

In the Matter of Merchant Mariner's Document No. Z-922935 and all
other Licenses and Documents
Issued to: WILLARD J. BURLEY

DECISION AN FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

908

WILLARD J. BURLEY

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 April 1950, an Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended Merchant Mariner's Document No. Z-922935 issued to Willard J. Burley upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as an ordinary seaman on board the American SS GULF SHIPPER under authority of the document above described, on or about 30 March 1956, while said vessel was at sea, he assaulted and battered by striking with his fists, Robert C. Echolds and Eugene Haat, fellow crew members.

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 voluntary elected to waive that right and act as his own counsel. He entered a plea of "guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement. Appellant stated that he had nothing to say when he was afforded the opportunity to present mitigating circumstances. NO evidence was introduced by either party.

At the conclusion of the hearing, the Examiner announced his decision and concluded that the charge and specification had been proved by plea. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-922935, and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of six months.

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

FINDINGS OF FACT

On 30 March 1956, Appellant was serving as an ordinary seaman on board the American SS GULF SHIPPER and acting under authority of his Merchant Mariner's Document No. Z-922935 while the ship was at sea.

On this date, Appellant used his fists to assault and batter two other members of the crew, Robert C. Echolds and Eugene Haat.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Although Appellant admits that Echolds suffered a slight concussion and Haat's nose was broken, Appellant feels that the order is too severe in view of his 5 years service without any prior record. Appellant requests that the suspension be made partially probationary so that he can support his family. Appellant states that he was silent at the hearing, as to the cause of his conduct, because of personal reasons between himself and the other two seamen.

OPINION

The above findings of fact are limited to the allegations in the specification since no evidence was introduced to establish matters of aggravation or mitigation as provided for in 46 CFR 137.09-50(b). The Investigating Officer's opening statement does not constitute evidence.

Appellant's contentions on appeal do not state anything which would justify a modification of the Examiner's order. Appellant's prior record is commendable and the personal hardship involved is unfortunate. Nevertheless, the order of suspension must be severe in cases such as this where a seaman is guilty of an attack upon his shipmates, which attack was unprovoked insofar as the record discloses. Under these circumstances, the order of six months' suspension is not considered to be too severe.

ORDER

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

A.C. Richmond

Dated at Washington, D.C., this 14TH day of AUGUST, 1956.

***** END OF DECISION NO. 908 *****

[Top](#)