

In the Matter of Merchant Mariner's Document No. Z-155911 and all  
other Seaman Documents  
Issued to: Manuel Rodriguez

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1394

Manuel Rodriguez

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 19 December 1962, 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 Chief Electrician on board the United States SS PRESIDENT McKINLEY under authority of the document above described, on 21 October 1962, Appellant assaulted another crew member with a crescent wrench. Two other specifications were dismissed.

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

The Investigating Officer introduced in evidence the testimony of Chief Mate Martin, and two exhibits (abstract of the Shipping Articles and a copy of an entry made in the Official Logbook).

In defense, Appellant offered in evidence the testimony of the steward's utility man and his own testimony. In addition a bloodstained shirt belonging to Appellant was introduced in evidence.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification has been proved.

#### *FINDINGS OF FACT*

On 21 October 1962 Appellant was serving as Chief Electrician on board a merchant vessel of the United States, the SS PRESIDENT McKINLEY, under the authority of his merchant mariner's document while the vessel lay at Belawan, Sumatra.

About 2230 on that evening Appellant returned from shore and having found his room locked, proceeded to the officers' saloon in search of his roommate, the Second Electrician. Not finding the electrician in the saloon Appellant asked O'Brien, a Third Assistant Engineer, if he knew the whereabouts of the Second Electrician. O'Brien told Appellant that he was not wanted in the saloon and an argument ensued. At this time Chief Mate Martin came along and separated the two men sending O'Brien to the saloon. Wagner, the Second Assistant Engineer, came by and fought with Appellant. Martin separated them and sent Wagner to the saloon. Appellant was bleeding from the mouth and had a bruise beneath one of his eyes. He grabbed a fire ax and started toward the saloon when he was disarmed by several persons. Appellant was taken to his cabin.

Around 0200, while Martin, Wagner, and the radio operator were seated in the saloon, Appellant appeared at the doorway holding in his hand a 12-inch crescent wrench raised above his head and headed toward Wagner, who saw Appellant and pinned him against the bulkhead. Appellant was disarmed and handcuffed before anything further happened. The Master was notified and Appellant was removed from the vessel and subsequently hospitalized. He did not return to the ship.

### BASES OF APPEAL

Among the grounds urged by counsel for reversal are the following:

1. The government failed to adduce substantial evidence of the alleged assault. It was inconsistent to believe with respect to the dismissed specifications but not concerning the other offense alleged.

2. The logging which occurred after Appellant was ashore and which he had no chance to answer was improper evidence even considering the exceptions permitting the admissibility of log entries. The log entry in this case was not a proper entry because it did not conform to the standards approved by the Coast Guard.

3. The government's witness, Chief Mate Martin, made statements inconsistent with the facts, including the severely beaten condition of the Appellant at the time of the alleged assault.

4. The government failed to produce necessary witnesses to the alleged assault, including Wagner.

APPEARANCE: Julius J. Rosen, Esquire, of Tenzer, Greenblatt, Fallon & Kaplan of New York, New York on the brief for Appellant.

### OPINION

The above findings of fact are substantially in agreement with those of the Examiner.

The second and fourth assignments of error may be dismissed without extended discussion.

Section 137.20-107, Title 46 of the Code of Federal Regulations provides in part that a certified copy of a log entry, if not made in substantial compliance with the requirements set forth in 46 U.S. Code 702, while admissible in evidence, does not constitute *prima facie* evidence of the facts stated

therein. In the instant case, it is not material whether the log entry meets the requirements of section 702 since the decision that Appellant was guilty is primarily based on the Chief Mate's testimony and not the log entry. Nevertheless, this entry constitutes proper evidence to corroborate Martin's testimony that Appellant's apparent injuries consisted of a bruise near one eye and a slight cut on the month. This condition as well as Appellant's appearance of intoxication was observed by the Master when he entered the saloon. The Master also stated, in the entry, that an American Vice-Consul agreed that Appellant should be permanently removed from the ship for the safety of all.

As to the fourth assignment of error, it is noted that the government did not have a duty to produce any specific witnesses. If Appellant desired Wagner's or O'Brien's testimony he could, presumably, have secured it by means of a subpoena or deposition. See 46 C.F.R. 137.15-10, 137.20-140.

The first and third assignments of error, together with others listed by Counsel in his brief, deal primarily with evidentiary matters.

The Examiner accepted Martin's version of the crescent wrench episode and found Appellant guilty as charged. There is no indication in the Examiner's decision that he discredited Martin's testimony in dismissing the two other specifications. In fact, the Examiner rejected Appellant's testimony that Martin was not present during the argument with O'Brien and the fight with Wagner, and that Appellant grabbed the ax to defend himself against Wagner. Consistent with this, the Examiner did not accept Appellant's testimony that he did not later have possession of a wrench but simply was seeking medical attention for numerous injuries when he was attacked and handcuffed. Martin's testimony, therefore, constitutes substantial evidence for the Examiner's evaluation as to what occurred just before Appellant was handcuffed.

With respect to the third assignment of error, the Examiner did not accept as a fact Appellant's testimony that he suffered a severe beating either before or after the time of the alleged assault with the wrench. The testimony of Appellant's only witness other than himself is so confusing and obviously exaggerated in some respects that it deserves no credence and was given none by

the Examiner. On the other hand, the Examiner accepted, as facts, the testimony given by Chief Mate concerning the extent of Appellant's injuries (referred to above) as well as that Appellant entered the saloon with the wrench in an upraised position and was stopped from using it only by the quick action of Wagner who was sitting at the table with the Chief Mate and the radio operator. The medical reports submitted on appeal are not convincing as to what injuries Appellant had suffered three months or more prior to the dates on the medical reports. Hence, there is no merit to the contention that the Chief Mate's testimony was inconsistent with the facts.

*ORDER*

The order of the Examiner dated at New York, New York on 19 December 1962, is AFFIRMED.

D. McG. MORRISON  
Vice Admiral, United States Coast Guard  
Acting Commandant

Signed at Washington, D. C., this 20th day of June 1963.

\*\*\*\*\* END OF DECISION NO. 1394 \*\*\*\*\*

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