

In the Matter of Merchant Mariner's Document No. Z-368289-D1 and
all other Seaman Documents
Issued to: Ernest Villarico

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1324

Ernest Villarico

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 1 December 1961, an Examiner of the United States Coast Guard at San Francisco, California suspended Appellant's seaman documents for three months upon finding him guilty of misconduct. The specification found proved alleges that while serving as an able seaman on board the United States SS MONTEREY under authority of the document above described, on 26 October 1961, Appellant assaulted and battered able seaman Van Vliet.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and specification.

The alleged offense was proved by the testimony of Van Vliet, as corroborated by a logbook entry, that when he rebuked Appellant for not reporting to his mooring station, Appellant struck Van Vliet in the face knocking him to the deck. The medical report

states that Van Vliet's upper lip was lacerated and required five stitches.

Appellant testified that he was belligerently addressed with insulting language by Van Vliet who was somewhat intoxicated; Van Vliet had his hands up and when he moved closer, Appellant hit him and walked away.

OPINION

It is urged on appeal that Appellant was extremely provoked by the language used by Van Vliet; the order imposed is excessive when considered in the light of the surrounding circumstances and Appellant's prior clear record.

The Examiner correctly states that provocation by words does not excuse the offense of assault and battery. Nevertheless, the record indicates that there was extreme provocation by the use of language reflecting on Appellant's racial extraction and that the single blow was struck in anger a Van Vliet continued to approach Appellant. In view of the circumstances, Appellant's prior clear disciplinary record, and his good work record, the order will be reduced.

ORDER

The order of the Examiner dated at San Francisco, California, on 1 December 1961, is modified to provide for a suspension of three (3) months on twelve months' probation.

If this probation is violated, the three months' suspension will become effective as directed by any Coast Guard Examiner who finds Appellant guilty of a later offense committed within the probationary period. This three months' suspension may be a part of the order which is entered by such an Examiner.

As so MODIFIED, the order is AFFIRMED.

E. J. Roland
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 13th day of September, 1962.

***** END OF DECISION NO. 1324 *****

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