

In the Matter of Merchant Mariner's Document No. Z-992417 and all
other Seaman Documents
Issued to: RICHARD G. HARRIS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1269

RICHARD G. HARRIS

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 18 April 1961, an Examiner of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a wiper on board the United States SS TOPA TOPA under authority of the document above described, on 11 March 1961, Appellant assaulted and battered crew member George J. Yagel, a wiper, while the ship was in the port of Antwerp, Belgium. Yagel was not seriously injured.

At the hearing, Appellant voluntarily elected to act as his own counsel. Appellant entered a plea of guilty to the charge and specification. In mitigation, Appellant stated under oath that he used his fists to strike Yagel several times when Appellant finally lost his temper after repeated verbal provocation by his roommate Yagel.

There was no evidence introduced by the Government.

In the Investigating Officer's closing argument, he corroborated Appellant's statement. The Investigating Officer also stated that, in his opinion, Appellant is not a vicious person.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved by plea. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of three months outright plus three months on twelve months' probation.

OPINION

The appeal is based on the grounds that the suspension appears to be excessive because the fistcuff's were provoked by Yagel and he was not injured; the suspension would cause a financial hardship. Appellant has no prior record.

Although verbal provocation does not justify an assault and battery, it should be considered when the angered party inflicts little or no bodily harm. In view of these factors and Appellant's prior clear record, the order of the Examiner will be modified.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 18 April 1961, is modified to provide for a suspension of one (1) month outright and tow (2) months on twelve (12) months' probation.

As so MODIFIED, the order is AFFIRMED.

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

Signed at Washington, D.C., this 9th day of November 1961.

***** END OF DECISION NO. 1269 *****

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