

In the Matter of License No. 213166 and
all other Seaman Documents
Issued to: RAYMOND G Mc MAHON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1238

RAYMOND G. Mc MAHON

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 41 Code of Federal Regulations 137.11-1.

By order dated 9 May 1960, an Examiner of the United States Coast Guard at New York, New York admonished Appellant upon finding him guilty of misconduct. The specification found proved alleges that while serving as a Third Assistant Engineer on board the United States SS SANTA PAULA under authority of the license above described, on 4 January 1960, Appellant assaulted and battered Second Assistant Engineer John Mulligan while the ship was at sea.

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

The Investigating Officer introduced in evidence the testimony of Second Assistant Engineer Mulligan and Giblin.

In defense, Appellant offered in evidence his testimony and that of Third Assistant Engineer Tuohey. Their testimony was that

Appellant pushed Mulligan out of the room after he shoved Appellant.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. The Examiner then entered the order admonishing Appellant.

The basis of this appeal is that the findings and order are contrary to the evidence and the law; the findings of the Examiner are not supported by reliable, probative and substantial evidence. The Examiner accepted Second Assistant Giblin's testimony that he did not know who started the trouble. The grounds given by the Examiner for rejecting the testimony of Third Assistant Tuohey, a disinterested witness whose testimony corroborated Appellant's, were not reasonable.

APPEARANCE: Lee Pressman of New York City by Ned R. Phillips, Esquire, of Counsel.

OPINION

The Examiner rejected the testimony of Appellant, Tuohey and, in part, that of Mulligan. The only other witness, Giblin, stated that he did not know where or how this incident started. Consequently, accepting the determinations of the trier of the facts as to the credibility of the witnesses, it is not possible to make findings of fact, based on substantial evidence, as to whether Appellant or Mulligan initiated the physical combat.

The Examiner specifically accepted Giblin's version of what occurred in the passageway. Giblin testified that he was awakened by angry voices; he saw Appellant and Mulligan struggling in the passageway with their hands on each other although Mulligan was on his knees and Appellant was standing; Mulligan got up and ran away; Appellant pursued Mulligan a short distance but not to a certain doorway.

For reasons not stated, the Examiner rejected Appellant's testimony that Mulligan came into Appellant's room and shoved

Appellant to the deck, while he was tilted back in a chair, before Appellant pushed Mulligan out of the room, he tripped on the doorsill, and fell on the deck in the passageway. Similar testimony by Tuohey was rejected on the basis of testimony by Giblin and Mulligan that they did not see Tuohey in the room. This was improper because both Giblin and Mulligan testified that they were not in Appellant's room. But, having accepted Giblin's version, there are other reason for rejecting the testimony of Appellant and Tuohey. Appellant's testimony that he simply helped Mulligan to get up off the deck indicated that he did not chase Mulligan. Tuohey testified that Appellant did not leave the room until after Mulligan had run away. On the other hand, Giblin testified that he saw Appellant pursue Mulligan a short distance after the two seamen struggled with each other.

Mulligan's testimony was that he politely greeted Appellant as Mulligan walked past Appellant's door; Appellant grabbed Mulligan from behind and bounced him on the deck for several minutes; Mulligan did not touch Appellant; Appellant chased Mulligan to the doorway after he managed to get free and ran away. This testimony is largely inconsistent with Giblin's. The Examiner stated that he rejected Mulligan's testimony as to how he greeted Appellant and his testimony that Appellant picked Mulligan up and pounded him on the deck. Mulligan's testimony on other matters was self-contradictory and very vague in contrast to his definite testimony as to how he was brutally attacked by Appellant. The latter is inconsistent with his testimony that he was only bruised. For these various reasons, Mulligan's testimony is almost totally unreliable.

To a limited extent, Giblin's version can be reconciled with either the testimony of Appellant and Tuohey or that of Mulligan. considering the above comments concerning the evidence, it is my opinion that there is too little credible evidence, in addition to Giblin's testimony, to constitute substantial evidence that Appellant was the aggressor and hence guilty of assault and battery. Such a conclusion would be speculative despite the fact that Appellant is a larger and younger man than Mulligan.

The finding that Appellant was guilty of assault is reversed. The charge and specification are dismissed.

ORDER

The order of the Examiner dated at New York, New York, on 9 May 1960, is VACATED.

J. A. Hirshfield
Vice Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 26th day of May 19 .
***** END OF DECISION NO. 1238 *****

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