

In the Matter of Merchant Mariner's Document No. Z-292741-D1 and
all other Seaman Documents
Issued to: THOMAS EDWARD BLAKE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1071

THOMAS EDWARD BLAKE

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 20 January 1958, an Examiner of the United States Coast Guard at Baltimore, Maryland, suspended Appellant's seaman documents upon finding him guilty of misconduct. Two specifications allege that while serving as Second Cook on board the United States SS ULUA under authority of the document above described, on or about 30 December 1957, Appellant assaulted Chief Steward Smet by brandishing a butcher knife in a threatening manner and offering to inflict bodily harm (First Specification); Appellant assaulted saloon messman Collins by brandishing two butcher knives in a threatening manner (Second Specification).

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 in the person of a union representative. Appellant and his counsel were fully informed of the right to subpoena witnesses or to obtain their testimony by depositions.

Counsel for Appellant stated that Appellant did not desire to have the Examiner make arrangements for the appearance of any witnesses or the taking of depositions. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer made his opening statement and introduced in evidence the testimony of three witnesses - the Chief Steward, messman Collins and the Chief Cook who witnessed the incident on which the First Specification is based.

After the Investigating Officer rested, counsel for Appellant made an opening statement in which he objected to the time element in that Appellant was given only 22 hours notice of the hearing. Counsel requested a continuance to prepare Appellant's defense and then agreed with the Examiner's suggestion to consider this request after three witnesses testified in Appellant's behalf. The sailing of the ship had already been delayed in order to obtain the appearance of witnesses at the hearing. The three witnesses testified but none of them had personal knowledge of the events in question. Appellant elected not to testify. Since counsel did not renew the request for a continuance, the Examiner stated in his decision that he considered the objection as to the time element to have been waived.

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 announced the decision in which he concluded that the charge and two specifications had been proved. An order was entered suspending all documents, issued to Appellant, for a period of nine months outright plus six months on eighteen months' probation.

The decision was served on 21 January 1958. Appeal was timely filed on or about 3 February.

FINDINGS OF FACT

On 30 December 1957, Appellant was serving as Second Cook on board the United States SS ULUA and acting under authority of his Merchant Mariner's Document No. Z-292741-D1 while the ship was at sea en route from Charleston, South Carolina to Baltimore,

Maryland.

Appellant and messman Collins were roommates on the ship. They had been ashore drinking intoxicants before the ship left Charleston on the afternoon of 30 December. At approximately 1500 on this date, these two seamen were in their quarters when they became involved in an argument concerning a radio in the room. Appellant took an eight to ten-inch-long nail file out of his locker and threatened to kill Collins but did not touch him. Appellant then ran from the room. Collins left the room and stood in the passageway at the foot of a ladder which led to the bridge. In less than two minutes, Appellant returned holding two butcher knives and walked in the direction of his room until he saw Collins by the ladder. Appellant immediately turned and went toward Collins with the two knives. No words were spoken by either seaman. Collins, being in fear of bodily harm, ran up the ladder to the chartroom where the Master was and reported the matter to him. Collins had not waited to observe the extent to which he was pursued by Appellant and there were no other eyewitnesses to this incident.

Shortly thereafter, the Chief Steward accompanied Appellant to the bridge to receive treatment for a finger he had cut with one of the knives. After the finger was treated, Appellant was ordered to go to sleep due to his intoxicated condition. The Chief Steward returned to the galley and Appellant followed him there. When the Steward told Appellant to go to bed, he picked up a butcher knife, staggered toward the Steward and swung the knife at him. The knife missed its mark by about six inches as the Steward jumped aside. Appellant dropped the knife and he was eventually persuaded to get some sleep.

After Appellant apologized to Collins, the two seamen slept in the same room during the next two nights without further difficulties.

Appellant has no prior disciplinary record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that 22 hours was insufficient time

to prepare his defense and locate favorable witnesses who had left the ship after completion of the voyage. There was no opportunity for counsel to investigate by going on board the ship and talking with the crew members. Witnesses have now been located who deny that these alleged assaults took place. One eyewitness, ship's cook William Ridenour Z-902 427, was in the galley when one of the offenses allegedly took place.

The Examiner was misled by the testimony of the Chief Steward. Appellant was not brought up on charges by the union, he was not logged a day's pay for these alleged offenses, he was permitted to continue sleeping in the same room with Collins, the man Appellant was accused of attacking with a knife. This seems inconsistent with the findings that Appellant is guilty. He has no prior record during 14 years at sea.

APPEARANCES: John T. Dillon, N.M.U. representative, of Counsel.

OPINION

Appellant contends that 22 hours were insufficient time in which to locate witnesses and that persons have since been found who deny that Appellant committed the two assaults alleged. As a result, a letter was mailed to Appellant, on 7 August, stating that he would be given 30 days to submit a petition to reopen the hearing on the basis of newly discovered evidence. No reply to this letter has been received. Consequently, no further consideration will be given to these contentions.

The assault by Appellant on messman Collins, with two butcher knives, is supported by substantial evidence although the evidence does not support the Examiner's finding that Appellant brandished (waved menacingly) the knives. Appellant's threat to kill Collins and then, within two minutes, Appellant's appearance with two large knives was sufficient to create a reasonable or well-founded apprehension of immediate peril on the part of Collins since he had been the only other person in the room for which Appellant was heading until he saw Collins nearby in the passageway. When Appellant then turned and advanced toward Collins, this act constituted an assault despite the lack of any further threat by words or gestures, and regardless of the absence of evidence that Appellant ran toward Collins. The latter had good cause to fear

that he would be injured if he did not retreat. Collins frankly admitted that he did not take time to see whether Appellant started to run after him. It is not important whether Appellant was close enough to Collins to have had the actual ability to commit a battery upon him because Appellant had such an apparent ability to consummate the attack as to reasonable cause fear on the part of Collins. This is sufficient even though Appellant was not within striking distance. See *5 C.J., Assault and Battery*, sec. 186; *Price v. United States* (1907), 156 Fed. 950.

The specification alleging the assault on the Chief Steward is supported by substantial evidence consisting of the testimony of the Chief Steward. Although the Chief Cook was present when this incident occurred, he repeatedly testified that he could not say whether Appellant was swinging (the knife) at the Chief Steward. The Chief Steward's testimony is very definite to the effect that Appellant swung the knife when he was two or three feet away from the Chief Steward and that he would have been struck by it if he had not jumped out of the path of the knife. The Examiner based his findings as to this specification on the testimony of the Chief Steward. As pointed out above, Appellant did not testify at the hearing.

Appellant has raised several other points which he claims are inconsistent with the findings that Appellant is guilty. These matters have no direct bearing on whether Appellant committed the two assaults. Hence, they do not refute the clear evidence on which the findings of guilty are based. The record indicates that Appellant was on the verge of causing serious injury due to a fit of drunken anger and that he was again normal after having slept several hours. It is felt that the order imposed is suitable to act as a deterrent against such conduct on the part of Appellant and other seamen in the future.

ORDER

The order of the Examiner dated at Baltimore, Maryland, on 20 January 1958, is

AFFIRMED.

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

Dated at Washington, D. C., this 23rd day of September, 1958.

***** END OF DECISION NO. 1071 *****

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