

In the Matter of Merchant Mariner's Document No. Z-181227 and all other Licenses, Certificates and Documents

Issued to: GORDON W. POWELL

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

879

GORDON W. POWELL

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1

By order dated 1 August 1955, an Examiner of the United States Coast Guard at New York, New York, suspended Merchant Mariner's Document No. Z-181227 issued to Gordon W. Powell upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as a carpenter on board the American SS HEREDIA under authority of the document above describe, on or about 22 July 1955, while said vessel was departing from Charleston, South Carolina, he was unable to perform his duties by reason of being under the influence of intoxicants; and on or about 22 July 1955, while the vessel was at sea, he assaulted and battered a fellow crew member, Patrick K. Ryan.

At 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 his right to be represented by counsel of his own choice, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and each

specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of several members of the crew as well as certified copies of two entries in the Official Logbook of the HEREDIA.

In defense, Appellant offered in evidence his sworn testimony. Appellant stated that he had 3 or 4 beers while ashore and he obeyed the Chief Mate when he told Appellant to go below. Concerning the other specification, Appellant testified that he felt justified in slapping Ryan after he continued to direct insulting language towards Appellant although told to stop or he would be slapped.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and two specifications had been proved. He then entered the order suspending Appellant's Merchant Mariner's Document No. 181227, and all other licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of six months - three months outright suspension and three months suspension on probation until twelve months after the termination of the outright suspension.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 22 July 1955, Appellant was serving as a carpenter on board the American SS HEREDIA and acting under authority of his Merchant Mariner's Document No. Z-181227.

On this date, Appellant had been drinking beer ashore prior to returning to the ship to get underway. Appellant's mooring station was at the capstan on the forecastle. When the ship was getting underway at about 1700, the Chief Mate observed that Appellant had been drinking and ordered him to go below. The Chief Mate considered that Appellant's condition was such that he could not

properly perform his duties.

At about 1800 on this date, Appellant was talking with another crew member in the recreation room on the ship which was now at sea. Appellant remarked that union activities were not properly conducted on the ship. The union deck delegate, Ryan, overheard this remark. In a belligerent manner and with the use of insulting language, Rayn told Appellant not to talk that way about his fellow crew members. Appellant told Ryan to go sleep it off and that Appellant would slap Ryan if he talked that way again. Ryan repeated the insulting language. Appellant used his open hand with which to slap Ryan on his face. The 60 year old Ryan fell to the deck and moaned as though he was in great pain. The vessel returned to port since Rayn's injury could not be determined on board the ship. Ryan was transferred to a Coast Guard vessel and hospitalized at Charleston. He was still in the hospital at the time of the commencement of the hearing on 27 July.

Appellant's prior record consists of a probationary suspension in 1943.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that it was not proved that he was unable to perform his duties when he was ordered below by the Chief Mate.

Appellant admits that he slapped Ryan but claims that he was justifiably provoked by Ryan's repeated insulting language in the presence of other members of the crew.

Appellant's only means of making a living is by going to sea.

OPINION

Although the Chief Mate considered Appellant to be a competent carpenter and a conscientious worker, the Chief Mate did not think it was safe for Appellant to perform his duties due to his intoxicated condition. Appellant was ordered to go below as a precautionary measure to protect him and other members of the crew

from possible injury while the ship was getting underway. There is no indication in the record that the Chief Mate abused his discretion by exercising his authority to remove Appellant from the circumstances the Appellant was unable to perform his duties by reason of being under the influence of intoxicants.

Concerning the specification alleging assault and battery, it is sufficient to state that such conduct was not justified no matter how insulting and offensive Ryan's language was. See *Rohrback v. Pullman's Palace Car Co.* (C.C.E.D. Pa., 1909), 166 Fed. 797. Regardless of how light the blow was, it was enough to injure a 60 year old man, result in his hospitalization, and delay the ship.

Under the circumstances, it is my opinion that the order is not excessive even though it interferes with Appellant's only livelihood.

ORDER

The order of the Examiner dated at New York, New York, on 1 August 1955 is AFFIRMED.

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

Dated at Washington, D. C., this 24th day of April, 1956.

***** END OF DECISION NO. 879 *****

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