In the Matter of Merchant Mariner's Document no. Z-935020 and all other Seaman Documents
Issued to: William Sckorohod

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1265

William Sckorohod

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 1 November 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 an ordinary seaman on the United States SS PRESIDENT HAYES under authority of the document above described, on 5 March 1960, Appellant failed to join his ship when she departed the port of Naha, Okinawa.

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

The Investigating Officer introduced in evidence documentary exhibits including a logbook entry, with four attached statements, concerning the alleged offense.

In defense, Appellant testified that after returning to the ship on 4 March, able seaman Sowal knocked Appellant down in the

presence of two other crew members; Sowal told Appellant"I can kill you," and then helped him get up; Appellant had minor injuries when he reported this to the Master and requested permission to leave the ship by mutual consent because Appellant was "afraid for my life"; Appellant repeated this request on several occasions although there was no further physical abuse by Sowal; the Master never agreed to release Appellant from the voyage; an electro-encephalograph test on 4 June 1960 in New York showed that Appellant was a tense, anxious individual.

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.

FINDINGS OF FACT

Until 5 March 1960, Appellant was serving as an ordinary seaman on board the United States SS PRESIDENT HAYES and acting under authority of his document while the ship was on a foreign voyage which had commenced on 11 February 1960.

The ship arrived at Naha, Okinawa on 4 March 1960. Appellant went on shore leave about 1600 and returned to the ship at 2100 with able seaman Sowal. The latter verbally abused Appellant but then quieted down and invited Appellant to his room for a drink. Both seaman had been drinking intoxicating beverages while ashore. Able seaman Nelson and Katilus were in the room on the ship when Appellant and Sowal entered and started and started wrestling. Appellant's shirt was ripped, his nose bloodied, he received a few scratches and was thrown to the deck. Sowal straddled Appellant and made a statement to the effect that he could seriously injure or kill Appellant if Sowal wanted to do so. Without further scuffling, Sowal helped Appellant to get up, they shock hands, and Appellant left the room. A few minutes later Sowal went to Appellant's room and used abusive language but left without touching Appellant.

About 2200, Appellant reported this to the Master, claimed that his life was in danger, and requested to be released from the ship. The Master allowed Appellant to stay ashore that night for his own protection.

In the Master's quarters the next morning, statements were

taken form Sowal, Appellant, Nelson and Katilus. These were attached to an entry in the Official Logbook. When Appellant still insisted on leaving the ship, the Master contacted the American Consul and he questioned Appellant, Sowal, and the two witnesses to the incident the night before. On the basis of this investigation, Sowal and Appellant agreed to forget the matter at the Consul's request and he dismissed it without taking additional action.

Shortly thereafter, however, Appellant reverted to his claim that he was "afraid for my life" and asked the Master to allow Appellant to leave the ship. When this permission was not granted, Appellant failed to join the ship upon her departure at 1200 on 5 March. Appellant returned to the United States by airplane at his own expense.

Appellant has no prior record.

OPINION

The only contention raised on appeal, without any details to support it, is that the charges against Appellant were not proved in fact and in law. I do not think that the record leads to this conclusion.

The above findings of fact agree with Appellant's testimony. In fact, Appellant's testimony, that Sowal told the other two seamen in the room that he had been challenged by Appellant on the dock, is consistent with the statement of Appellant, attached to the logbook entry, that he had suggested settling their differences on the dock when Sowal became abusive. The finding as to the extent of Appellant's slight injuries is based on his testimony (R.38). Appellant admitted that he was not given permission by the Master to leave the ship (R.42).

Judging from Appellant's testimony and the absence of specificity on appeal, the only defense intended is that Appellant was justified in leaving the ship because of his fear that, as a result of the events on the night of 4 March, his life was in danger so long as he remained on the same ship with Sowal. There is some evidence that Appellant was mentally disturbed and emotionally unstable at the time he failed to join the ship but there has not been any attempt to show that Appellant was mentally

deranged to such an extent that he was not fit for duty or that his mental condition caused an irrational fear which was not consistent with the circumstances. Completely unexplained in the record is the meaning of the technical, medical language in the report of the physician which was used to corroborate Appellant's testimony that he had an electro-encephalograph test on 4 June 1960. Consequently, the case will be judged on the basis of whether or not Appellant's fear of harm from Sowal justified the conduct of Appellant.

The law is that there must not only be a genuine fear of at least grave bodily injury but also "reasonable cause" for such fear in order to leave the ship, and it is not sufficient that this fear exists if there is not adequate justification for it. See *Commandant's Appeal Decision* No. (435) and cases cited therein. The courts state that the Shipping Articles is a contract which should be lived up to scrupulously *(Rees v. United States* (C.C.A. 4, 1938) 95 F. 2d 784); seamen are contractually bound "to stand by the ship and obey the master until the voyage be done, unless she come to such a pass as to be dangerous to human life (citing cases)." *The CONDOR* (D. C. N. Y., 1912), 196 Fed. 71.

A seaman is justified in leaving the ship through fear induced by cruel treatment (severe injuries) and threats by the Master. *Sherwood v. McIntosh* (D. C. Me., 1826), Fed. Cas. No. 12, 778. But such conduct is not justified if a seaman fears that his life is in danger because of threats by some members of the crew as a result of a fight between the seaman and another crew member. *Commandant's Appeal Decision* No. (731). In *Rogers v. Pacific-Atlantic S. S. Co.* (C.C.A. 9, 1948), 170 F. 2d 30, it was held that the First Assistant Engineer was required to obey the order of the American Consul to return to the ship even though a drunken Master had threatened to shoot him. A Consul's decision is prima facie correct and it must be followed unless persuasive evidence to the contrary is presented. *Commandant's Appeal Decision* No. (608)

According to these standards and the facts of the case, it is obvious that Appellant's conduct cannot be justified on the basis of "reasonable cause" to be in fear even if this fear were genuine. Appellant suffered only minor injuries as a result of a scuffle

with Sowal which was at least partially induced by Appellant's challenge on the dock and the fact that he then went with Sowal to his room on the ship. Sowal could have seriously injured Appellant when he was on the deck but instead, according to Appellant, he was helped up by Sowal. in view of the absence of any later abuse by Sowal, the language and activities on the night of 4 March should be discounted in the light of the fact that both seamen were affected to some extent by the drinks they had while ashore. Also, the Consul apparently did not feel that there was sufficient reason to release Appellant from the ship.

It is my opinion that the order imposed by the Examiner was very lenient under the circumstances of the case which indicate that Appellant made no attempt to rejoin the ship. Seamen under some emotional or other mental strain cannot be permitted to leave their ships at will in foreign ports and thereby impair the proper operation of the ships while they are undermanned.

ORDER

The order of the Examiner dated at New York, New York, on 1 November 1960, us AFFIRMED.

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

Signed at Washington, D. C., this 19th day of October 1961.

***** END OF DECISION NO. 1265 *****

Top