

In the Matter of Merchant Mariner's Document No. Z-595189-D1
Issued to: JUAN W. MAYORGA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

534

JUAN W. MAYORGA

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 26 June, 1951, and Examiner of the United States Coast Guard at New York City revoked Merchant Mariner's Document No. Z-595189-D1 issued to Juan W. Mayorga upon finding him guilty of misconduct based upon nine specifications alleging in substance that while serving as Cabin Class Deck Steward on board the American SS ARGENTINA under authority of the document above described, between 14 April and 18 April, 1951, inclusive, he did:

"First Specification: . . . on or about 14 April, 1951, while the vessel was at sea, wrongfully molest a female passenger; to wit, one Celia Perez.

"Second Specification: . . . on or about 15 April, 1951, while the vessel was at sea, wrongfully dance with a female passenger; to wit, one Mrs. Cecilia Calvo.

"Third Specification: . . . on or about 15 April, 1951, while the vessel was at sea, wrongfully dance with a female

passenger; to wit, one Mrs. Maria Bastos.

"Fourth Specification:on or about 16 April, 1951, while the vessel was at sea, wrongfully loiter at the first class passengers' swimming pool while dressed in civilian clothing.

"Fifth Specification:on or about 17 April, 1951, while the vessel was at sea, wrongfully commit an assault and battery upon a fellow crew member; to wit, one Frank F. Ebel.

"Sixth Specification:on or about 17 April, 1951, while the vessel was at sea, wrongfully assault a fellow crew member, one Frank F. Ebel, with a dangerous weapon; to wit, an ice pick.

"Seventh Specification:on or about 17 April, 1951, while the vessel was at sea, wrongfully use threatening and abusive language to a fellow crew member; to wit, one Frank F. Ebel.

"Eighth Specification:on or about 18 April, 1951, while the vessel was in the port of Rio de Janeiro, wrongfully enter passenger spaces; to wit, the cabin class passengers' dining room.

"Tenth Specification:on or about 18 April, 1951, while the vessel was in the port of Rio de Janeiro, wrongfully absent yourself from duties without authority.

The Examiner found the Ninth Specification "not proved" and he dismissed the Eleventh Specification stating that it merged with the Second Specification since the facts alleged coincided with the allegations in the latter specification.

At the hearing, Appellant was given full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by an attorney of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of four witnesses as well as certified copies of extracts from the Official Log Book and an authenticated copy of a Consular report from the American Embassy at Rio de Janeiro.

In defense, Appellant testified under oath in his own behalf. Both parties then rested their case.

At the conclusion of the hearing, having heard the argument of the Investigating Officer and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the first eight specifications and the tenth specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-595189-D1, and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that the order is of unusual severity and deprives Appellant of his livelihood; that Appellant has served for eight years with an unblemished record; that the difficulties arose out of an excessive use of alcoholic beverages which Appellant will no longer use aboard ship since he now knows that such conduct cannot be tolerated, and that, therefore, the case be reopened for the taking of further testimony as well as for reargument.

APPEARANCES: Messrs. Brower, Brill and Gangel of New York City
Willaim B. Gurock, Esquire, of Counsel.

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

FINDINGS OF FACT

On a voyage covering 14 April through 18 April, 1951, Appellant was serving as Cabin Class Deck Steward on board the American SS ARGENTINA and acting under authority of his Merchant Mariner's Document No. Z-595189-D1.

At about 2100 on 14 April, 1951, Appellant was seated in the cabin passengers' smoke room with a drink under his chair. He approached Celia Perez, a female passenger, took her by the arm and attempted to get her to dance with him but she refused to do so. On the following evening at about the same time, Appellant danced with two other female passengers, Mrs. Cecilia Calvo and Mrs. Maria Bastos, in the cabin class smoke room. Appellant had been drinking on this occasion also and he attempted to embrace Mrs. Calvo while dancing with her.

At approximately 0200 on 16 April, 1951, Appellant was conversing with one of the passengers in the vicinity of the first class passengers' swimming pool. At this time, Appellant was dressed in his ordinary civilian clothing and he was not on duty despite the fact that there were signs posted in various places throughout the ship stating that crew members were not permitted in the passengers' spaces except while on duty. Appellant went below after having been ordered to leave twice by the junior officer on watch. On 18 April, 1951, Appellant entered the cabin class passengers' dining room after having been ordered to stay out of the passenger spaces. The purpose of this visit was to pay off a personal debt.

Between 2000 and 2100 on 17 April, 1951, Appellant entered the forecandle which he shared with Frank F. Ebel and three other members of the crew. Ebel was lying in his bunk reading a book. Appellant insisted upon seeing the book and Ebel's seaman documents, called Ebel vulgar and abusive names, grabbed Ebel's leg and tried to pull him out of his bunk, and commenced ransacking Ebel's locker looking for his seaman papers. Appellant threatened Ebel with physical injury if he stayed in the same forecandle, so the ship's union delegate moved Ebel to another forecandle. A few minutes later, Appellant entered the forecandle where Ebel was and attempted to hit him with the handle of an ice pick but he was restrained by some other members of the crew and finally left the forecandle. During this incident, Appellant's eyes were bloodshot and he seemed emotionally upset but he was steady on his feet.

As a result of various complaints against Appellant, he was signed off the vessel at Rio de Janeiro on 19 April, 1951, and returned to the United States aboard the MORMACPENN on 4 May, 1951.

He had been serving on the ARGENTINA for approximately two and a half years without any record of prior incidents of misconduct.

OPINION

The Examiner found that Appellant cannot be held to have wrongfully absented himself from his duties without authority on 18 April, 1951, since there is no evidence as to the duties and times involved. Therefore, the conclusion that the Tenth Specification was "proved" must be reversed and the Tenth Specification dismissed.

Appellant requests clemency stating that he has learned his lesson and that he will not again indulge in such conduct or the consumption of alcoholic beverages while serving aboard any vessel.

The Examiner has very ably pointed out the reasons why crew members may not be permitted to associate with passengers. This rule must be strictly observed regardless of the attitude of the passengers. In addition to the shipping companys' regulations against fraternizing with the passengers, the courts have had something to say on the subject. It was stated more than a century ago that the owner's and master's contractual obligation to passengers is one of peculiar responsibility and delicacy. In *Chamberlain v. Chandler*, *Fed. Cas. 2575*, decided in 1823, Judge Story said:

"In respect to females it [the contract] proceeds yet farther, it includes an implied stipulation against general obscenity, that immodesty of approach which borders on lasciviousness and against that wanton disregard of the feelings, which aggravates ever evil, and endeavors by the excitement of terror, and cold malignancy of conduct, to inflict torture upon susceptible minds. * * * In each case the contract of the passengers for the voyage is in substance violated; and the wrong is to be redressed as a cause of damage."

And in *Nieto v. Clark*, *Fed. Cas. 10,262*, decided in 1858, it was held that the contract covered protection against personal rudeness from all those in charge of the vessel, and every interference with the passenger's person. Hence, by his actions while a member of the crew, Appellant subjected the ship's owner to

a possible penalty. And since it is incumbent upon the owners to see that such a high degree of respect is paid to its female passengers, this duty is also imposed upon the owner's employees who are aboard the ship. Appellant's failure to comply with this strict obligation is additional reason for finding that his behavior constituted misconduct.

Appellant stated that most of the trouble arose from his indulgence in quantities of rum. Although this cannot be used to excuse his conduct with respect to the passengers or his fellow crew member Ebel, the fact that Appellant served for eight years as a seaman and for two and a half years aboard the ARGENTINA without being in any trouble, indicates the probability that this was an isolated group of incidents which will not be repeated if Appellant keeps his promise to refrain from indulging in alcoholic beverages while aboard ship.

In view of the substantial nature of the evidence supporting the allegations contained in the specifications and the modification of the order to be made, it would serve no purpose to reopen the hearing to take further testimony or for reargument of the case.

ORDER

Accordingly, it is ORDERED and DIRECTED that the order of the Examiner dated 26 June, 1951, is hereby MODIFIED to provide for the suspension of Appellant's Merchant Mariner's Document No. Z-595189-D1, and all other valid licenses, certificates of service and documents issued to Appellant by the United States Coast Guard or its predecessor authority for a period of eighteen (18) months. Six (6) months of the suspension ordered shall not be effective provided no charge under R.S. 4450, as amended (46 United States Code 239), is proved against Appellant for acts committed within twenty-four (24) months of the expiration of the twelve (12) months outright suspension. As so MODIFIED, said order is AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 21st day of November, 1951.

***** END OF DECISION NO. 534 *****

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