

In the Matter of Merchant Mariner's Document No. Z-734523-D2 and
all other Licenses and Documents
Issued to: JUAN ANTONIO G. MARTINEZ

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

971

JUAN ANTONIO G. MARTINEZ

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 14 August 1956, an Examiner of the United States Coast Guard at San Francisco, California, suspended the seaman documents of Appellant upon finding him guilty of misconduct. The three specifications allege in substance that while serving as a messman on board the American SS F. J. LUCKENBACH under authority of the document above described, on or about 6 July 1956, while said vessel was at Guam Island, Appellant wrongfully engaged in a fight with the Chief Cook of the vessel, Joseph Campbell (First Specification); he assaulted the Chief Cook with a knife (Second Specification); and Appellant wrongfully struck the Chief Cook while ashore at the Seamen's Club (Third Specification).

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.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of four witnesses including that of the Chief Cook.

In defense, Appellant offered in evidence his sworn testimony. Appellant stated that he was grabbed by the Chief Cook and pushed out of the pantry after asking the Chief Cook for the key to the icebox; Appellant did not threaten the Chief Cook with a knife; and in the Seamen's Club, Appellant struck the Chief Cook when he tried to attack Appellant from the rear.

At the conclusion of the hearing, the Examiner announced his decision and concluded that the charge and three specifications had been proved. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-734523-D2, 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 outright and six months 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 6 July 1956, Appellant was serving as a messman on board the American SS F. J. LUCKENBACH and acting under authority of his Merchant Mariner's Document No. Z-734523-D2 while the ship was at Guam Island.

Between 1530 and 1630 on this date, Appellant was twice ordered by Chief Cook Campbell to leave the galley because Appellant was interfering with the work of the cooks who were preparing the evening meal. Appellant left the galley on both occasions. Shortly thereafter, Appellant again entered the galley and walked between the Chief Cook and the galley range where the latter was frying fish. The Chief Cook again ordered Appellant to leave the galley but he did not do so. The Chief Cook, a larger

man than Appellant, took hold of Appellant's arm and led him to the galley door. At this time, Appellant struck the Chief Cook with his fist. The Chief Cook grabbed Appellant and held him until other members of the crew separated the two seamen. The Chief Cook returned to work in the galley and Appellant went to the pantry.

A few minutes later, Appellant picked up a French knife with a ten-inch blade, held it by the point with his fingers and raised it in a position as though he were going to throw the knife at the Chief Cook from a distance of about ten feet. The latter saw this gesture by Appellant and was afraid that he was going to throw the knife. Appellant put the knife down after a few seconds. The Chief Steward and Chief Cook then reported the incident to the Master. Appellant was relieved of his duties for the balance of the day.

Later in the evening, the Chief Cook was sitting at a table in the Seamen's Club with the Chief Steward when Appellant approached from behind and used his fist to strike the Chief Cook on the side of his face. The Chief Cook held Appellant in order to prevent further blows before they were separated. The Chief Cook was not visibly injured by the blow.

Appellant's prior record consists of probationary suspensions in 1946 and 1955 for wrongful presence in passenger quarters and for failure to attend shipboard drills.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the evidence is insufficient to support the findings of fact essential to the proof of the specifications; and the order of suspension imposed is too severe even if the evidence supports the specifications.

OPINION

There is substantial evidence to support each of the three specifications. The above findings of fact are substantially in accord with the testimony of the Chief Cook. His testimony is corroborated by the Chief Steward and a fellow messman with respect

to the First Specification, and by the Chief Steward as to the Third Specification. Appellant's testimony that he was in the galley attempting to get the icebox key from the Chief Cook is discredited by the Chief Cook and two other witnesses who stated that the key was not in the possession of the Chief Cook but was hanging on a hook in the galley. In any event, this issue is irrelevant except with respect to the credence to be given Appellant's testimony. The evidence indicates that Appellant initiated the trouble throughout the incidents under consideration.

Nevertheless, it is my opinion that the order should be modified to reduce the outright portion of the suspension to three months in view of the mildness of the two attacks upon the Chief Cook. Also, the record indicates that Appellant's technical assault with the knife was only for the purpose of frightening the Chief Cook rather than having been done with the intention of throwing the knife at him.

ORDER

The order of the Examiner dated at San Francisco, California, on 14 August 1956, is modified to provide that Merchant Mariner's Document No. Z-734523-D2, and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority, are suspended outright for a period of three (3) months. Appellant's documents are further suspended for an additional nine (9) months which shall not become effective provided no charge under R.S. 4450, as amended (46 U.S.C. 239), is proved against Appellant for acts committed during the period of the outright suspension or within nine (9) months of the termination of the outright suspension.

As so MODIFIED, said order is

AFFIRMED.

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

Dated at Washington, D. C., this 28th day of June, 1957.

***** END OF DECISION NO. 971 *****

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