

In the Matter of Merchant Mariner's Document No. Z-135575-D3 and
all other Seaman Documents
Issued to: HIPOLITO WILLIAM FIGUEROA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1241

HIPOLITO WILLIAM FIGUEROA

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 2 September 1960, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a glory hole steward on board the United States SS ARGENTINA under authority of the document above described, on or about 10 July 1960, Appellant assaulted and battered a member of the crew, Antonio Sanquiche.

At the hearing, Appellant voluntarily elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of Sanquiche and copies of entries in the ship's Official Logbook referring to this incident.

In defense, Appellant offered in evidence his own testimony and that of two alibi witnesses. Appellant testified that he did not, and could not have, committed the offense because he was in the crew's recreation room (part of the mess hall) until the Staff Captain came for Appellant at about 1800.

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 an order suspending all documents, issued to Appellant, for a period of two months outright plus four months on twelve months' probation.

FINDINGS OF FACT

On 10 July 1960, Appellant was serving as a glory hole steward on board the United States SS ARGENTINA and acting under the authority of his document while the ship was at Bahia, Brazil.

On this date, all hands were required to be on board at 1600 preparatory to getting underway at 1700. Appellant and able seaman Antonio Sanquiche had an argument near the gangway while returning on board. Appellant went to the mess hall shortly thereafter and Sanquiche went to his mooring station.

About 1750, Sanquiche was returning to his room one deck above the mess hall. He was walking alone along a lighted passageway when Appellant approached and asked Sanquiche if he were the seaman with whom Appellant had the earlier argument. Without waiting for a reply, Appellant swung his right fist striking and cutting Sanquiche just above his left eye. The wound required three stitches.

At the time, Sanquiche did not know Appellant by name but identified him as the assailant, in the presence of the Staff Captain, shortly after the incident occurred.

Appellant's prior record consists of a suspension in 1958 for addressing a Second Mate with insubordinate language and failing to carry out promptly his lawful order.

OPINION

Appellant claims that he can prove the charges against him are not true. Appellant requests an opportunity to clarify certain very important facts which were overlooked. He does not specify what these facts are.

The request to reopen the hearing will not be granted. Appellant's two witnesses testified that he was in the recreation room of the mess hall from 1700 until about 1800 when Sanquiche entered after he had been injured. At the hearing, Appellant indicated that he wanted at least two more seamen to testify in his behalf. Toward the end of the hearing, the Examiner repeatedly informed Appellant that, if he desired, the Examiner would issue more subpoenas for witnesses and adjourn the hearing to await the appearance of the witnesses. Nevertheless, Appellant definitely stated that he would rest his case without additional witnesses and that he did not want to postpone the hearing. Nothing more could be done by the Examiner short of forcing Appellant to produce more witnesses. Consequently, the request to reopen the hearing, after the Examiner rendered his decision, is too late.

The issue on the merits of the case is one of credibility. The Examiner specifically stated that he accepted Sanquiche's testimony that he was struck by Appellant and rejected the testimony of Appellant and his two witnesses to the contrary. As stated by the Examiner, the testimony of Appellant's witnesses does not establish conclusively, even if accepted, that Appellant was in the recreation room at the time Sanquiche says he was injured. One of the witnesses was busy serving meals. The testimony of the other one is very confusing and somewhat contradictory concerning the circumstances. Both of these seamen testified that they were good friends of the Appellant. They apparently did not know Sanquiche. The evidence indicates that many other members were in the recreation room but none of them testified at the hearing.

Since there is no adequate basis for refusing to accept the Examiner's findings as to the credibility of the witnesses, the order of suspension will be sustained.

ORDER

The order of the Examiner dated at New York, New York, on 2

September 1960, is AFFIRMED.

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

Date at Washington, D.C., this 7th day of June 1961.

***** END OF DECISION NO. 1241 *****

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