In the Matter of Merchant Mariner's Document No. Z-264802-D1 and all other Seaman Documents
Issued to: TADEUSZ CHILINSKI

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1067

TADEUSZ CHILINSKI

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 11 February 1958, an Examiner of the United States Coast Guard at New York, New York, suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification alleges that while serving as a carpenter on board the United States SS ROBIN HOOD under authority of the document above described, on or about 31 October 1957, Appellant wrongfully struck Fourth Mate Cain by butting him. 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 specification.

The Investigating Officer made his opening statement and introduced in evidence the testimony of Fourth Mate Cain. In defense, Appellant offered in evidence his sworn testimony.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant's counsel were heard and both parties were given an opportunity to submit proposed findings and conclusions. The Examiner then rendered the decision in which he concluded that the charge and specification had been proved. An order was entered suspending all documents, issued to Appellant, for a period of six months outright and six months on probation for a period of twelve months.

The decision was served on 12 February. Appeal was timely filed on 7 March and a supporting brief was submitted on 7 July.

*FINDINGS OF FACT*

In October 1957, Appellant was serving as a carpenter on board the United States SS ROBIN HOOD and acting under authority of his Merchant Mariner's Document No. Z-264802-D1 while the ship was on a foreign voyage. When the ship arrived at Capetown, South Africa, on 28 October, Appellant received word that his wife had left town with another man and Appellant's bank roll. As a result of this news, Appellant became intoxicated and received minor facial injuries in a barroom brawl early on the morning of 29 October. Appellant could not remember what happened but he was informed that he had been injured by the Fourth Mate. Actually, the Fourth Mate had attempted to protect Appellant during the brawl.

On the morning of 31 October, the Fourth Mate went to Appellant's room and told him that it was time to take sounding. Appellant invited the mate into the room and closed the door behind him. Appellant pointed to the injuries on his face and asked the mate why he did it. The Fourth Mate did not understand what Appellant had said and made a slight questioning gesture with his hand. Believing that the mate was going to strike him again, Appellant suddenly grabbed the made by the front of his shirt, pulled the mate toward Appellant and butted the mate on the lower lip with his head causing the mate's teeth to puncture his lip. Appellant then applied a headlock but the mate broke the hold and left the room to report the matter to the Master. Two sutures were required to close the mate's wound. Appellant later apologized to the Fourth Mate for this incident.

Appellant has been going to sea for 17 years without any prior

disciplinary record.

*BASES OF APPEAL*

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the order should be vacated because he acted in self-defense. Alternatively, the order should be greatly reduced in view of Appellant's unblemished record for 17 years and his upset condition due to his personal difficulties at the time.

The decision is incorrect as a matter of law. Since Appellant thought that his facial injuries had been caused by the Fourth Mate, Appellant acted under a reasonable belief that the movement of the mate's hand indicated that he was going to strike Appellant. The law of self-defense is that, if a person reasonably believes that another is going to harm him, he need not retreat and may strike the first blow even though acting under a mistaken belief. The Examiner erroneously made no finding as to the reasonableness of Appellant's belief. Also, it is not necessary for a person to believe that he is in serious danger before acting in self-defense.

APPEARANCES: Seymour W. Miller of Brooklyn, New York by Ralph P. Katz, Esquire of Counsel.

*OPINION*

Since there is no conflict in the testimony given by Appellant and the Fourth Mate, the above findings of fact represent the composite testimony of the two witnesses.

I agree with the general propositions set forth by Appellant as to the law of self-defense. Nevertheless, based on the facts of the case, it is my opinion that Appellant's belief that he was in imminent danger of some degree of bodily harm was not well founded. This is the test in such cases. 6 *C.J.S. Assault and Battey*, sec. 18b(2). Appellant admitted that he invited the Fourth Mate into the room and closed the door behind him. There is no evidence that the mate made a fist or even raised his open hand in a position to be able to strike Appellant. In fact, Appellant was the first one to make a motion with his hand when he raised it to point at his face. Under these circumstances, the most logical

interpretation of the events seems to be that the mate rather than Appellant might have had reasonable ground to believe that there was some danger of being attacked after Appellant had closed the door to the room.

Hence, even accepting the Examiner's findings, based on Appellant's testimony, that Appellant felt the mate was going to strike a blow, I do not think that the facts support the reasonableness of this state of mind. In connection with this, it is noted that Appellant was in an upset, and probably not completely rational, state of mind as a result of his wife's behavior. For these reasons, the contention that Appellant acted in self-defense is considered to be without merit. Possibly the Examiner failed to make a finding with respect to the reasonableness of Appellant's belief because this point of law was not specifically raised prior to this appeal.

The mitigating circumstances favorable to Appellant were taken into consideration by the Examiner before rendering his order. In view of this and the seriousness of an attack upon a ship's officer, the suspension imposed will not be modified.

*ORDER*

The order of the Examiner dated at New York, New York, on 11 February 1958, is AFFIRMED.

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

Dated at Washington, D. C., this 22nd day of August, 1958.

***** END OF DECISION NO. 1067 *****

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