

In the Matter of License No. 152958 Merchant Mariner's Document No.
Z-794475-D1 And All Other Seaman Documents
Issued to: RICHARD PRICE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1122

RICHARD PRICE

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 29 January 1959, an Examiner of the United States Coast Guard at Long Beach, California suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as Third Assistant Engineer on board the United States SS MORMACLAND under authority of the license above described, on or about 13 September 1958, Appellant assaulted and battered a fellow ship's officer, Charles Crawford (Third Mate).

At the hearing, Appellant was represented by counsel of his own choice. Appellant entered a plea of not guilty to the charge and specification. Both parties made opening statements.

The Investigating Officer introduced in evidence the testimony of Third Mate Crawford, testimony of two witnesses who did not see the incident, and two documentary exhibits.

In defense, Appellant offered in evidence his sworn testimony and that of the licensed Junior Engineer who was an eyewitness to the events in issue. Appellant testified that Crawford agreed to a fight on the dock; Crawford struck Appellant on the back of the head when he turned to go down the gangway; several blows were exchanged before Crawford fell to the deck; the licensed Junior Engineer then grabbed Appellant; as the two seamen scuffled, Appellant stepped over Crawford but did not kick or stamp him.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant's counsel were heard and both parties were given an opportunity to submit proposed findings and conclusions. The Examiner rendered the decision in which he concluded that the charge and above specification had been proved. An order was entered suspending all documents, issued to Appellant, for a period of three months outright plus nine months on twelve months' probation.

FINDINGS OF FACT

On 13 and 14 September 1958, Appellant was serving as Third Assistant Engineer on board the American SS MORMACLAND and acting under authority of his License No. 152958 while the ship was in the port of Rio Grande, Brazil.

Shortly before midnight on 13 September, Appellant returned on board in a somewhat intoxicated condition and went to the officers' saloon. Others were present when Third Mate Crawford entered the saloon and left in a few minutes to complete standing the 2000 and 2400 watch. No words were exchanged by the two officers at this time.

About 0030 on 14 September, the Third Mate had been relieved of the watch when he was accosted by appellant in the passageway outside of the officers' saloon. Appellant accused the Third Mate of insulting a girl in Santos, Brazil three or four days earlier and demanded that he apologize or go on the dock to settle the matter. (Appellant is a much larger and younger man than Third Mate Crawford.) The Third Mate denied the accusation and accompanied Appellant in the direction of the gangway as they engaged in a very heated exchange of words.

When they were near the gangway, the Third Mate faced inboard with his back against the chain rail. Appellant was standing opposite the Third Mate facing outboard as the altercation continued. The loud voices attracted the attention of the licensed Junior Engineer who came out on deck in time to see the two seamen commence swinging their fists at the same time. Almost immediately, the Third Mate was knocked to the deck and kicked in the face and chest by Appellant. The Junior Engineer grabbed Appellant and scuffled briefly with him until he became quiet. The Third Mate remained on the deck until he was assisted to his room by the Junior Engineer.

The Third Mate's face was bloody and he complained of pains in his chest. After receiving first-aid treatment, he was taken to a local hospital in an ambulance. The Third Mate returned to the ship after emergency medical treatment but he was permanently removed from the ship and hospitalized in Buenos Aires shortly thereafter for eight days. Upon returning to the United States, X rays showed that Appellant had suffered an incomplete fracture of the breastbone and dislocation of the collarbone.

Appellant did not receive any medical attention as a result of this incident.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the decision contains inconsistencies, illogical reasoning, unsupported findings and unwarranted conclusions.

The Examiner accepted testimony by the licensed Junior Engineer which was unfavorable to Appellant but rejected his testimony that Appellant did not kick the Third Mate. Appellant testified that he did not kick the Third Mate but may have stepped on him. Neither the latter nor the Junior Engineer denied that the Third Mate's injuries might have been caused by his being stepped

on.

It is impossible to reconcile the Examiner's statement that this was an unprovoked assault with his acceptance of the Junior Engineer's testimony that the participants were calling each other names and then both started to swing at the same time.

In conclusion, it is stated that the decision should be reversed.

OPINION

There is no dispute concerning the facts that Appellant accosted the Third Mate and they walked together toward the gangway after the Third Mate was accused by Appellant of making an uncomplimentary remark about a girl in Santos. But there is a divergence of testimony as to how the fight started and whether Appellant was responsible for the injuries, shown by the X rays, by kicking the Third Mate while he was on the deck.

Both of the combatants testified that the other one struck the first blow. The Examiner rejected these versions in favor of the testimony of the only other eyewitness, the licensed Junior Engineer. He stated in substance, as set forth in the above findings of fact, that they both started fighting at the same time (R. 38, 41).

Because of the medical report in evidence as to the Third Mate's breastbone and collarbone injuries as shown by X rays, the Examiner rejected Appellant's testimony that he had not kicked the Third Mate. This, in effect, also discarded the Junior Engineer's testimony that he did not see Appellant kick the Third Mate. Appellant also testified that he stepped over the Third Mate while scuffling with the Junior Engineer but does not remember stepping on him. The Third Mate testified very definitely that he was kicked on the face and chest by appellant rather than that he was stepped on accidentally. That he was intentionally kicked is the only reasonable conclusion to reach in view of the injuries received by the Third Mate and the absence of any other logical explanation. Hence, there can be no proper objection to the acceptance of some of the Junior Engineer's testimony and the rejection of other portions of it. Since a "jury is free to

discard or disbelieve whatever facts are inconsistent with its conclusion * * * where there is an evidentiary basis for the jury's verdict" (*Lavender v. Kurn* (1946), 327 U.S. 645, 653), a hearing examiner who is the trier of the facts is equally free to do so.

There is some merit in Appellant's contention that it was inconsistent for the Examiner to state that his was an unprovoked assault and battery in the face of his findings that both men were angry and headed toward the gangway making abusive statements to each other after the Third Mate apparently had accepted Appellant's invitation to settle the matter on the dock. Although there was mutual provocation after the two men met outside the officers' saloon, there is no doubt that Appellant was the initial agitator and aggressor. Also, the acceptance of a challenge to fight does not justify an assault and battery committed during the fight. 5 *Corpus Juris*, Assault and Battery, sec. 24.

Appellant's several blanket contentions are not supported by the record.

Consequently, it is my opinion that the order of suspension imposed was lenient, particularly since the seamen involved were officers of the ship. Discipline on ships is primarily the responsibility of the officers. Therefore, they should set a good example with respect to maintaining discipline rather than personally disrupting it.

ORDER

The order of the Examiner dated at Long Beach, California, on 29 January 1959, is AFFIRMED.

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

Dated at Washington, D. C., this 12th day of November, 1959.

***** END OF DECISION NO. 1122 *****

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