

In the Matter of Merchant Mariner's Document No. Z-924044-D1 and
All Other Seaman Documents
Issued to: THEOPHILE HEBERT

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1130

THEOPHILE HEBERT

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 21 November 1958, an Examiner of the United States Coast Guard at Long Beach, California revoked Appellant's seaman documents upon finding him guilty of misconduct. The three specifications found proved allege that while serving as an oiler on board the United States SS TOPA TOPA under authority of the document described, on or about 20 July 1958, Appellant failed to perform his duties; on 23 July 1958, Appellant assaulted and battered oilers Richardson and Fitzpatrick.

At the hearing, Appellant elected to act as his own counsel. Pleas of not guilty were entered to the charge and each specification.

After considering the evidence, the Examiner rendered the decision in which he concluded that the charge and three specification had been proved. An order was entered revoking all documents issued to Appellant.

FINDINGS OF FACT

Between 13 June and 24 July 1958, Appellant was serving as an oiler on board the United States SS TOPA TOPA and acting under authority of his Merchant Mariner's Document No. Z-924044-D1 while the ship was on a foreign voyage.

On 20 July, the ship was at Yokohama, Japan when Appellant failed, without permission, to stand his assigned watch from 1200 to 1600. Sea watches had not been broken.

About 2330 on 23 July while the ship was at Kobe, Japan, Richardson (age 61) entered the room which he shared with two other oilers--Appellant (age 27) and Fitzpatrick. Appellant was sitting on his upper bunk and Fitzpatrick was asleep in a lower bunk. When Richardson started to undress, Appellant jumped down from his bunk and struck Richardson five or six blows on the head. His face was bruised and eyeglasses broken during this attack.

Appellant then turned to Fitzpatrick and struck him three or four times on the face and neck. This awakened Fitzpatrick. He suffered a bloody nose, a cut on the inside of his upper lip and soreness about the ears and throat.

Appellant then left to stand his watch but was removed from the ship by the local police authorities about 0100 after being questioned by the Master and stating that he struck the two oilers because he did not like them.

Appellant has been going to sea since 1951. His prior record consists of an admonition in 1956 for using profane language to a superior officer.

OPINIONS

On appeal, Appellant contends only that the two assaults were greatly exaggerated since each one consisted of a few slaps. He also states that the revocation of his documents is a severe handicap because this is his only means of support and it is unfair

in view of his prior good record.

The Examiner accepted the testimony of the other two oilers as set forth in the above findings of fact and he specifically rejected the version presented by Appellant as being incredible. The record discloses no reason why the Examiner's findings as to credibility should not be accepted. Consequently, his findings with respect to the facts of the assaults are also accepted as accurate.

Since Appellant committed two completely unprovoked assaults within seconds of each other, it is clear that it would not be safe to allow him to continue his career at sea. This does not prevent him from obtaining other employment.

ORDER

The order of the Examiner dated at Long Beach, California, on 21 November 1958, is AFFIRMED.

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

Dated at Washington, D.C., this 26th day of January, 1960.

***** END OF DECISION NO. 1130 *****

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