

In the Matter of Merchant Mariner's Document No. Z-1105-397-D1 and
all other Seaman Documents
Issued to: NICOLAS D. V. CARBAJAL

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1295

NICOLAS D. V. CARBAJAL

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 14 August 1961, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of misconduct. The offense found proved by the Examiner is that while in the service of the United States SS ESSO GLOUCESTER as a messman, acting under authority of the document above described, on the night of 23 July 1961, Appellant molested a woman and her two minor children when he approached their convertible automobile on three occasions and twice chased them when they ran away from the car as Appellant came toward it. The automobile was parked near, but outside of, the entrance to the Esso dock at Canton, Baltimore, Maryland. The woman was waiting for the arrival of another Esso ship on which her husband was employed as a seaman.

At the hearing, Appellant voluntarily elected to act as his own counsel. Appellant entered a plea of guilty to the charge and specification. He then stated that he was intoxicated and did not remember anything concerning the alleged offense.

No evidence was introduced by either party. The Investigating Officer said that, after the incident alleged, a guard at the gate to the dock told Appellant to leave the area but the local police were not called.

Appearance on Appeal: S. Michael Weisberg, Esquire of New York
City, of Counsel

OPINION

Appellant's plea of guilty should have been rejected because it was inconsistent with his claimed lack of any recollection about the alleged offense. Also, the propriety of assuming jurisdiction is questionable with respect to a matter which did not involve anyone connected with the ship, occurred outside of the gate to the dock area, and apparently was not considered to be serious enough to report to the police. The account as to what constituted this alleged offense of molestation is based, in the record, solely on statements made by the Investigating Officer. Even if this were accepted, the significance of Appellant's conduct is left to speculation.

In view of these factors, the finding and conclusion that the specification was proved are set aside; the charge and specification are dismissed.

ORDER

The order of the Examiner dated at New York, New York, on 14 August 1961, is VACATED.

A. C. Richmond
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 8th day of March 1962.

***** END OF DECISION NO. 1295 *****

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