In the Matter of Merchant Mariner's Document No. Z-171224-D1 and All Other Seaman Documents
Issued to: WILLIAM D. WEISE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1212

WILLIAM D. WEISE

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 11 May 1960, an Examiner of the United States Coast Guard at New Orleans, Louisiana revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as an oiler on board the United States SS TITAN under authority of the document above described, on or about 2 May 1960, Appellant assaulted and battered the ship's Chief Steward with a deadly weapon, to wit: a knife.

At the hearing on 5, 6 and 9 May, Appellant was represented by a union patrolman. Appellant entered a plea of not guilty to the charge and specification. Due to insufficient funds, Appellant departed for his home in Philadelphia before the end of the hearing. Appellant had informed the Examiner that Appellant might be required to leave. As a result of this action, Appellant was not present when the Chief Steward testified on 9 May (Monday) after his release from the hospital on 7 May.

The Investigating Officer introduced in evidence the testimony of two members of the crew in addition to the testimony of the Chief Steward.

A letter from the Appellant presenting his version of the incident was admitted in evidence by stipulation. In the letter, Appellant stated that he picked up a knife and the Steward was cut by it when he lunged at Appellant as he backed away during the fist fight.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the change and specification had been proved. The Examiner then entered an order revoking all documents issued to Appellant.

FINDINGS OF FACT

On 2 May 1960, Appellant was serving as an oiler on board the United States SS TITAN and acting under authority of his document while the ship was at sea.

About 1700 on this date during the evening meal, Appellant and the Chief Steward entered into an argument concerning a water pitcher which had been taken by Appellant. A fist fight followed. This started in the galley and Appellant retreated toward the crew's mess hall from the larger and older Chief Steward. Before reaching the mess hall, Appellant picked up a paring knife. The Steward was cut on his left side by the knife held by Appellant as the Steward forced Appellant backward into the mess hall. At this stage, another crew member stopped the fight.

The Steward was not seriously injured although he was hospitalized when the ship arrived in New Orleans on the evening of 3 May and he remained there until 7 May. Part of this time was devoted to taking X rays which did not disclose anything unusual.

Appellant has no prior record. He has been going to sea for eighteen years.

BASES OF APPEAL

This appeal has been taken form the order imposed by the

Examiner. It is contended that the hearing should be conducted de novo in Philadelphia because Appellant was financially unable to obtain professional counsel in New Orleans or to remain to cross-examine the Steward.

Appellant acted in self-defense. The evidence shows that the Steward was the aggressor and was accidentally injured.

The Examiner erred in failing to consider Appellant's letter of explanation which was submitted in evidence without objection.

It is respectfully submitted that there should be a hearing de novo, the case should be dismissed, or the order should be substantially reduced.

APPEARANCE: Wilderman and Markowitz of Philadelphia, Pennsylvania by Richard Kirschner, Esquire, of Counsel

OPINION

I agree that the Examiner erred in giving "little or no weight" to the letter presenting Appellant's explanation of the incident. For practical reasons with which the Examiner had been acquainted, Appellant left New Orleans before the Steward was released from the hospital to testify at the hearing. Appellant had expressed a desire to testify but the Examiner had not given Appellant an opportunity to do so before he left. His testimony could have been taken while awaiting the appearance of the Steward. Consequently, it was not fair to practically ignore the contents of Appellant's letter which the Investigating Officer had agreed to admit in evidence.

In order to eliminate the prejudice to Appellant caused by the above and his inability to cross-examine the Steward either personally or through an attorney, I have accepted in substance Appellant's statements as to the material facts. However, there was no justification for the use of a knife even if the Steward started the fist fight and was the aggressor throughout. There is no evidence that Appellant was in danger of serious bodily injury when he picked up the knife. The Steward was heavier than Appellant but also considerably older- age 56. Therefore,

Appellant did not have any right to use a dangerous weapon in self-defense. The fact that the injury may have been accidentally inflicted is no excuse because a person is responsible for results reasonably to be anticipated by his conduct.

The use of a knife as a weapon, even in retreat, is an infraction of shipboard discipline which requires severe action regardless of Appellant's previously unblemished record during eighteen years at sea. Nevertheless, Appellant's prior clear record and the circumstances of the case convince me that Appellant's alternative request, on appeal, for a substantial reduction of the revocation order should be granted. Because of this modification as a result of having adopted Appellant's version of the incident, it is not necessary to remand the case for further proceedings before a hearing examiner.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 11 May 1960, is MODIFIED to provide for a suspension of nine (9) months.

As so MODIFIED, the order is AFFIRMED.

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

Dated at Washington, D.C., this 12th day of January, 1961.

***** END OF DECISION NO. 1212 *****

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