

In the Matter of Merchant Mariner's Document No. Z-734429-D1
Issued to: LEROY BROWN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

981

LEROY BROWN

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 28 November 1956, an Examiner of the United States Coast Guard at New York, New York, suspended Appellant's seaman documents upon finding him guilty of misconduct. Two specifications allege, in substance, that while serving as a fireman-watertender on board the American SS FLYING CLOUD under authority of the document above described, on or about 28 August 1956, while said vessel was at Tokuyama, Japan, Appellant wrongfully failed to perform his duties from 2000 to 2400; and on or about 26 September 1956, while the ship was at San Francisco, California, Appellant assaulted and battered a U.S. Customs Guard named Steven Perry.

At the hearing, Appellant entered pleas of "guilty" to the charge and each of the above two specifications. No evidence was presented by either party with respect to these two specifications. Subsequently, a third specification was found not proved and dismissed by the Examiner.

At the conclusion of the hearing, the Examiner determined that the charge and two specifications had been proved by plea. He entered the order suspending Appellant's Merchant Mariner's Document No. Z-734429-D1, and all other licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of twelve months outright and twelve months on probation until twenty-four 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 28 August 1956, Appellant was serving as a fireman-watertender on board the American SS FLYING CLOUD and acting under authority of his Merchant Mariner's Document No. Z-734429-D1 while the ship was at Tokuyama, Japan. On this date, Appellant failed to perform his duties from 2000 to 2400.

While serving in the above capacity on 26 September 1956, Appellant assaulted and battered U.S. Customs Guard Steven Perry. Appellant was convicted in a Federal court for this offense and served 45 days in jail.

Appellant's prior record consists of a probationary suspension in 1949 for failing to perform his duties and destroying ship's property; an admonition in 1951 for failing to perform his duties; six months outright suspension plus probation in 1951 for offenses including obscene language to a junior engineer and threats to strike him; six months outright suspension in 1955 for directing vile language toward, and threatening, a superior officer on board ship.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the suspension imposed is too severe for the two offenses involved. After drinking ashore upon his return from a long voyage, Appellant took one swing at the

Guard since Appellant was surprised when the Guard put his hands in Appellant's pockets to search him. The only other offense consisted of missing one watch.

The assault offense was adequately disposed of by the U.S. Government when Appellant was punished by imprisonment for this act which occurred ashore rather than on the ship. This order of suspension constitutes a second punishment for the same offense.

In conclusion, it is respectfully urged that the severity of the suspension be reconsidered.

APPEARANCE ON APPEAL: Murray A. Miller, Esquire, of New York City, of Counsel.

OPINION

Appellant's contention that the suspension of his seaman documents constitutes a second punishment for the offense of assault and battery upon a U.S. Customs Guard is without merit. Such action taken under 46 U.S.C. 239 has been held consistently to be a remedial sanction rather than a penal one since the primary purpose is not to punish the seaman but to act as a deterrent in the future for the protection of other persons in contact with the seaman in his capacity as an employee on a merchant vessel. This position is fortified by 46 U.S.C. 239(h) which provides for the referral of evidence of criminal liability to the Attorney General for prosecution under the Criminal Code, thus recognizing and providing for the separability of the penal from remedial or administrative actions. There is also a distinction with respect to the degree of proof required in these proceedings (substantial evidence) and criminal actions (proof beyond a reasonable doubt). Although there is some element of punishment involved when a seaman's document is suspended or revoked, this does not constitute double jeopardy within the meaning of the Fifth Amendment of the Constitution of the United States since such a suspension or revocation is not a criminal penalty or a matter of criminal record.

Although the assault by Appellant did not take place on the ship, Appellant was still employed on the vessel and, therefore, subject to charges conducted under 46 U.S.C. 239. From the above

stated purpose of these proceedings, it is evident that Appellant's conviction in the Federal court did not adequately serve the purpose of this hearing against Appellant's documents even though the offense was committed ashore.

Under these circumstances and in view of Appellant's prior record of offenses of the same general nature as are here under consideration, it is my opinion that the order of suspension imposed by the Examiner is an appropriate one which will tend to discourage Appellant from such conduct in the future while he is employed on a merchant vessel of the United States.

ORDER

The order of the Examiner dated at New York, New York, on 28 November 1956, is AFFIRMED.

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

Dated at Washington, D. C., this 21st day of August, 1957.

***** END OF DECISION NO. 981 *****

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