In the Matter of Merchant Mariner's Document No. Z-374094 and all other Licenses, Certificates and Documents
Issued to: FRANK J. HROZEK

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

925

FRANK J. HROZEK

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 26 January 1956, an Examiner of the United States Coast Guard at Houston, Texas, suspended Merchant Mariner's Document No. Z-374094 issued to Frank J. Hrozek upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as an able seaman on board the American SS NATALIE O. WARREN under authority of the document above described, on or about 15 December 1955, he assaulted a member of the crew, able seaman Adolphe Brown, with a dangerous weapon: to wit, a knife.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the right 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 proffered against him.

Thereupon, the Investigating Officer make his opening

statement and introduced in evidence the testimony of three witnesses including that of seaman Adolphe Brown. Appellant and Brown were the only eyewitnesses to the fight between them on 15 December 1955.

In defense, Appellant offered in evidence his sworn testimony and the testimony of six other witnesses. Appellant stated that he used the knife in self-defense when Brown attacked Appellant while he was lying in his bunk and Appellant was in fear of losing his life.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and specification had been proved. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-374094, and all other licenses, certificated 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 a voyage including the dates of 14 and 15 December 1955, Appellant was serving as an able seaman on board the American SS NATALIE O. WARREN and acting under authority of his Merchant Mariner's Document No. Z-371094 while the ship was enroute from Newark, New Jersey to Houston, Texas. Adolphe Brown was also serving as an able seaman. These two seamen shared a room on the ship with another able seaman. Appellant and Brown were approximately the same size and age.

Prior to 14 December, Appellant and Brown were on reasonable friendly terms. On this date, these two seamen engaged in two brief fist fights as a result of their disagreement concerning overtime work. Both of these fights were provoked by Brown. Only minor injuries were received by each of them although Brown was not injured as much as Appellant was. The two seamen assured the Master that there would be no more trouble between them.

Nevertheless, Appellant's living quarters were moved to the ship's hospital after his request to be separated from Brown.

At approximately 1200 on 15 December 1955, Brown entered the ship's hospital while Appellant was lying on his bunk. Nobody else was present. An argument started and soon developed into a fight. After a brief struggle, Appellant managed to take his knife out of his pocket, open the blade and cut Brown several times. Brown suffered two serious knife wounds - one in the chest and one in the left arm - and comparatively minor lacerations. Brown was removed from the ship to a Coast Guard cutter for medical treatment and hospitalization. Appellant was not seriously injured.

Appellant has no prior record.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner.

Appellant contends that:

POINT 1. The evidence is insufficient to support the specification. The two unprovoked attacks upon Appellant by Brown on 14 December and Brown's unauthorized presence in the ship's hospital on 15 December show that Brown initiated the fight on the latter date. Since Appellant was "in fear of his life" after 14 December, the use of a knife on 15 December was justified.

POINT 2. As a matter of law, Appellant was entitled to use any instrument to protect himself from bodily harm or death when Brown committed a premeditated attack upon Appellant on 15 December.

POINT 3. Appellant was denied his Constitutional right of trial by jury.

POINT 4. Appellant was deprived of his property (his right to earn a living) without due process of law.

APPEARANCE: Milton H. Mulitz, Esquire of Houston, Texas, of

Counsel.

OPINION

I concur with the conclusion of the Examiner that Appellant's conduct was not justified on the theory of self-defense. The following statement is contained in *5 Corpus Juris 748-9:*

> "The use of deadly weapons to repel a simple assault is not ordinarily justified, but it may be where the use of such weapon is necessary to prevent the threatened injury, as where there is a great disparity in the physical strength of the parties. Nor when a person is threatened with death or great bodily injury is he required to use all means consistent with his safety to avoid the danger which apparently threatens him, in order to avert the necessity for the employment of force in self-defense."

Appellant and Brown were about the same size. Since Appellant was not seriously injured when they fought with their fists on 14 December, there was no reasonable basis for Appellant to fear great bodily harm or death on 15 December. Hence, there was no legal justification for the use of a dangerous weapon by Appellant. This is in line with the doctrine that excessive force may not be used in self-defense. Consequently, Appellant was guilty as charged regardless of who initiated the fight in which Brown was seriously injured. This does not exonerate Brown's unauthorized presence in the ship's hospital.

There is no Constitutional provision for trial by jury in these remedial, administrative proceedings as there is for criminal prosecution in the courts.

In accordance with the requirements of due process, Appellant was granted a fair hearing and the Examiner's findings and conclusions were based upon substantial evidence. By his own actions, Appellant forfeited his right to hold a seaman's document.

In view of the serious injuries to Brown, it is my opinion that Appellant deserved the six months suspension imposed by the Examiner regardless of Appellant's prior record.

ORDER

The order of the Examiner dated at Houston, Texas, on 26 January 1956 is AFFIRMED.

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

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

***** END OF DECISION NO. 925 *****

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