

In the Matter of Merchant Mariner's Document No. Z-762274(R)
Issued to: ROBERT V. ANDERSON

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

669

ROBERT V. ANDERSON

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 February, 1953, an Examiner of the United States Coast Guard at Philadelphia, Pennsylvania, suspended Merchant Mariner's Document No. Z-762274(R) issued to Robert V. Anderson upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as an oiler on board the American SS ATLANTIC VOYAGER under authority of the document above described, on or about 31 January, 1953, while said vessel was in a domestic port, he assaulted and battered a member of the crew, John F. Sheridan, with a dangerous weapon in the form of a glass bowl; and he wrongfully entered into an affray with John F. Sheridan.

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. Appellant was represented by an attorney of his own selection and 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 Sheridan and four other seamen who were members of the crew of the ATLANTIC VOYAGER and witnessed the fight between Appellant and Sheridan.

In defense, Appellant testified under oath 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 two specifications.

At this time, the Examiner on his own motion and without objection amended the two specifications to read that Appellant wrongfully entered into an affray with Sheridan; and during the course of this affray, Appellant wrongfully and without justifiable cause struck Sheridan on the head with a glass jar, causing injury to Sheridan.

The Examiner then entered the order suspending Appellant's Merchant Mariner's Document No. Z-762274(R), and all other licenses and documents held by Appellant, for a period of six months - three months' outright suspension and three months on nine months' probation.

From that order, this appeal has been taken, and it is urged that the decision of the Examiner is against the weight of the evidence because Appellant was provoked into striking the first blow; he acted in self-defense and resorted to unfair tactics only after Sheridan had done so; and Sheridan hit Appellant with a glass bottle before he broke a glass jar on Sheridan's head. It is also contended that even if the decision is sustained by the evidence, the order of the Examiner should be mitigated because of Appellant's previous record; and since Appellant has already felt the consequences of this incident, the suspension of his document would serve no purpose.

APPEARANCES: Alexander H. Borden, Esquire, of Philadelphia,
Pennsylvania, of Counsel.

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

FINDINGS OF FACT

On 31 January, 1953, Appellant was serving as an oiler on board the American SS ATLANTIC VOYAGER and acting under authority of his Merchant Mariner's Document No. Z-762274(R) while the ship was at Baytown, Texas.

While ashore on this date, Appellant and another member of the crew, John F. Sheridan, engaged in an argument concerning racial discrimination and unions. The two men returned to the ship separately but they met in the crew's messroom and continued the argument which became very heated and led to an exchange of insulting personal remarks. Appellant started to leave the messroom but he was called back by Sheridan and more words were exchanged before Sheridan told Appellant to strike the first blow if he wanted to fight. Appellant then hit Sheridan in the eye with a fist and an exchange of blows between the two seamen followed. When Appellant said he had had enough, Sheridan let Appellant get to his feet. Appellant then resumed the fight by kneeing Sheridan in the groin, grabbing him around the head and breaking a glass jar on Sheridan's head after striking him with it two or three times on the top of his head. Sheridan was severely cut on the head and also cut on one forearm by the broken glass. Appellant received glass cuts and other injuries.

Appellant's prior record consists of an admonition in 1948 for being absent over leave.

OPINION

The evidence supports the proposition that both Appellant and Sheridan were at fault for the fight which took place. There was provocation on the part of both men. Appellant is precluded from claiming that he acted in self-defense since he not only struck the first blow at the beginning of the fight but he also initiated the resumption of the fight after it had stopped momentarily. Appellant's action of kneeing Sheridan and breaking a glass jar on his head went far beyond any necessity Appellant had to protect himself, especially since Sheridan had voluntarily agreed to stop the fight at a time when Appellant was at a distinct disadvantage in the struggle. Since Appellant was the aggressor in both phases

of the fight, it is no defense that Sheridan struck or attempted to strike Appellant with a bottle at some time after Appellant had resumed the altercation.

For these reasons, the order imposed by the Examiner is not considered to be excessive and it will be sustained.

ORDER

The order of the Examiner dated at Philadelphia, Pennsylvania, on 26 February, 1953, is AFFIRMED.

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

Dated at Washington, D. C., this 9th day of July, 1953.

***** END OF DECISION NO. 669 *****

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