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In the Matter of Merchant Mariner's Document No. Z-702024-D1
Issued to: CHARLES HEFFLEY, JR.

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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CHARLES HEFFLEY, JR.

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 20 February, 1953, an Examiner of the United States Coast Guard at Norfolk, Virginia, suspended Merchant Mariner's Document No. Z-702024-D1 issued to Charles Heffley, Jr., upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as an able seaman on board the American SS CHAIN TRADER under authority of the document above described, on or about 19 January, 1953, while said vessel was in the port of Garston, England, he used obscene and abusive language against the First Assistant Engineer, William E. Wasmund. (A second specification was found "not proved" and dismissed by the Examiner at the conclusion of the Investigating Officer's case.)

At the hearing, Appellant was given an explanation of the nature of the proceedings and the possible results of the hearing. Appellant was represented by an attorney of his own selection and he entered pleas of "not guilty" to the charge and two specifications proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of the First Assistant Engineer and two other members of the crew.

At this time, counsel's motion to dismiss the first specification was denied but his motion to dismiss the second specification was granted.

In defense, Appellant offered in evidence the testimony of two other members of the crew in addition to testifying 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 one remaining specification. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-702024-D1, and all other licenses and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of six months - three months outright and the balance of three months on twelve months' probation from 20 February, 1953.

From that order, this appeal has been taken, and it is urged that the Investigating Officer did not conduct an impartial investigation and he later acted more in the capacity of a prosecutor than an investigator; and the charge was not proved by the evidence. In support of the latter point, Appellant states that the First Assistant Engineer was the only one of the Investigating Officer's witnesses who was able to testify as to the altercation between himself and Appellant; the First Assistant's testimony was not reliable because he was defending himself against charges resulting from the incident; and both of Appellant's witnesses corroborated Appellant's claim that he directed no foul language towards the First Assistant and the latter struck Appellant three times without provocation.

APPEARANCES: Messrs. Jett, Sykes and Howell of Norfolk, Virginia,
by Henry E. Howell, Esquire, appearing for Appellant.

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

FINDINGS OF FACT

On 19 January, 1953, Appellant was serving as an able seaman on board the American SS CHAIN TRADER and acting under authority of his Merchant Mariner's Document No. Z-702024-D1 while the ship was in the port of Garston, England.

On the afternoon of this date, Appellant went to the engine room to obtain a sledge hammer for use on deck. When asking the First Assistant Engineer for the sledge hammer and, again, after his request had been refused, Appellant used offensive language in the presence of the First Assistant Engineer; but such language was not directed against the person of the First Assistant.

About an hour later on the same day, Appellant and the First Assistant were in the crew's messroom during the 1500 "coffee time." As a result of the earlier refusal of Appellant's request for the sledge hammer, Appellant twice called the First Assistant Engineer a very obscene name. This language was directed towards the First Assistant by Appellant in a tone of voice which was louder than normal. The First Assistant was so provoked that he struck Appellant in the face two times. Appellant had been drinking whiskey shortly prior to this time and the effect of it was evident.

Appellant's prior record consists of an eleven months' suspension (eight months of which was a probationary suspension) in 1950 for absence without leave, failure to turn to, and intoxication while on lookout duty; and an admonition in 1947 for absence without leave and failure to perform duties.

OPINION

It was the Investigating Officer's duty to investigate this matter after it was brought to his attention, to institute proceedings against Appellant's document when the investigation produced evidence of an offense by Appellant and to attempt to introduce evidence of the true facts at the hearing. The record

does not indicate that the Investigating Officer did not act in good faith in the performance of any of these duties; and Appellant has assigned no reason for his claim that the Investigating Officer had not conducted an impartial investigation.

The record does not support Appellant's contention that the charge was not proved by the evidence produced at the hearing. Regardless of the fact that the First Assistant Engineer was not a disinterested witness, the fact remains that his testimony as to the obscene language which was used by Appellant in the messroom was corroborated not only by the testimony of the Chief Mate but also by Appellant's own testimony. The Chief Mate testified that just after the incident occurred, Appellant told the Chief Mate that Appellant had called the First Assistant Engineer the same obscene name which the First Assistant Engineer testified Appellant had directed toward the First Assistant Engineer. And when questioned by the Examiner, the Appellant admitted that the Chief Mate's testimony was the truth. This leaves no room to doubt that the allegations contained in the specification were proved by substantial evidence.

Appellant's misconduct was an act which tends to undermine the high degree of discipline which must be maintained at sea. Such a gross insult of a ship's officer by an able seaman cannot be tolerated without risking danger to life and property as a result of lowered disciplinary standards and consequent inefficient performance of duties by shipboard personnel. Since Appellant's prior record indicates a strong tendency to abuse this required and necessary discipline, the order of the Examiner is not considered to be excessive.

ORDER

The Order of the Examiner dated at Norfolk, Virginia, on 20 February, 1952, is AFFIRMED.

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

Dated at Washington, D.C., this 16th day of July, 1953.

***** END OF DECISION NO. PAGE *****

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