

In the Matter of Merchant Mariner's Document No. Z-263718
Issued to: CHARLES W. LAIRD

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1148

CHARLES W. LAIRD

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 April 1959, an Examiner of the United States Coast Guard at San Francisco, California revoked Appellant's document upon finding him guilty of misconduct. The three specifications found proved allege that while serving as a messman on board the United States SS PHILIPPINE TRANSPORT under authority of the document above described, on or about 24 December 1958, Appellant assaulted James Mitchell with a knife; he wrongfully engaged in a fight with Mitchell; Appellant assaulted and battered Mitchell with a long piece of wood. The events occurred in this chronological order.

At the hearing, Appellant was not represented by counsel. Appellant entered a plea of guilty to the specification alleging that he fought with Mitchell. Appellant pleaded not guilty to the other two specifications. The Investigating Officer introduced in evidence the testimony of the Master and of several members of the crew, including that of messman Mitchell. The only evidence submitted by Appellant was his sworn testimony which, in part,

denied the allegations but, predominantly, it consisted of stating that he did not remember what had happened.

After considering the evidence, the Examiner rendered his decision in which he concluded that three separate and violent attacks by Appellant, upon Mitchell, had been proved. As stated by the Examiner, the evidence shows that without the slightest provocation Appellant, in the morning, threatened to cut Mitchell with a knife which the latter forced Appellant to drop; later, Appellant surprised Mitchell by striking him on the head with his fists; and then, in the afternoon, Appellant came up behind Mitchell and struck him on the head with a two to three foot length of wood. At the latter time, Appellant was injured by cups thrown by Mitchell to defend himself.

On appeal, it is urged that although Appellant was repeatedly advised of his right to subpoena witnesses, he failed to do so because he did not comprehend the gravity of the charges and thought that no disciplinary action would be taken if he said nothing to rebut the testimony against him. Therefore, it is requested that the hearing be reopened in order to permit Appellant to present evidence that Mitchell was the aggressor and that Appellant was severely injured. Counsel states that Appellant has been going to sea since 1932 without any prior record.

Appearance on Appeal: Cragen and Wadleigh of San Francisco, California, by Edward L. Cragen, Esquire, of Counsel.

OPINION

Despite Appellant's prior clear record, the Examiner revoked Appellant's document because of the complete absence of any mitigating circumstances in the nature of some explanation for these distinct offenses, the lack of any provocation by Mitchell, and Appellant's demonstrated proclivity to use dangerous weapons against a shipmate. I agree with the Examiner's order in the interest of safety at sea.

Appellant's request to reopen the hearing is denied. Appellant did testify briefly at the hearing. The gist of his testimony was that he did not remember what had happened but he

still offers no explanation for this lack of recollection. At the time of the offenses, he told the Master and Chief Mate nothing more than that his conduct was due to personal differences with Mitchell. If Appellant had any explanation for these matters, he had every opportunity to make them known when he testified at the hearing. Since he did not do so and also because of his apparent inability to recall the events in question, it is difficult to visualize how Appellant now expects to be able to produce evidence favorable to his cause. (The fact that he was injured was the result of his own misconduct.) It seems very unlikely that an innocent person would remain mute with respect to such things at a hearing on obviously serious charges. But if Appellant did so and still has not disclosed his reasons and the specific nature of his defense in appealing from the Examiner's decision, there is no indication that it would serve any purpose to reopen the hearing for further proceedings.

ORDER

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

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

Dated at Washington, D. C., this 1st day of March, 1960.

***** END OF DECISION NO. 1148 *****

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