

In the Matter of Merchant Mariner's Document No. Z-267080-D1
Issued to: JOSEPH FELTON

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

607

JOSEPH FELTON

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, 1952, an Examiner of the United States Coast Guard at New York City suspended Merchant Mariner's Document No. Z-267080-D1 issued to Joseph Felton upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as Boatswain on board the American SS ANSON MILLS under authority of the document above described, on or about 3 August, 1951, while said vessel was at sea, he (1) wrongfully threatened bodily injury to a fellow seaman, Rudolph Pace; and (2) failed to obey a lawful order of the vessel's Master to return a certain rug to a fellow seaman, Rudolph Pace.

Appellant was represented by counsel of his own selection, and entered a plea of "not guilty" to the charge and each specification.

The Investigating Officer and Appellant's counsel made their opening statements and the Investigating Officer introduced in evidence an exemplified copy of reports received by the State

Department from the American Legation at Tangier, inclosing unsigned statements from the Master, personnel of the ANSON MILLS, and other documents relating to Appellant's discharge from the vessel.

Appellant then moved to dismiss the charge as a *prima facie* case had not been established. Upon denial of this motion, Appellant testified in his own behalf.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel 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 specifications and entered the order suspending Appellant's Merchant Mariner's Document No. Z-267080-D1 and all other licenses, certificates of service and documents held by this Appellant for a period of three months; but the suspension should not be made effective provided no charge under R.S. 4450 is proved against Appellant for acts committed within twelve months from 21 May, 1952.

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

1. The prosecution failed to establish the guilt of the person charged; and
2. The evidence upon which the Examiner's decision was based was inadmissible.

APPEARANCES: Harold Guttman, Esq., of New York City, for Appellant.

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

FINDINGS OF FACT

On 3 August, 1951, Appellant was serving as Boatswain on board the American SS ANSON MILLS and acting under authority of his Merchant Mariner's Document No. Z-267080-D1, while said vessel was at sea.

Prior to said date Appellant had negotiated with one Rudolph Pace, a bedroom steward, for the purchase of a rug. The agreement was that Appellant should have possession of the rug - and make payment at the next port at which American money would be available as an advance on wages. Later Pace undertook to repudiate the agreement; and when Appellant announced, by the use of indelicate but direct language, that he insisted upon fulfillment of the agreement, Pace reported the controversy to the Master.

The Master then ordered Appellant to return the rug to Pace; Appellant refused; was placed in irons; and finally discharged from the service of the vessel before the British Vice Consul at Ceuta, Spanish North Africa - from whence he was later repatriated on an American vessel.

Appellant's unblemished service at sea dates from about 1917.

OPINION

Examination of this record does not disclose to my satisfaction that, as a matter of law, there is sufficient evidence to support the Examiner's decision.

ORDER

The Order of the Examiner dated New York, N.Y., on 21 May, 1952, is VACATED, SET ASIDE and REVERSED. The charge against Appellant is DISMISSED.

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

Dated at Washington, D. C., this 9th day of September, 1952.

***** END OF DECISION NO. 607 *****

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