

In the Matter of Merchant Mariner's Document No. Z-752919-D1
Issued to: WOODROW W. CARTE

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

554

WOODROW W. CARTE

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 21 May, 1951, an Examiner of the United States Coast Guard at New York City suspended Merchant Mariner's Document No. Z-752919-D1 issued to Woodrow W. Carte upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as wiper on board the American SS FLYING INDEPENDENT under authority of the document above described, on or about 28 April, 1951, while said vessel was in the port of San Francisco, California, he wrongfully engaged in two separate fights with two other members of the crew, Emery Kokarek (First Specification) and Frederick Carrozza (Second Specification). A third specification, alleging disorderly conduct on this same date, was stricken out by the Examiner as being redundant (R. 3).

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 charge and First Specification and a plea of "not guilty" to the Second Specification.

Thereupon, the Investigating Officer and Appellant made their opening statements and the Investigating Officer introduced in evidence the testimony of George Hynes who witnessed both of the fights in question.

In defense, Appellant testified under oath in his own behalf. He admitted having participated in the two fights alleged in the specifications.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant 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 plea to the First Specification and proved by proof of the Second Specification. The Examiner then made his findings of fact and entered the order suspending Appellant's Merchant Mariner's Document No. Z-752919-D1, and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of two months.

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

- "POINT I The prosecution failed to prove Carte wrongfully engaged in a fight with Carrozza.
- "POINT II The failure of the prosecution to make an opening statement vitiates the entire proceeding.
- "POINT III The plea of guilty to the first count should be set aside."

APPEARANCES: Samuel Segal, Esquire, of New York City, of Counsel.

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

FINDINGS OF FACT

On 28 April, 1951, Appellant was serving as wiper on board the American SS FLYING INDEPENDENT and acting under authority of his Merchant Mariner's Document No. Z-752919-D1 while the ship was in the port of San Francisco, California.

Shortly after returning aboard on the afternoon of this date, a fight in the starboard passageway took place between Appellant and one of his shipmates, Emery Kokarek. The Master, Chief Engineer and other members of the crew stopped the fight. Appellant "was pretty drunk" (R. 9) and he was locked in his quarters by the Chief Engineer. There were no serious injuries inflicted during this souffle although Appellant had bitten Kokarek's finger.

Later in the afternoon, Carrozza entered Appellant's quarters in a belligerent manner and demanded an explanation as to why he had attacked Kokarek. Carrozza was the aggressor in the fight which followed. Appellant bumped his head on the deck and suffered injuries for which he was hospitalized from 28 April to 7 May, 1951. No weapons were used in either fight.

Appellant is thirty-two years of age and married. There is no record of any prior disciplinary action having been taken against him during approximately four years at sea.

OPINION

I agree with the contention that the Second Specification was not proved (Point I). Carrozza not only was "spoiling for a fight," as found by the Examiner, but he entered Appellant's quarters and precipitated the fight with him. The invasion of Appellant's privacy under these circumstances overcomes any evidence that Appellant "wrongfully" engaged in the second fight. Therefore, the conclusion that the Second Specification was "proved" is hereby reversed; the Second Specification is found "not proved" and dismissed.

Since a plea of "guilty" was entered to the First Specification, there was no reversible error, with respect to this

specification, in the failure of the Investigating Officer to set forth in his opening statement the facts which he intended to prove pertaining to the fight between Appellant and Kokarek (Point II). The regulations provide that "a summary of matters expected to be proved [shall be included in the opening statement] when a plea of 'not guilty' is entered" (46 C.F.R. 137.09-40). This point is moot with respect to the Second Specification which is dismissed by this decision.

I do not think there is any merit in Appellant's final argument that the plea of "guilty" to the First Specification should be set aside (Point III). It is contended that although Appellant was discharged from the United States Marine Hospital in San Francisco on 7 May, 1951, he had suffered a cerebral concussion and was "incapable of properly and adequately defending himself" when the hearing was conducted on 18 May, 1951. The length of Appellant's confinement in the hospital indicates that he was properly cared for and not prematurely dismissed. There is no evidence in the record to create the contrary impression or to indicate that Appellant was physically or mentally unfit at the time of the hearing. The additional period of eleven days, after Appellant had left the hospital and before the commencement of the hearing, was certainly a sufficient length of time for Appellant to completely recover from his injuries. Finally, Appellant demonstrated his ability to evaluate and differentiate between the allegations contained in the First and Second Specifications by entering a plea of "guilty" to the former and "not guilty" to the latter. The similarity of the two specifications and Appellant's admission that he had participated in the two fights alleged makes it seem clear that Appellant recognized the element of his "wrongful" participation in the fight with Kokarek since he denied that his involvement in the second engagement was "wrongful."

CONCLUSION

Since the Second Specification is dismissed by this decision and because the offenses alleged in the First and Second Specification are approximately equal infractions of shipboard discipline, the order of the Examiner dated 21 May, 1951, is modified as follows:

ORDER

The Merchant Mariner's Document No. Z-752919-D1, and all other valid licenses, certificates of service and documents held by Woodrow W. Carte, are hereby suspended for a period of one (1) month. Any period, or periods, during which Appellant has not been in possession of a temporary document since 21 May, 1951, shall be considered in computing the suspension period of one month. As so MODIFIED, the Examiner's order dated 21 May, 1951, is hereby AFFIRMED.

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

Dated at Washington, D. C., this 24th day of March, 1952.

***** END OF DECISION NO. 554 *****

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