, Appellant wrongfully addressed the Fourth Assistant Engineer, Melvin B. Harris with profane and abusive language; on or about 1 October 1957, Appellant wrongfully spat in the face of the Fourth Assistant Engineer.

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. Appellant was represented by counsel of his own choice and he entered a plea

of not guilty to the charge and each specification

The Investigating Officer made his opening statement. He then introduced in evidence the testimony of the Second and Fourth Assistant Engineers as well as two entries in the ship's Official Logbook concerning the alleged offenses.

In defense, Appellant offered in evidence his testimony and that of a character witness. Appellant denied the use of indecent language to the two engineering officers. He added that he was caused to expel tobacco juice from his mouth when he was kneed in the groin by the Fourth Assistant.

The oral argument of the Investigating and Appellant's counsel were heard and both parties were given an opportunity to submit proposed findings and conclusions. The Examiner later rendered the decision in which he concluded that the charge and three specifications had been proved. An order was entered suspending all documents, issued to Appellant, for a period of two months outright and four months on twelve months probation.

The decision was served by mail on 3 February 1958. Appeal was timely filed on 28 February 1958.

FINDINGS OF FACT

On 30 September and 10 October 1957, Appellant was serving as a firemen-watertender on board the American SS FLYING TRADER and acting under authority of his Merchant Mariner's Document No. Z-52296-D1 while the ship was at sea en route to Singapore. Appellant was the fireman-watertender on the 4 to 8 underway watches.

At approximately 0500 on 30 September 1957, the Second Assistant Engineer, who was on watch, noted that the water in the port boiler was low and speeded up the feed pump since he did not see Appellant. A few minutes later, Appellant approached the watch officer and demanded to know who was serving as fireman-watertender. A short argument followed during which Appellant directed foul and abusive language toward the Second Assistant. The latter reported the matter to the Chief Engineer and Appellant was logged for this offense.

About 1940 on 1 October 1957, the 8 to 12 engineering officer, the Fourth Assistant, went below in order to check conditions prior to assuming the watch. Noting that the fires were not satisfactory, he told Appellant to "punch the carbon" in order to clean the fire boxes. When Appellant made no move to comply, the order was repeated. This angered Appellant as he slowly began to obey. At this point, Appellant addressed the Fourth Assistant with foul and abusive language and spat tobacco juice in his face. The officer left the scene so as to prevent further trouble. Appellant was logged for this incident also.

On 5 October at Singapore, Appellant was hospitalized and did not return to the ship. He received treatment for a hernia condition.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. The decision is contrary to common experience and is based on the uncorroborated testimony of the two engineering officers. The Fourth Assistant started the trouble on 1 October by kneeling Appellant in the groin. It is respectfully submitted that Appellant's unblemished record for thirty years in the U.S. Marine Corps and employment on the FLYING TRADER for more than five years without any prior trouble support the view that these charges should be dismissed.

APPEARANCE: Silas B. Axtell, Esquire, of New York City, of Counsel.

OPINION

This case turns largely on the question of the credibility of the witnesses who appeared before the Examiner as the trier of the facts. The Examiner found in favor of the testimony of the two engineering watch officers and specifically stated that he did not believe Appellant's testimony denying the allegations. Since the Examiner's findings as to credibility are not clearly erroneous, there is no reason to reject them. The officers versions are corroborated y the two properly made entries in the Official Logbook whereas Appellant's denials are uncorroborated There is

nothing in Appellant's reply to the pertinent log entry or elsewhere in the record to support this claim that a kneeling by the Fourth Assistant caused Appellant to spit juice and led to his hospitalization for a hernia condition. Therefore, my findings on the merits are substantially in accord with those of the Examiner except for that part which states that Appellant was guilty of using "profane" language. The commonly accepted meaning of the word is: not sacred or holy; not devoted to religion or religious ends. The record indicates that "foul and abusive" is more descriptive of the language used than is "profane and abusive."

Appellant's prior unblemished record, both in the Merchant Marine Service and the Marine Corps, does not justify the lack of respect for authority which he displayed in these two instances. Such breaches of discipline directed toward ship's officers merit strong censure.

ORDER

The order of the Examiner dated at New York, New York, on 31 January 1958, 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. 1053 *****

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