

In the Matter of Merchant Mariner's Document No. Z-815278 and all
other Licenses and Documents
Issued to: MAURO CARVACHE

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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MAURO CARVACHE

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 8 November 1956, an Examiner of the United States Coast Guard at New York, New York, suspended Merchant Mariner's Document No. Z-815278 issued to Mauro Carvache upon finding him guilty of misconduct. The specification alleges that while serving as a fireman-watertender on board the American SS REMSEN HEIGHTS under authority of the document above described, on or about 18 January 1956, while said vessel was in the port of Singapore, Appellant assaulted and battered the Third Assistant Engineer of the ship.

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. 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.

The Investigating Officer made his opening statement. He then

introduced in evidence a certified copy of an entry in the ship's Official Logbook as well as depositions of the Third Assistant Engineer and the Fourth Assistant Engineer.

In defense, Appellant offered in evidence his sworn testimony and that of the oiler on watch at the time of this incident. Appellant stated that the heat in the engine room made him sick after he went on watch; he was told to go above to his room; and he has no recollection of doing anything between 1630 and 1800 except going to his room and falling asleep.

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-815278, and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of three months outright and three months on probation until eighteen 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 18 January 1956, appellant was serving as a fireman-watertender on board the American SS REMSEN HEIGHTS and acting under authority of his Merchant Mariner's Document No. Z-815278 while the ship was anchored at Singapore.

Appellant returned to the ship at approximately 1400 on this date. He relieved the watch at 1600 in the engine room where it was very hot because one of the two blowers had been broken for some time and was not in operation.

At 1630, Appellant appeared at the door of the Third Assistant Engineer's room. The latter person and the Fourth Assistant Engineer were in the room. Appellant was covered with fuel oil. He asked the Third Assistant who was on watch and was told that the Second Assistant was. Appellant said there was no one in the

engine room and he wanted the Third Assistant to go below in order to see what had happened. The Third Assistant told Appellant to see the Second Assistant and moved toward the door in order to see if the Second Assistant was in his room. Appellant made a derogatory remark about the Second Assistant and suddenly struck the Third Assistant at least three blows with his fists. The Fourth Assistant intervened and Appellant left when he was told to do so. Appellant seemed to be sick and in a dazed condition at the time of this incident. He slept until he resumed his watch shortly after 7800 and appeared to be normal at this time.

Appellant has no prior record.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the allegations are not sustained by the evidence. The Examiner was not in a position, without benefit of expert testimony, to make a finding that Appellant's illness did not cause his state of mind to be irrational. the logical inference that Appellant was irrational when he attacked the Third Assistant follows from the fact that there is no evidence to indicate a motive or provocation for the assault. Therefore, only an irrational person would have acted as Appellant did. This proposition is also supported by the fact that Appellant was placed under observation and confinement for thirteen days after the ship returned to the United States.

For these reasons, it is respectfully requested that the order be set aside or that Appellant be placed on probation in view of his prior unblemished record. The three months outright suspension creates an undue hardship for Appellant and his family.

APPEARANCE: Arthur S. Schapira, Esquire, of New York City, of Counsel.

OPINION

Appellant's sick and dazed condition apparently resulted from the fact that Appellant drank three or four bottles of beer before

returning to the ship to stand his watch and the effect of the beer was accentuated by the excessive heat in the engine room due to a broken blower. Nevertheless, I am not able to agree that any irrationality which was induced by this condition was an excuse for Appellant's attack upon the Third Assistant Engineer. Appellant carried on a fairly normal conversation with the Third Assistant before striking him. Afterward, Appellant left the Third Assistant's room without the use of force. This does not indicate Appellant's state of mind was such as to make him irresponsible for his acts. It is my opinion that no expert testimony is required in order to make this determination based on the facts of the case. After later observation ashore, it was concluded that Appellant was fit for sea duty.

The record indicates that Appellant became angry because the Third Assistant would not go below to the engine room. The normal degree of irritation which this refusal would have caused may well have been aggravated by Appellant's illness. This does not justify striking another member of the crew.

The Examiner rejected Appellant's testimony that he had no recollection of seeing or striking the Third Assistant. In any event, voluntary intoxication does not excuse or justify an assault (5 *Corpus Juris*, Assault and Battery, sec. 254) and, presumably, appellant's condition was brought about by his indulgence in beer while ashore when he knew he had to go on watch in the poorly ventilated engine room. There is no clear evidence that any other member of the crew was similarly affected by the engine room temperature. Hence, this incident occurred through appellant's fault alone.

Assaulting a ship's officer is a serious offense since it is a breach of discipline and order committed against one having a major responsibility for the safety of the crew and ship. Consequently, the order imposed is justified and it will be sustained despite the personal hardship to Appellant and his prior unblemished record.

ORDER

The order of the Examiner dated at New York, New York, on 8 November 1956, is AFFIRMED.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 22nd day of March, 1957.

***** END OF DECISION NO. 957 *****

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