

In the Matter of License No. 67236 and Merchant Mariner's Document
No. Z-295807

Issued to: MARTIN FELDMAN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

539

MARTIN FELDMAN

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 28 August, 1951, an Examiner of the United States Coast Guard at Mobile, Alabama, suspended License No. 67236 and Merchant Mariner's Document No. Z-295807 issued to Martin Feldman upon finding him guilty of misconduct based upon four specifications alleging in substance that while serving as able seaman on board the American SS LAFAYETTE VICTORY under authority of the Merchant Mariner's document above described: (1) on or about 23 February, 1951, while said vessel was in the port of Yokohama, Japan, he absented himself without permission; (2) on or about 4 and 8 March, 1951, at Inchon, Korea, he absented himself from the vessel and his duties without permission; (3) on or about 6 March, 1951, he used abusive and obscene language to the Chief Officer of said vessel; and (4) on or about 7 March, 1951, he threatened the Chief Officer of said vessel.

At the hearing, Appellant was given a 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 "guilty" to the first specification; "not guilty" to the second and fourth specifications; and "guilty with an explanation" to the third specification.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence certified copies of excerpts from the vessel's official log book covering the dates in question and a certified copy of the shipping articles - and rested his case. The Examiner then dismissed the second and fourth specifications as not proved.

In defense, Appellant undertook to explain the circumstances associated with the third specification - which would mitigate the seriousness of that alleged offense.

At the conclusion of the hearing, having 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 plea to the first and third specifications and entered the order suspending Appellant's License No. 67236 and Merchant Mariner's Document No. Z-295807 and all other licenses, certificates of service and documents issued to this Appellant for a period of eighteen (18) months; of which the last six (6) months shall not become effective provided no charge is proved against Appellant under R.S. 4450, as amended, for acts committed within twenty-four months of 28 August, 1951.

From that order, this appeal has been taken, and it is urged:

1. The Master discriminated against Appellant and punished him while others were equally guilty of the same offense (absence without permission);
2. Appellant's language addressed to the Chief Officer was justified;
3. Appellant was incarcerated for five days and fined by the Master for his transgressions;

4. Appellant was repeatedly threatened, and on one occasion, actually struck by the Master; and
5. Suspension of Appellant's documents for twelve months is unjust.

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

FINDINGS OF FACT

During February and March, 1951, Appellant was serving as able seaman on board the American SS LAFAYETTE VICTORY and acting under authority of his Merchant Mariner's Document No. Z-295807 while said vessel was on a voyage to foreign ports.

On 23 February, 1951, in Yokohama, Japan, Appellant was absent from his vessel and duty without permission. On 6 March, 1951, Appellant undertook to defend a shipmate, weighing about 140 pounds, from the verbal and physical attacks by the Chief Officer - who weighed over 200 pounds. In the process, Appellant addressed a foul name to the Chief Officer and asked, "Why don't you pick on somebody your own size?" The Master had Appellant, and two other seamen who were involved in the "threat" to the Chief Officer, placed in irons and taken to a naval vessel for disciplinary purposes, to await the vessel's departure from port.

Appellant was signed off the articles of the LAFAYETTE VICTORY "under protest" at Pusan, Korea, on 30 March, 1951.

Between 1944 and 1946, Appellant's disciplinary record with the Coast Guard was quite unsatisfactory; however, since 1946 this is the first time Appellant's conduct has required action.

OPINION

Appellant's plea to the first specification supports the Examiner's findings; however, my review of the record disposes me to grant some relief to Appellant and direct entry of the following

ORDER

Appellant's License No. 67236 and Merchant Mariner's Document No. Z-295807, and all other validated licenses, documents and certificates are suspended for a period of eighteen (18) months from the date said documents are surrendered by Appellant. The first six (6) months shall be outright suspension; the remaining twelve (12) months shall not be made effective provided no charge is proved against Appellant under R.S. 4450 (as amended) within twenty-four months after the date Appellant surrenders his documents to the Coast Guard. As so modified, the Examiner's Order dated 28 August, 1951, is AFFIRMED.

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

Dated at Washington, D.C., this 26th day of December, 1951.

***** END OF DECISION NO. 539 *****

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