

In the Matter of Merchant Mariner's Document No: Z-268358-D5
Issued to: AGUEDO RUIZ

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

487

AGUEDO RUIZ

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

On 2 November, 1950, an Examiner of the United States Coast Guard at New York City suspended Merchant Mariner's Document No. Z-268358-D5 issued to Aguedo Ruiz upon finding him guilty of "misconduct" based upon two specifications alleging in substance that while serving as a messman on board the American S. S. MORMACSEA, under authority of the document above described, on or about 3 and 27 August, 1950, respectively, he wrongfully failed to turn to and he wrongfully struck the chief steward of said vessel. Two other specifications, alleging failure to turn to on another date and the use of threatening language, were dismissed by the Examiner due to the lack of substantial and probative evidence.

The hearing was commenced "in absentia" due to Appellant's failure to appear at the designated time and place. The Examiner informed counsel for Appellant as to the nature of the proceedings and the possible consequences. A plea of "not guilty" was entered, to the charge and all four specifications, by the Examiner.

After the Investigating Officer had made his opening statement and counsel for the person charged had objected to the commencement of the proceedings in the absence of Appellant, the Investigating Officer introduced in evidence the testimony of Bahrs, the chief steward alleged to have been struck by the person charged. The hearing was then adjourned.

Upon reconvening, Appellant was present and remained throughout the balance of the proceedings. The Investigating Officer called three more witnesses and also offered in evidence a consular report before resting his case. Upon motion of counsel for Appellant, the second and third specifications were dismissed by the Examiner. Appellant then testified under oath in his own behalf and introduced in evidence the testimony of one other witness. He then rested.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and counsel, the Examiner found the charge "proved" by proof of the first and fourth specifications and entered an order suspending Merchant Mariner's Document No. Z-268358-D5, and all other valid documents, licenses and certificates issued to Appellant by the U.S. Coast Guard or its predecessor authority, for a period of eight months - five months outright suspension and three months on six months probation.

Appellant has appealed from that order urging that the findings as to the fourth specification are contrary to the weight of the credible evidence and should be set aside as being arbitrary and capricious; and that the order is excessively harsh for the minor offenses of misconduct of which Appellant was found guilty.

APPEARANCES: Messrs. Lawrence and Levy of New York City Irving Lawrence, Esquire, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On a foreign voyage covering the dates of 3 and 27 August, 1950, Appellant was serving as messman, under authority of Merchant Mariner's Document No. Z-268358-D5, on board the American S.S.

MORMACSEA.

On 3 August, 1950, the MORMACSEA was at the Port of New York preparatory to departure for South America. Appellant reported on board on this date and he was informed by the chief steward that he was to start work at 1600 to prepare for the 1700 meal. Appellant was not aboard at 1600 and, at 1610, the chief steward assigned another man to do Appellant's work. He came aboard at 1630 and turned to at 1635. When asked by the chief steward why he was late, Appellant did not give any excuse.

On 27 August, 1950, the MORMACSEA was moored in Rio de Janeiro, Brazil. It was Appellant's duty to prepare the grapefruit which was on the breakfast menu. The chief steward, Bahrs, was in his room at about 0800 when the ship's union chairman, Prockl, complained to Bahrs that there was no grapefruit ready for breakfast. Bahrs then went to Appellant, accompanied by Prockl. Appellant was in the recreation room near the doorway as Bahrs approached with Prockl. Bahrs asked Appellant why he had not fixed the grapefruit. Answering with an unintelligible reply, Appellant suddenly grabbed Bahrs by the shirt with his left hand and hit him twice in the face with his right fist. Bahrs did not strike or threaten Appellant during this fracas. Appellant released Bahrs and members of the crew intervened to prevent any further fighting. Bahrs was bleeding from the mouth as a result of these blows and his face was bruised and swollen.

Bahrs immediately reported this incident to the Master who, in turn, investigated the situation and then addressed a letter to the U.S. Consul at Rio de Janeiro requesting that Appellant be discharged for the benefit of the vessel. As a result of this request, a hearing was held and Appellant was interrogated by the officer in charge of the Consular Section. With the concurrence of the ship's delegates, Appellant was discharged by the American Consul on 27 August, 1950.

There is no record of any prior disciplinary action having been taken against Appellant by the U. S. Coast Guard.

OPINION

It is contended that there are several glaring discrepancies

in the testimony of three of the Investigating Officer's witnesses and, for this reason, serious doubt is cast upon the validity and credibility of his case. The testimony referred to is that of Bahrs, Prockl and Gadson. There are differences in their testimony as to the number of blows struck by Appellant, who separated the two men and what Appellant had in his hand just prior to the attack.

Bahrs testified that he was struck five or six times; Prockl stated that two blows were struck; and Gadson definitely saw one blow land but was not certain as to any more because Prockl was blocking his view. I see nothing objectionable to this testimony. The statements of the three witnesses were basically similar. Seldom, if ever, do three men testify exactly alike as to incidents which occurred suddenly and in an atmosphere of excitement. Due to his dazed condition or the force of the blows, Bahrs might well have thought that he had been hit two or three times as often as was actually the case. In any event, the testimony conclusively establishes that Appellant struck Bahrs at least twice and Appellant admitted that he hit Bahrs once. That this was quite a forceful blow is supported by the statement in the consular report that Appellant visited the American Embassy and indicated his intention to make a claim for injuries received to his hand when he struck the chief steward Bahrs.

Gadson and the chief steward testified that Prockl helped to separate the two men and prevent further fighting. This was only denied by Prockl in the sense that he tried to separate them but he was not able to do so and Appellant then let go of his hold on the chief steward. Obviously, this could present the appearance that Prockl forced Appellant to release Bahrs. Hence, this does not in any respect reflect on the reliability of the testimony given by Prockl.

Concerning what Appellant had in his hand just before he struck Bahrs, it is sufficient to note that Gadson, as well as Bahrs, made specific reference to the presence of a broom in the same room with Appellant. Gadson did testify that the person charged was holding a rag while Bahrs said it was a broom. This minor discrepancy is relatively unimportant and not sufficient to affect the outcome of this case.

Appellant claims that he was pushed by Bahrs and that any subsequent action was taken in self-defense. The evidence does not support this contention. All three of the above witnesses definitely testified that Bahrs had not pushed Appellant nor had the latter been provoked in any manner by the chief steward. Even if Appellant's testimony were accepted, he would not have been justified in striking Bahrs as he did since the person charged testified that he was not shoved hard enough to make him fall down. Consequently, there would have been no need to hit Bahrs to repulse him.

It is also urged that there is no charge of assault and that the order is too severe for a simple charge of misconduct. It is true that the word "assault" is not used but the words of the fourth specification do, in fact, set forth the offense of assault as it is commonly defined. The assault herein was particularly obnoxious since it consisted of an unprovoked attack upon a superior who was acting in the line of duty. This is an offense of a serious nature which tends to undermine the duly constituted authority necessary to the maintenance of discipline on shipboard.

ORDER

The Order of the Examiner dated 2 November, 1950, should be, and it is, AFFIRMED.

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

Dated at Washington, D.C., this 23rd day of February, 1951.

***** END OF DECISION NO. 487 *****

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