

In the Matter of Merchant Mariner's Document No. Z-253659-D3 and
all other seaman Documents
Issued to: ARCHIE LUTHER YOUNG

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

996

ARCHIE LUTHER YOUNG

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 15 January 1957, an Examiner of the United States Coast Guard at New York, New York, revoked Appellant's seaman documents upon finding him guilty of misconduct. Two specifications allege that while serving as an ordinary seaman on the American SS GEORGE M. CULUCUNDIS under authority of the document above described, on or about 20 April 1954, Appellant assaulted and battered crew Wendell J. Pander with a dangerous weapon, to wit: a bottle; and on or about 21 April 1954, Appellant again assaulted and battered the same seaman.

At the time of service of the charge and specifications, 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 not present or represented by counsel at the beginning of the hearing on 15 June 1956 or thereafter during the course of the proceedings. The Examiner entered pleas of not guilty to the charge and specifications on

behalf of Appellant and conducted the hearing *in absentia*.

The Investigating Officer made his opening statement and introduced in evidence several documentary exhibits. After numerous adjournments, the Investigating Officer presented in evidence the testimony of John Shumchenia and two depositions - that of the Chief Mate and that of the seaman alleged to have been attacked by Appellant.

Several unsuccessful attempts were made by the Examiner to inform Appellant by letter of these adjournments but all such letters were returned undelivered. On 12 December 1956 at Seattle, Washington, Appellant acknowledged receipt of written notice that the hearing in his case would be reconvened on 19 December 1956 in New York City. Appellant shipped out on a foreign voyage on the latter date.

At the conclusion of the hearing, the oral argument of the Investigating Officer was heard and he was given an opportunity to submit proposed findings and conclusions. The Examiner then announced the decision in which he concluded that the charge and two specifications had been proved. An order was entered revoking all documents issued to Appellant.

The decision was served on 1 March 1957 at which time Appellant surrendered a temporary waiver which had been authorized pending issuance of a duplicate document. Appeal was timely filed on 21 March 1957 through counsel. No elaboration of the notice of appeal has been received from Appellant or his counsel.

FINDINGS OF FACT

On 20 and 21 April 1954, Appellant was in the service of the American SS GEORGE M. CULUCUNDIS as an ordinary seaman and acting under authority of his Merchant Mariner's Document No. Z-253659-D3 while the ship was in the port of Shimizu, Japan.

At approximately 1600 on 20 April 1954, able seaman Wendell J. Pander and deck maintenanceman John Shumchenia entered a barroom ashore where Appellant and a seaman from another ship were in a discussion. Appellant joined Pander and Shumchenia when the other

seaman left. Appellant and Pander commenced arguing with each other. This continued while Shumchenia went to the head. The latter was returning in time to see Appellant strike Pander on the head with a bottle full of beer. The bottle was broken and Pander was knocked unconscious. Appellant kicked Pander in the head while he was on the floor. When Shumchenia tried to intervene, Appellant attempted to strike Shumchenia and then kicked Pander again. Appellant stopped his attack and left the scene while Pander was still unconscious. Pander was removed to a hospital where about 25 stitches were taken on his head, face and the inside of his mouth. Appellant was temporarily detained by the local police before being released in the custody of the Master of the ship.

Pander returned to the vessel on the following morning. He entered the quarters which he shared with Appellant in order to change his clothes Appellant again attacked Pander and reopened some of the wounds received the day before. The Chief Mate and Shumchenia were attracted to the scene by Pander's screams and then groans. When the Chief Mate entered the room, Pander was lying on the deck on his back. Appellant was straddling Pander while attempting to lift him from the deck. Pander was taken to the hospital for further treatment.

Appellant was a younger man than Pander and much larger weighing at least 200 pounds. Pander did not weigh more than 150 pounds.

Various members of the crew protested against Appellant's continued presence on board the ship. As a result, Appellant was removed from the ship by the American Consul at Fukuoka, Japan, on 26 April 1954.

Appellant's prior record includes a three month's suspension in 1946 for assault and battery a fellow crew member.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the Examiner erred in his findings of fact; there was not sufficient evidence of a fight between Appellant and Pander; there was no evidence by Appellant that he was not acting in self-defense; Appellant did not realize

the seriousness of the charges because of his limited education; Appellant was at sea when communication were sent to him concerning the dates of the hearing.

APPEARANCE ON APPEAL: Joseph S. Kane, Esquire, of Seattle,
Washington, of Counsel

OPINION

The Examiner was correct *in* conducting the hearing *in absentia*, in accordance with 46 CRF 137.09-5(f), on 15 June 1956 and subsequent dates. When the Investigating Officer served the charge and specifications on 14 May 1956, Appellant was apprised of the fact that the hearing would be held *in absentia* if Appellant was not present at the commencement of the hearing on 15 June 1956 and that one of the possible outcomes was revocation of Appellant's document. As indicated above, Appellant was again contacted on 12 December and given written notice that the hearing would reconvene on 19 December whether or not Appellant was present. Under these circumstances, neither Appellant's claimed ignorance as to the seriousness of the offenses through lack of education nor his failure to receive other attempted notifications of hearing date while he was at sea is an excuse. By his failure to appear at the hearing, Appellant forfeited his right to submit evidence that he was acting in self-defense when he twice attacked Pander. The record does not in any way support such a version of the incidents.

As to the merits of the case, my above findings of fact are in accord with those of the Examiner. These findings are based on the testimony of the witness Shumchenia who was with Pander in the barroom, the deposition of Pander and the deposition of the Chief Mate. This uncontradicted evidence was accepted by the Examiner and there appears to be no reason to question its credibility. It is not inherently improbable or unreasonable due to other circumstances or facts presented in the case. Consequently, it constitutes substantial evidence in support of the two specifications. Hence, there is no basis for the contentions that the Examiner's findings were erroneous and that the evidence is insufficient.

In view of the vicious nature of these attacks by Appellant, the only suitable order is one of revocation. Appellant hit Pander on the head with a bottle, kicked him while unconscious and reopened some of his wounds the next day. Appellant also has a prior record of assault and battery while serving on a merchant vessel. For these reasons, the order imposed by the Examiner is considered to be the only suitable one in this case.

ORDER

The order of the Examiner dated at New York, New York, on 15 January 1957, is AFFIRMED.

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

Dated at Washington, D. C., this 16th December 1957.

***** END OF DECISION NO. 996 *****

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