

In the Matter of Merchant Mariner's Document No. Z-1019573 and all  
other Seaman Documents  
Issued to: VICENTE MARTINEZ

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1059

VICENTE MARTINEZ

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 30 September 1957, an Examiner of the United States Coast Guard at San Francisco, California, revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification alleges that while serving as a wiper on board the American SS MATSONIA under authority to the document above described, on or about 17 August, Appellant wrongfully entered a passenger stateroom, assigned to Misses Sue and Linda Leopold (aged 16 and 11, respectively), which was occupied at the time by Linda Leopold who had retired.

At the hearing, Appellant entered a plea of guilty to the charge and specification. The Investigating Officer made an opening statement but did not introduce any evidence except a deck plan of the ship showing that Appellant's quarters and the stateroom in question were in different areas on the main deck. Appellant stated that he did not remember what happened because he was drunk at the time of the incident.

The Examiner concluded that the charge and specification had been proved by plea. An order was entered revoking all documents issued to Appellant without prejudice to the issuance of a document to Appellant for service on vessels not carrying passengers.

The decision was served on 1 October 1957. Appeal was timely filed on 15 October 1957.

#### *FINDINGS OF FACT*

On 17 August 1957, Appellant was serving as a wiper on board the American SS MATSONIA and acting under authority of his Merchant Mariner's Document No. Z-1019573 while the ship was at sea.

At 2330 on this date, Appellant was intoxicated when, without authority to do so, he entered a passenger stateroom located on the same deck as Appellant's quarters. The stateroom was assigned to Sue Leopold, age 16, and Linda Leopold, age 11. At the time, the stateroom was occupied by Linda Leopold who had retired. There is no evidence that Appellant approached the girl, physically molested her in any manner or had any intention of doing so.

Appellant has no prior record with the Coast Guard. He was honorably discharged from the U.S. Army in 1952 after three years' service.

#### *OPINION*

This appeal is based on the ground that the order of revocation is excessive because there was no overt act or other improper conduct by Appellant other than entering the passenger stateroom.

Appellant's plea of guilty obviated the necessity to introduce evidence in support of the allegations contained in the specification. No such evidence was introduced at the hearing although the Investigation Officer is empowered to submit evidence to establish matters of aggravation after a plea of guilty has been entered. 46 CFR 137.09-50(b). The Investigating Officer's opening statement, wherein he said that Appellant awoke the girl by talking

and then sat down in a chair to read a magazine, does not constitute evidence as to the merits of the case. See *Commandant's Appeal* No. 806. Hence, the appropriateness of the order must be judged on the bare allegations of the specification supplemented by Appellant's admission that he was drunk at the time.

In the absence of evidence to the contrary, it may be assumed that Appellant, as a member of the Engine Department, did not have authority to be anywhere in the passengers' areas. But it cannot be assumed either that Appellant had any intention of molesting a passenger or even that he knew this stateroom was assigned to two young girls. Hence, Appellant's offense consists of unauthorized entry into a passenger stateroom at a time when an 11-year old girl passenger was present in the stateroom unknown to Appellant prior to his entering. There is no evidence of an offense involving moral turpitude in the sense of sexual perversion or deviation.

Due to the absence of evidence of actual or intended molestation, the order of revocation will be modified to one of suspension. There is no provision for the issuance of a document limiting Appellant to employment on ships not carrying passengers. This type of document was improperly suggested in the Examiner's order and reiterated by Appellant on appeal.

#### ORDER

The order of the Examiner dated at San Francisco, California, on 30 September 1957, is modified to provide that Merchant Mariner's Document No. Z-1019573, and all other documents issued to Appellant by the United States Coast Guard or its predecessor authority, are suspended outright for a period of six (6) months. Appellant's documents are further suspended for an additional six (6) months which shall not become effective provided no charge under R.S. 4450, as amended (46 U.S.C. 239), is proved against Appellant for acts committed during the period of outright suspension or within twelve (12) months of the termination of the outright suspension.

As so MODIFIED, said order is

AFFIRMED.

A.C.Richmond  
Vice Admiral, U. S. Coast Guard  
Commandant

Dated at Washington, D.C., this 29th day of July, 1958.

\*\*\*\*\* END OF DECISION NO. 1059 \*\*\*\*\*

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