

In the Matter of Merchant Mariner's Document No. Z-136902 and all
other Licenses, Certificates and Documents
Issued to: ERIC I. CALLENDER

DECISION AND FINAL ORDER THE COMMANDANT
UNITED STATES COAST GUARD

890

ELRIC I. CALLENDER

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 10 February 1956, an Examiner of the United States Coast Guard at New Orleans, Louisiana, revoked Merchant Mariner's Document No. Z-136902 issued to Elric I. Callender upon finding him guilty of misconduct based upon two specification alleging in substance that while serving as an oiler on board the American SS WILLIAM LYKES under authority of the document above described, on or about 7 February 1956, while said vessel was in the port of New Orleans, Louisiana, he assaulted and battered Newburn Redding, a member of the crew by cutting him with a sharp instrument and by striking him with his (Appellant's) fists.

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. The Investigating Officer introduced in evidence the testimony of three members of the crew including the seaman allegedly assaulted, the Junior Third Mate, and oiler Holloway who observed part of the first phase of the fight after it had started. The Investigating Officer also introduced in evidence the testimony of a Public Health Service physician who treated Redding for injuries received in his encounter with Appellant.

In defense, Appellant offered in evidence his sworn testimony. Appellant stated that the fight ended after the two men wrestled on the bunk without the use of any weapons.

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 revoking Appellant's Merchant Mariner's Document No. Z-136902 and all other licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority.

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

FINDINGS OF FACT

On 7 February 1956, Appellant was serving as an oiler on board the American SS WILLIAM LYKES and acting under authority of his Merchant Mariner's Document No. Z-136902 while the ship was undergoing repairs at New Orleans, Louisiana.

Shortly before 1600 on this date, fireman-watertender Redding started to move his belongings into Appellant's room in order to share the room with him. Appellant objected to Redding bringing an electric fan into the room. This led to an argument resulting in Appellant striking Redding. They wrestled on Appellant's bunk until Redding pinned Appellant and then let him up.

Appellant left the room and returned with a long-blade pocket knife in his hand. Appellant stated that he would "get him now" and struck Redding in the left eye with a fist. During the ensuing fight, appellant used the knife to stab Redding in the calf of his left leg. Redding's dungarees were cleanly cut in a corresponding place in the left leg.

After the fight, there was blood on the bedding from the middle to the head of Appellant's bunk. There was no blood at the foot of the bunk where Appellant claims that Redding cut his leg on a sharp metal point of the coaming around a shelf. In an investigation later on the same day, the Junior Third Mate determined that there was no such sharp point or edge which could have caused the injury to Redding's leg. The next morning Appellant pointed out a sharp edge, on a shelf, which had not been there on the previous day.

Redding was given first aid on the ship and the taken to the Public Health Service Hospital. The leg injury was diagnosed as a stab wound. There were no bruises around the half-inch deep cut. Three stitches were taken in Redding's leg. Three stitches were also required for a cut at the edge of his left eye. In addition, Redding suffered a blackened left eye and a bruise on his forehead.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner Appellant contends that:

1. There is no evidence that Appellant was given notice of his right to counsel.
2. Appellant was no represented by counsel.
3. The Examiner permitted leading questions and hearsay evidence.
4. The Examiner did not find the charge and specifications

proved before revoking Appellant's documents.

5. There is no testimony which shows that Redding was not the aggressor, nor whether Appellant struck Redding in self-defense.
6. It was reversible error to receive in evidence the statement by Redding that, after the fight, he told a fireman that a knife was used.
7. There is no substantial evidence that Appellant assaulted and battered Redding by cutting him with a sharp instrument.
8. The Examiner made a substantial error in judgment and an abuse of his discretion by concluding, on the bases of three minor conflicting statements Appellant, that Appellant was not telling the truth in his testimony.
9. The Examiner erred in permitting the Investigating Officer to demonstrate that the metal coaming of the shelf at the foot of the bunk could not have inflicted the cut on Redding's leg.
10. The Examiner erred in receiving evidence that there was blood in the middle of the bunk and in inferring that the blood came from Redding's leg injury rather than the cut on the edge of his eye.
11. The only evidence relating directly to the assault and battery was given by the alleged victim without corroboration.
12. The Examiner's opinion Redding's leg was cut with a sharp instrument is not supported by the facts.

In conclusion, Appellant respectfully submits that the charges should be dismissed or, alternatively, a rehearing should be granted.

APPEARANCE ON APPEAL: Clarence E. Moses, Esquire, of Mobile,

Alabama, of Counsel.

OPINION

The above findings of fact are in accord with the Examiner's judgment as to the credibility of the witnesses. Questions of credibility are for the trier facts and his determination will not be disturbed unless they are clearly erroneous.

The Examiner specifically accepted the version of the incident presented by Redding and rejected the testimony of the Appellant. Redding stated that his recollection was vague as to what happened after he was struck in the eye by Appellant. But Redding's testimony is perfectly clear concerning Appellant's return with an open pocket knife in his hand. In addition to the three conflicting statements by Appellant, the inference that Redding's leg was cut by the knife is supported by several factors: the absence of blood by the shelf at the foot of the bunk; the Junior Third Mate's testimony that there was no sharp metal edge on the shelf at the foot of the bunk until the next morning; the clean cut in the dungarees worn by Redding at the time; and the diagnosis by the Public Health Service physician who treated Redding's injuries on the day of the incident. This corroborating evidence leads to the only logical conclusion that Appellant cut Redding in the leg with the knife. Hence, the presence of a few harmless leading questions and the admission of hearsay evidence (Redding's statement to the fireman immediately after the fight was spontaneous exclamation and therefore an exception to the hearsay rule) are not considered to have been prejudicial to Appellant.

With respect to the beginning of the fight, Redding specifically stated that Appellant struck the first blow after the argument started. This testimony was accepted by the Examiner.

The record shows that Appellant was advised of his right to counsel by both the Examiner and the Investigating Officer.

There is no support in the record for the contention that the Examiner revoked Appellant's documents before finding the charge specifications proved.

The attempt of the Investigating Officer to demonstrate that

the metal coaming could not have caused the leg injury is superfluous to the proof of the specifications. Also, there is no indication that it was prejudicial to Appellant.

The dictates of order and discipline require that a seaman's documents be revoked after having been found guilty of assault and battery with a deadly weapon.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 10 February 1956, is AFFIRMED.

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

Dated at Washington, D. C., this 11th day of May, 1956.

***** END OF DECISION NO. 890 *****

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