

In the Matter of Merchant Mariner's Document No. Z-803432 and all
other Seaman Documents
Issued to: HERBERT SUVACO

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1127

HERBERT SUVACO

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 October 1959, an Examiner of the United States Coast Guard at San Francisco, California, suspended Appellant's seaman documents upon finding him guilty of misconduct. Two specifications allege that while serving as a day fireman on board the United States SS MATSONIA under authority of the document above described, on 27 March 1959, Appellant assaulted and battered the ship's First Assistant Engineer; and on this date, Appellant engaged in an altercation and fight with the same officer.

At the hearing, Appellant was represented by counsel of his own choice. Appellant entered a plea of not guilty to the charge and each specification. After considering the testimony of the several witnesses introduced by each party, the Examiner rendered the decision in which he concluded that the charge and two specifications had been proved. An order was entered suspending all documents, issued to Appellant, for a period of twelve months outright plus twelve months on twenty-four months' probation.

FINDINGS OF FACT

On and prior to 27 March 1959, Appellant was serving as a day fireman on board the United States SS MATSONIA and acting under authority of his Merchant Mariner's Document No. Z-803432 while the ship was in the port of San Francisco, California.

For some time prior to 27 March, there was a growing antagonism between the First Assistant Engineer and Appellant due to the latter's activities as one of the ship's union delegates. On the morning of this date, the First Assistant told both Appellant and a crew member named Hiner that they were fired because they had not been working during the required hours on this day.

Less than an hour later, Appellant and Hiner were together when they encountered the First Assistant near the main galley. The two seamen approached the First Assistant and Appellant, without warning or provocation, commenced striking the First Assistant with his fists. The latter received several blows in the face and elsewhere as he was knocked to the deck. They then grabbed each other and were wrestling or grappling until Hiner jumped on Appellant's back and other members of the crew, who had not witnessed the beginning of the incident, assisted in separating the two men.

Appellant's hand was injured. The First Assistant's face was lacerated and he suffered multiple bruises. A cut near his right eye required several stitches. He was treated as an outpatient for three days at the San Francisco U. S. Public Health Service. During this time, he was considered unfit for duty according to the hospital records.

Appellant's prior record consists of having failed to join one ship. He has been going to sea for sixteen years.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the uncorroborated testimony of the

First Assistant is insufficient to justify the decision of the Examiner in the face of Appellant's testimony that he acted in self-defense. This testimony is corroborated by the testimony of the only neutral eyewitness (Hiner) to the incident. Several witnesses testified as to the First Assistant's animosity toward Appellant and the former's violet temperament. On the other hand, the Examiner's decision omits certain inconsistencies in the testimony of the First Assistant which have a bearing on the credibility of the witness.

Appellant was denied due process of law in that he was not accorded a full and fair hearing. His direct testimony as to the First Assistant's personal animosity toward Appellant was curtailed by the Examiner. The bias of the Examiner against Appellant is shown by this curtailment of testimony and other expressions used by the Examiner during Appellant's testimony.

The two specifications found proved allege substantially the same offense. The order imposed is excessive in view of Appellant's prior good record and good reputation as testified to by several witnesses.

It is respectfully submitted that the decision should be reversed or, alternatively, that the order should be modified.

APPEARANCE: Martin J. Jarvis, Esquire, of San Francisco,
 California, of Counsel.

OPINION

It is my opinion that there is nothing in the record which requires reversal of the Examiner's decision, in toto, or modification of the order.

The Examiner conducted the hearing fairly and presented a fair review of the testimony of the witnesses in his decision. He permitted in evidence considerable testimony concerning the First Assistant's temperament and dislike of Appellant as a union delegate. I do not agree with Appellant's contention that the Examiner showed any personal bias toward Appellant for which the Examiner should have disqualified himself from conducting the hearing.

The First Assistant testified that the assault took place as set forth in the above findings of fact. Appellant's version was that he acted in self-defense after the First Assistant came as Appellant with a raised wrench and hit him on the hand which was put up to ward off the blow. Hiner testified that he did not know who swung the first blow but he did see the First Assistant "strike at" Appellant with the wrench. There are minor inconsistencies in the testimony of each of the three principal witnesses and it can be seen that Hiner's testimony does not fully corroborate Appellant's story as is contended. In fact, it was Hiner's testimony that he jumped on Appellant in order to stop the fight. Neither this nor the extent of the First Assistant's injuries support Appellant's claim that he acted in self-defense. The latter's injury to his hand could have resulted from striking the First Assistant just as well as from being struck with a wrench which Hiner did not state that he saw hit Appellant.

In any event, there is basically a question of credibility involved. The conflict in the testimony presented an issue of creditbility which was resolved against Appellant by the Examiner as the trier of the facts who heard and observed the witnesses. The Examiner specifically stated that he accepted the First Assistant's version of the incident and rejected Appellant's. In conncection with this, the Examiner stated that Appellant's motive was that he had just been discharged by the First Assistant. The Examiner was in the best position to judge the credibility of the witnesses since he had the advantage of "demeanor evidence" which does not appear in the record on appeal. Since the Examiner applied no irrational test as to credibility, it is my conclusion that the testimony of the First Assistant Engineer constitutes substantial evidence that he was assaulted and batteed by Appellant. This agrees with the view expressed in numerous judicial decisions, including *Pacific Portland Cement Co. v. Food Machinery and Chemical Corp.* (C.A. 9, 1950), 178 F.2d 541, at page 548, that:

"Full effect will always be given to the opportunity which the trial judge has, *denied to us*, to observe the witnesses, judge their credibility, and draw inferences from contradictions in the testimony of even the same witness."

Since the second specification is substantially encompassed

within the specification alleging assault and battery, the second specification is dismissed. This does not require any modification of the order because of the seriousness of the offense of assaulting a ship's officer.

ORDER

The order of the Examiner dated at San Francisco, California, on 15 October 1959, is AFFIRMED.

Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 18th day of December 1959.

***** END OF DECISION NO. 1127 *****

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