

In the Matter of Merchant Mariner's Document No. Z-458670 and all  
other Seaman Documents  
Issued to: LEOVIGILDA F. AGUILAR

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1248

LEOVIGILDA F. AGUILAR

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 17 November 1959, an Examiner of the United States Coast Guard at San Francisco, California revoked Appellant's seaman documents upon finding him guilty of misconduct. The three specifications found proved allege that while serving as an able seaman on the United States SS JULIA LUCKENBACH under authority of the document above described, on 17 September 1958, Appellant assaulted and battered Boatswain Frederick A. Jarvis and created a disturbance on the ship; on 19 September 1958, Appellant assaulted and battered Boatswain Jarvis causing the loss of his left eye.

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

The Investigating Officer introduced in evidence the testimony of the Boatswain and three other witnesses. Appellant also submitted the testimony of four witnesses including his own.

Attempts to obtain the depositions of the two Korean girls involved were unsuccessful.

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

#### *FINDINGS OF FACT*

From 22 January to 20 September 1958, Appellant was serving as an able seaman on the United States SS JULIA LUCKENBACH and acting under authority of his document. Between 15 and 20 September, the ship was at Inchon, Korea.

About 1430 on 17 September, Appellant (age 35) complained to Boatswain Jarvis (age 62) about working alone. When the Boatswain explained the reason for this, he was hit a glancing blow on the face by Appellant. The Boatswain reported this incident to the Chief Mate who reprimanded Appellant and caused the parties to be called before the Master. Appellant stated on 17 September and again on 19 September that he was going to "get" the Boatswain when he was ashore.

On the evening on 19 September, the Boatswain was ashore in the Seamen's Club when Appellant and other members of the crew entered. The Boatswain left with a native girl and went to the room where she lived. About 2100, Appellant was directed to this room by another native girl. Appellant entered the room and attacked the Boatswain. During the course of the fight, something struck the Boatswain's left eye, he felt a sharp pain and could no longer see with that eye.

In the meanwhile, Appellant's companion had returned to the Seamen's Club and told the crew members that there was a fight. Wiper Van Laurant, ordinary seaman Peterson and able seaman Sununu went to the house. Van Laurant went into the house where he found the Boatswain in a dazed condition. The Boatswain said he had a fight with "Leo" (as Leovigilda Aguilar was sometimes called). With Van Laurant's assistance, the Boatswain cleaned up, got dressed, and went to a hospital.

Peterson and Sununu had remained outside the house. As the Boatswain was leaving, he asked Sununu who had told the Appellant where the Boatswain was.

At the hospital, the Boatswain's ruptured left eyeball was replaced with a plastic one after tests indicated that the sight could not be restored. Appellant was repatriated after three weeks' hospitalization in Korea.

Appellant has no prior record.

#### *BASES OF APPEAL*

This appeal has been taken from the order by the Examiner. It is contended that the Government acted in excess of its jurisdiction; the Examiner committed errors of law; the evidence does not support the findings; the findings do not support the decision.

#### *OPINION*

The above findings of fact are in accord with the versions of the Boatswain, Van Laurant, and Peterson whose testimony the Examiner stated he accepted because it agreed with the probabilities based on common human experience. Peterson corroborated the Boatswain's testimony that he was hit by Appellant on 17 September. Peterson testified that he heard Appellant threaten to "get" the Boatswain. Van Laurant corroborated the Boatswain's testimony that he was badly beaten. Van Laurant also testified that the Boatswain did not seem to be fully conscious when he indicated that he had a fight with Appellant.

Sununu was working with Peterson on 17 September but claimed not to have seen the incident on deck. With respect to 19 September, Sununu testified that he was too drunk to remember what happened. The Examiner stated that Sununu, a witness for Appellant, appeared to be almost completely untruthful while testifying. The testimony of Appellant's other two witnesses is equally ineffective in his behalf whether believed or not.

The Examiner rejected Appellant's testimony that he walked away without swinging at the Boatswain on 17 September and that, at the time of the incident on 19 September, Appellant had left the Seaman's Club by himself and was walking around the streets trying to pick up a girl. The Examiner stated that Appellant's testimony concerning 19 September was particularly implausible in view of his prior threats against the Boatswain and the coincidence of time when Appellant claims he was alone and the Boatswain was beaten.

Since there is no reason to discard the Examiner's findings of credibility, there is substantial evidence to support the findings and the decision as a whole. There is no question of jurisdiction since Appellant was still acting under the authority of his document and in the service of the ship while ashore. No prejudicial errors of law appear in the record. Consequently, the contentions raised on appeal are not persuasive.

The severity of this attack upon the much older Boatswain is emphasized by the fact that he lost the sight of one eye. Revocation of Appellant's documents is the only appropriate order.

As a matter of formality, the specification alleging a disturbance on 17 September is dismissed because there is no evidence of a disturbance other than what occurred when Appellant struck the Boatswain. This is covered by the specification alleging an assault and battery.

*ORDER*

The order of the Examiner dated at San Francisco, California, on 17 November 1959, is AFFIRMED.

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

Dated at Washington, D. C., this 20th day of June, 1961.

\*\*\*\*\* END OF DECISION NO. 1248 \*\*\*\*\*

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