

In the Matter of Merchant Mariner's Document No. Z-752508 and all
other Seaman Documents
Issued to: JUAN MORALES MARTINEZ

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1279

JUAN MORALES MARTINEZ

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 31 January 1961, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for three months on twelve months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a waiter on board the United States SS INDEPENDENCE under authority of the document above described, on 17 October 1960, Appellant wrongfully struck another waiter, Tom Bardi, with a dangerous weapon (a water pitcher) while the ship was in the Port of Naples, Italy.

The evidence presented by both parties shows that Bardi was the initial aggressor when he used his fist to hit Appellant on the head. Bardi then grabbed Appellant two or three times as he retreated. When Bardi grabbed Appellant the last time, Appellant picked up a glass water pitcher from a table and struck Bardi on the head with it. Other crew members stopped the fight. The cut on Bardi's head required three stitches.

On appeal, it is stated that Appellant's conduct was justified because he acted in self-defense when Bardi continued to chase Appellant.

APPEARANCE: Zwerling and Zwerling of New York City by Sidney
 Zwerling, Esquire, of Counsel

OPINION

I agree with the Examiner that, although Bardi was not free from fault, there is no evidence to indicate that Appellant was justified in wielding the glass water pitcher as a weapon in self-defense even after he had continued to retreat from Bardi. There is no evidence that Appellant had reason to believe that he was in danger of serious bodily harm. Appellant was not knocked down, he was injured only slightly, and other members of the crew were present to protect him. Therefore, Appellant used excessive force in self-defense when he struck Bardi on the head with the water pitcher. The order of probationary suspension imposed by the Examiner was lenient under the circumstances despite Appellant's prior clear record.

ORDER

The order of the Examiner dated at New York, New York, on 31 January 1961, is AFFIRMED.

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

Dated at Washington, D. C., this 11th day of January 1962.

***** END OF DECISION NO. 1279 *****

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