

In the Matter of Merchant Mariner's Document No. Z-70102-D4
Issued to: LOUIS PARKER

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

391

Louis Parker

This appeal comes before me in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

On 16 May, 1949, Appellant appeared before an Examiner of the United States Coast Guard at New York City to answer a charge of "misconduct" supported by two specifications alleging that while Appellant was serving as saloon pantryman on board the American SS FLYING CLIPPER, under authority of Merchant Mariner's Document No. Z-70102-D4, he did, on or about 11 January, 1949, while the said vessel was at Manila, Philippine Republic:

"First Specification: * * * * assault one Ernestine Rios, A crew member of the said vessel. "Second Specification: * * * * assault one Frank Arnold, a crew member of the said vessel, with a dangerous weapon, to wit: a fireax."

At the hearing, Appellant was fully informed as to the nature of the proceeding, the rights to which he was entitled and the possible outcomes of the hearing. The first specification was dismissed by the Examiner since it failed to set forth facts with sufficient particularity to allow the person charged to prepare a

defense. Appellant was not represented by counsel and he pleaded "not guilty" to the second specification and charge.

After the Investigating Officer and Appellant had completed their opening statements, testimony was given by the person alleged to have been assaulted by Appellant. The latter was afforded an opportunity to cross-examine the witness but he did not do so. Before being dismissed, the witness gratuitously made a statement to the effect that there had been numerous fights aboard the ship on the voyage in question. The Investigating Officer then offered in evidence an excerpt from the official Log Book of the SS FLYING CLIPPER which states that Appellant had attacked "at least four crew members with a fireax." (R. 15)

Upon being informed of his right to testify as a witness in his own behalf or to make a statement not under oath, Appellant chose to speak while not under oath. He stated that he did not attack Arnold with a fire ax but that Arnold hit him in the eye and cut him up to such an extent that he was hospitalized.

The Examiner made his findings of fact and concluded that the second specification and the charge were "proved". He then entered an order suspending Appellant's Merchant Mariner's Document and all other valid licenses, certificates, and documents issued to him by the United States Coast Guard or its predecessor authority, for a period of two years, one year outright and the remaining year on probation from 16 May, 1950, for a period of one year.

On Appeal, Appellant contends that:

Point 1: Appellant was misled as to the seriousness of the offense and for this reason he did not obtain counsel. A new hearing is requested so that he may be adequately represented by counsel.

Point 2: The evidence does not support the finding that Appellant assaulted Arnold. The latter had admittedly attacked Appellant at a prior time on the day of the alleged assault. Appellant was carrying the fire axe for purposes of self-defense. Hence, the second specification

- and charge should have been dismissed.
- Point 3: The log book entry should have been excluded from the record because it does not comply with the statutory requirements. It was not read to Appellant, he was not given a copy of it nor did he have an opportunity to reply to it.
- Point 4: The order imposed is too severe under the circumstances. The numerous fights aboard the FLYING CLIPPER indicate that there was a general breakdown in discipline.

FINDINGS OF FACT

On or about 11 January, 1949, Appellant was serving as a member of the crew in the capacity of saloon pantryman on board the American SS FLYING CLIPPER, under authority of Merchant Mariner's Document No. Z-70102-D4, while the ship was at Manila, Philippine Republic. Appellant shared a room on board the ship with Arnold and Harris.

On the above date at approximately 1400, Arnold returned to his room with the saloon passenger stewardess. The chief cook, Harris and Appellant were also in the room. Appellant told Arnold to take the stewardess out of the room and when he refused to do so, Appellant put his hands on her arms to remove her. Arnold attacked Appellant and although the latter put up a struggle, he was beaten and left the room.

A short time later, Appellant came back to the room carrying a fireax. Arnold's testimony is not clear as to how Appellant was holding the ax; whether Appellant was inside or still outside of the room when Arnold saw him with the ax; and whether Appellant was heading toward Arnold, some other person in the room or Appellant's bunk. And it was not stated how many other people were in the room at that time except that at least one other person was present. Despite the indefiniteness as to what Appellant's apparent intention was, Arnold ran to meet Appellant and wrestled the fireax from his grasp because of Arnold's apprehension of danger. Arnold gave the ax to "casey" as Arnold and Appellant continued to fight. Appellant was injured to such an extent that he was removed to a hospital and later removed from the ship as a result of a petition

by the crew.

OPINION

This case has given me much concern. First, I do not consider that the Coast Guard should favor a merchant seaman whose disposition is so controversial that his shipmates find it necessary to request, in writing, his removal from the vessel in a foreign port.

On the other hand, and secondly, I do not wish to approve suspension of documents held by even a recalcitrant seaman without satisfactory proof of his misconduct.

In this case, I think the testimony shows Appellant made himself personally objectionable to his shipmates. However, I entertain some doubt that the evidence adduced at this hearing is sufficient to support the charge and second specification. In view of that uncertainty, I propose to give Appellant the benefit of the doubt. I do not believe a remand of the case at this late date would serve any useful purpose or produce more conclusive proof of his misconduct under this particular charge and specification.

My disposition of the case makes it unnecessary to comment upon the other points submitted on appeal, beyond remarking that I do not consider them meritorious.

ORDER

The Order of the Examiner dated at New York, N.Y., on 16 May, 1949 is REVERSED, VACATED and SET ASIDE.

MERLIN O'NEILL
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C. this 27th day of January, 1950.

***** END OF DECISION NO. 391 *****

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