

In the Matter of Merchant Mariner's Document No. Z-885097 and all
other Seaman Documents
Issued to: JOSEPH LUTZ

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1199

JOSEPH LUTZ

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 5 May 1959, an Examiner of the United States Coast Guard at New York, New York directed an admonition against Appellant upon finding him guilty of misconduct. The specification found proved alleges that while serving as a bedroom steward on board the United States SS INDEPENDENCE under authority of the document above described, on or about 2 February 1959, Appellant assaulted and battered second steward Brown.

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

The Investigating Officer introduced in evidence a logbook entry, the testimony of the second steward and that of the ship's chief butcher who witnessed the incident from the dock.

In defense, Appellant offered in evidence his testimony and

that of several other crew members. Two of them testified that they saw Appellant and the second steward together near the gangway but saw no pushing by either. Appellant testified that, possibly, he hit the second steward's shoulder when Appellant threw up his hands in defense after the second steward pushed Appellant.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved.

FINDINGS OF FACT

On 2 February 1959, Appellant was serving as a bedroom steward on board the United States SS INDEPENDENCE and acting under authority of his Merchant Mariner's Document No. Z-885097 while the ship was moored at a dock in the port of Santa Cruz, Canary Islands.

At 1815 on this date, Appellant approached second steward Brown at the gangway, addressed a joking remark to him, and playfully pushed him without much force. The second steward angrily pushed Appellant away and an argument followed between the two seamen. The second steward, an elderly man, was not injured.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the evidence does not justify the finding that Appellant assaulted and battered second steward Brown. The latter lied when he testified that he was shoved violently by Appellant. The Examiner did not accept Brown's testimony that he was shoved so hard as to injure him. An admonition on Appellant's prior unblemished thirty-year record is not warranted.

As a result of the ten months delay in receiving the hearing transcript, Appellant was prejudiced in locating witnesses to prove that Appellant, at most, merely placed his hand on Brown's shoulder in a friendly gesture rather than as a vicious assault.

APPEARANCE: Zwerling and Zwerling of New York City by Irving
 Zwerling, Esquire, of Counsel.

OPINION

As contended on appeal, the Examiner did not accept Brown's testimony that he was given a hard shove by Appellant and injured. Nevertheless, the Examiner stated that he was convinced by the testimony of the ship's butcher that Appellant was guilty of placing his hands on Brown and pushing him. Regardless of the playful intentions of Appellant, this constituted a technical assault and battery upon the second steward who was Appellant's superior on the ship. See *5 Corpus Juris*, Assault and Battery, sec. 224.

In view of Appellant's prior unblemished record for many years this technical offense will be dismissed in order to maintain his clear record.

ORDER

The charge, specification, finding, and order of the Examiner dated at New York, New York, on 5 May 1959, are DISMISSED and VACATED.

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

Dated at Washington, D. C., this 31st day of October 1960.

***** END OF DECISION NO. 1199 *****

