

In the Matter of Merchant Mariner's Document No. Z-929599
and All Other Seaman Documents

Issued to: JOHNNIE CHEATHAM

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1096

JOHNNIE CHEATHAM

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 28 February 1958, an Examiner of the United States Coast Guard at Corpus Christi, Texas revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification alleges that while serving as a messman on board the United States SS THOMPSON LYKES under authority of the document above described, on or about 20 February 1958, Appellant assaulted and battered Steward Pio Espirito by striking him.

After considering the evidence which consisted of testimony of the Appellant, the Steward and several other members of the crew, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. An order was entered revoking all documents issued to Appellant.

FINDINGS OF FACT

On 20 February 1958, Appellant was serving as a messman on board the United States SS THOMPSON LYKES and acting under authority of his Merchant Mariner's Document No. Z-929599 while the ship was in the port of Corpus Christi, Texas.

On this date, Appellant pushed Chief Steward Pio Espiritu during in the galley concerning the whereabouts of Appellant's overtime slip. The Steward did not fall down but his back struck a piece of galley equipment as a result of the shove by Appellant. No injuries to the Steward were discernible at the time of the hearing two days later.

On the request of the Steward, the Junior Third Mate called the local police and Appellant was fined ten dollars for this offense.

Appellant's prior record consists of a six months' suspension imposed on 20 February 1958 for brandishing a knife in a threatening manner on 19 February 1958. The Steward was one of the several witnesses who appeared against Appellant at the hearing for this offense.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that he did not push the Steward until he used abusive language. Appellant thought that the argument had changed its course and he committed this mild assault without further reflection. Appellant feels that he should be found not guilty and his document returned.

OPINION

The Examiner found that the specification was proved to the extent that Appellant either pushed or slapped the Steward and this force caused him to come into very slight contact with something in the galley. The Steward testified that he fell to the deck when he was pushed or slapped by Appellant and then latter repeatedly kicked the Steward causing painful injuries which were treated by a physician ashore. Appellant testified that he merely pushed the Steward, he did not fall to the deck, and he was not kicked by Appellant. No other eyewitnesses to the incident testified at the hearing. The only additional, material finding by the Examiner was

that Appellant did not kick the Steward. The Examiner also implied that he did not think that the Steward fell to the deck. Thus, the Examiner substantially rejected all of the Steward's testimony on these issues except that he was pushed or slapped by Appellant and accepted the latter's testimony with the reservation by the Examiner as to the exact manner in which Appellant physically contacted the Steward.

In view of these strong indications that the Examiner, as the trier of the facts who observed the demeanor of the witnesses, considered Appellant's testimony to be more credible than that of the Steward, my above findings of fact, adopt Appellant's version that he pushed the Steward with insufficient force to cause more than very minor injuries, at most, when he struck some object as a result of the force of the shove. When the Steward's shoulder and back were examined at the hearing on 22 February, the alleged injuries were not discernible. The ten-dollar fine imposed by the local authorities also denotes that the Steward was not seriously injured.

Appellant admits that he shoved the Steward but the circumstances indicate that the battery was a very mild one, as contended, which does not justify the order of revocation despite the similar offense on the preceding day. On the basis of my prior decisions on appeal, the present offenses would call for a suspension of not more than three months if it were an isolated incident. But since it occurred so shortly after the offense of 19 February, it is my opinion that the fairest disposition is to modify the order to a suspension of six months to commence running after the completion of the six months' suspension for the prior offense.

ORDER

The order of the Examiner dated at Corpus Christi, Texas, on 28 February 1958, is modified to provide for an outright suspension of all Appellant's documents for a period of six (6) months.

As so MODIFIED, said order is

AFFIRMED.

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

Dated at Washington, D.C., this 4th day of May, 1959.

***** END OF DECISION NO. 1096 *****

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