

In the Matter of Merchant Mariner's Document No. Z-117697-D4 and
all other Seaman Documents
Issued to: FRANK T. SIEJACK

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1271

FRANK T. SIEJACK

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 24 May 1961, an Examiner of the United States Coast Guard at Houston, Texas revoked Appellant's seaman documents upon finding him guilty of misconduct. The three specifications found proved allege that while serving as a machinist and pumpman on board the United States SS VICKSBURG under authority of the document above described, on 28 April 1961, Appellant wrongfully threatened the First Assistant Engineer; on 16 May 1961, he wrongfully threatened the Chief Mate; on 16 May 1961, Appellant wrongfully disobeyed a lawful command by the Chief Mate.

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

The Investigating Officer introduced in evidence the testimony of the First Assistant Engineer and the Chief Mate as well as Official Logbook entries concerning these incidents.

Appellant did not testify but he repeatedly interjected statements denying that he threatened either officer.

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

On voyage including the dates of 28 April and 16 May 1961, Appellant was serving as a machinist and pumpman on board the United States SS VICKSBURG and acting under authority of his documents.

On 28 April 1961, the ship was at sea when the First Assistant Engineer gave Appellant instructions about a pump which was not operating. Resenting these instructions, Appellant became angry and shouted that he would give the First Assistant "something to remember me by." At the same time, Appellant approached the First Assistant waving some object. The First Assistant retreated. He is 58 years old. Appellant is 40 years of age and weighs about 220 pounds.

On 16 May 1961, the ship was in the port of Houston, Texas discharging ballast. Appellant shut off one of the pumps contrary to the instructions of the Chief Mate. When the Chief Mate realized what had happened, he ordered Appellant to leave the deck. Appellant refused to leave and stated that he would beat the Chief Mate's brain out if he were not the Mate. The Chief Mate repeated the order at least four times but Appellant refused to obey.

Appellant's prior record includes a probationary suspension in 1952 for bodily attack on other crew members; a four months' suspension in 1955 for assault and battery; a two months' suspension in 1956 for addressing the ship's Master with abusive language; a twelve months' suspension plus a probationary suspension in March 1960 for assaulting and battering an engineering officer.

BASES OF APPEAL

This appeal, taken from the order by the Examiner, is a plea for leniency. Appellant states that he is destitute and has no other livelihood. He has been sailing as a merchant seaman since 1938 and was a prisoner of war in Japan for 3 1/2 years. Several of Appellant's past offenses were punished by the civil authorities in addition to action taken by the Coast Guard. Appellant did not start trouble while he was on probation but was victimized by means of these alleged threats because of his prior record.

OPINION

I agreed with the Examiner that Appellant is not a fit person to go to sea on United States merchant vessels. The evidence in this case and his prior record indicate that Appellant is almost completely undisciplined and is belligerently resentful of authority. Both witnesses testified that they feared throughout the voyage that Appellant might become violent at any time.

There is no evidence to support Appellant's denials except with respect to the allegation that he threatened the Chief Mate. Appellant's language did not express a present intent "to injure presently or in the future" (*United States v. Metzdorf* (D.C. Montana, 1918), 252 Fed. 933 at 938) but it was an offer of violence conditioned upon the other party's lack of status as the Mate. Since this does not constitute a threat, the conclusion that this specification was proved is reversed and the specification is dismissed.

Regardless of the resulting hardship to Appellant and anything favorable in his past record, there is no reason to modify the order of revocation in view of the consistent pattern of similar offenses over a period of almost ten years.

Order

The order of the Examiner dated at Houston, Texas, on 24 May 1961, is AFFIRMED.

J. A. Hirshfield

Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D.C., this 13th day of November 1961.

***** END OF DECISION NO. 1271 *****

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