

In the Matter of Merchant Mariner's Document No. Z-251197-D1 and
all other Seaman Documents
Issued to: EARL A. SPENCER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1316

EARL A. SPENCER

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 November 1961, an Examiner of the United States Coast Guard at Baltimore, Maryland revoked Appellant's seaman documents upon finding him guilty of misconduct. The two specifications found proved allege that while serving as an unlicensed Junior Engineer on board the United States SS AFRICAN SUN under authority of the document above described, on 13 October 1961, Appellant wrongfully failed to perform his duties due to intoxication; on 1 November 1961, Appellant wrongfully struck Herminio Saurez.

Since Appellant was not present at the hearing, the Examiner entered pleas of not guilty to the charge and specification. The hearing proceeded in absentia.

The Investigating Officer introduced in evidence copies of entries in the Ship's Official Logbook and the testimony of the Chief Mate, Herminio Saurez, and wiper Ramos. Another member of

the crew, carpenter Marshall, was present to testify at the hearing but he was not called since the other evidence was considered to be sufficient in the absence of any rebuttal by Appellant.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and two specifications had been proved. The Examiner then entered an order revoking all documents issued to Appellant.

FINDINGS OF FACT

On 13 October and 1 November 1961, Appellant was serving as an unlicensed Junior Engineer on board the United States SS AFRICAN SUN and acting under authority of his document.

On 13 October 1961, the ship was at sea when Appellant was late turning to as a day worker. When he complained about missing breakfast, the First Assistant Engineer sent Appellant to get breakfast but he did not return to work. About 0930, the First Assistant found Appellant wandering along a passageway in an intoxicated condition. Appellant did not turn to at any time on this date.

The ship was at Monrovia, Liberia, on 1 November 1961, at 2330 when Appellant went to the room which he shared with two other unlicensed Junior Engineers. One of them, Herminio Saurez was awakened when Appellant turned on the light and argued with him about the light. Appellant picked up a channel lock, threatened to injure Saurez if he turned out the light, and hit him on the head with the channel lock when Saurez turned out the light. Saurez was cut over the left eye and the injury bled profusely. He awakened the First Assistant Engineer and received medical treatment on board since it was too late to obtain the services of a physician ashore.

Appellant's prior record consists of a probationary suspension in 1953 for failure to perform duties, intoxication and assault; one month outright plus probation in 1958 for failure to perform duties; and six months on eighteen months probation in April 1961 for intoxication and absence from his ship and duties without permission on several occasions.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that Appellant was deprived of his right to a fair and impartial hearing because the hearing was held in his absence despite his previous statement that he might not be present, and because a seaman present at the hearing was not called upon to testify. An affidavit by this seaman is enclosed. (It states that the seaman saw Appellant and Saurez as they emerged from the room, Saurez was holding the channel lock, and Appellant did not strike Saurez with any tool.)

The order of revocation is too severe.

APPEARANCE: Sol C. Berenholtz of Baltimore, Maryland by William H. Engelman, Esquire, of Counsel.

OPINION

The Investigating Officer stated that, when Appellant was served with the charges on 17 November 1961 to appear on 20 November, Appellant at first indicated that he might not be present but he then said he would be present at the hearing on 20 November. Nothing was heard from Appellant to explain his absence.

The statement in the affidavit that Saurez had possession of the tool when the two seamen emerged from the room is not inconsistent with Saurez's testimony that after he was hit with the channel lock by Appellant, Saurez delivered a blow with his fist and got possession of the channel lock. The striking of Saurez with the channel lock held by Appellant is also testified to by wiper Ramos, whereas the seaman whose affidavit was submitted was not in a position to see whether Appellant struck Suarez with the tool before the two left the room. Additional reasons for rejecting some of the contents of the affidavits are that it was not submitted as evidence at the hearing and there is nothing in the hearing record to indicate that his seaman was subpoenaed to appear as a witness for Appellant rather than for the Investigating Officer.

The evidence is clear that his was an unprovoked attack with

a tool used as a dangerous weapon. The First Assistant Engineer testified that the wound was bleeding profusely and that Saurez was sent to a doctor on the following morning. The Examiner noted in his decision that Suarez was sent to a doctor on the following morning. The Examiner noted in his decision that Suarez had a substantial scar over his left eye and that his offense occurred well within the probationary period of the order imposed in April 1961. Considering these factors together with Appellant's prior record, it is my opinion that the order of revocation is not too severe.

ORDER

The order of the Examiner dated at Baltimore, Maryland, on 24 November 1961, is AFFIRMED.

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

Signed at Washington, D. C., this 15th day of May 1962.

***** END OF DECISION NO. 1316 *****

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