

In the Matter of Merchant Mariner's Document No. 518902
Issued to: ADAM LEMOINE, JR.

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

698

ADAM LEMOINE, 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 17 March, 1953, an Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended Merchant Mariner's Document No. Z-518902 issued to Adam Lemoine, Jr., upon finding him guilty of misconduct based upon three specifications alleging in substance that while serving as steward's utilityman on board the American SS GENEVIEVE PETERKIN under authority of the document above described, while said vessel was in the port of Bremen, Germany, on or about 16 January, 1953, he was absent from his vessel and duties without permission (First Specification); on or about 17 January, 1953, he used foul and abusive language toward the Captain, Willis David (Second Specification); and by use of his hands, he assaulted and battered the Captain, Willis David (Third Specification), which latter offense occurred on 18 January, 1953.

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. After the Examiner had ruled

against counsel's motion to quash the First and Second Specifications, Appellant entered a plea of "guilty" to the First Specification and "not guilty" to the Second and Third Specifications proffered against him.

Thereupon, the Investigating Officer and Appellant's counsel made their opening statements and the Investigating Officer introduced in evidence certified copies of entries in the Official Logbook of the PETERKIN and certified extracts from the Shipping Articles of the ship for the voyage including the dates alleged in the specifications. By stipulation of the parties, the records of the Coast Guard investigation of the offenses alleged were placed in evidence. This consists of statements and testimony by the Master and various members of the crew, a statement by Appellant, several letters and other documentary exhibits. The Investigating Officer then rested his case.

In defense, Appellant offered in evidence the testimony of the Boatswain of the ship as well as Appellant's own testimony taken under oath. Appellant admitted having directed abusive language towards the Master when he did not give Appellant the full amount of the draw which Appellant had requested. Appellant also stated that he went to the Master's quarters and requested to be paid off by mutual consent; and that the Master then hit Appellant in the head three times with a blackjack. Appellant repeatedly claimed that he had been hit before he grabbed the Master's left wrist first and then his right wrist.

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 plea to the First Specification and by proof of the other two specifications. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-518902, and all other licenses, certificates of service and documents issued to this Appellant, for a period of one year.

From that order, this appeal has been taken, and it is urged that Appellant has a good reputation and an otherwise unblemished record while the Master was a nervous man who could not get along with some people; that during the voyage, differences arose which

bred resentment and animosity between the two men; and that Appellant had been unfairly treated by the Master on several occasions.

With respect to the First Specification, it is contended that this charge would never have been made except for the later altercation between Appellant and the Master; and that since Appellant was logged and forfeited two days pay for this offense, it should not be considered in the suspension ordered.

Concerning the Second Specification, Appellant states that no sanction should be imposed since the Master did not see fit to log Appellant as the result of his language towards the Master.

As to the specification alleging assault and battery, Appellant claims that "the conclusion could readily be drawn to the effect that the Master took advantage of an opportunity that presented itself and released the smoldering resentment and animosity which had been lying within him by beating Lemoine over the head with a blackjack." Appellant also refers to that part of the Examiner's Opinion which states that Appellant's testimony is not accepted because the "probabilities" are in favor of the Master's story that Appellant grabbed the Master's wrist before he hit Appellant with the blackjack. It is urged that the Examiner dealt in probabilities rather than facts, as required, and that it was just as probable that the Master had been the aggressor since both men had motives.

APPEARANCES: Messrs. Dodd, Hirsch and Barker of New Orleans, by John P. Nelson, Jr., Esquire, of Counsel.

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

FINDINGS OF FACT

On a voyage including the dates of 16 to 18 January, 1953, inclusive, Appellant was serving as a stewards department utilityman on board the American SS GENEVIEVE PETERKIN and acting under authority of his Merchant Mariner's Document No. Z-518902. The ship was in Bremen, Germany, from 16 to 18 January, 1953.

On 16 January, 1953, Appellant was absent from the ship and his duties without permission.

On the afternoon of 17 January, 1953, Appellant, by his own admission (R. 15), became angry as he was not given the full amount of the draw he had requested and he directed language towards the Master which language was extremely foul and abusive. This incident took place in the presence of other members of the crew.

After returning to the ship early on the morning of 18 January, 1953, Appellant went to the Master's quarters and pounded loudly on the Master's office door. When the Master opened his stateroom door a short distance from Appellant, the latter demanded that he be paid off by mutual consent as he approached the stateroom door. The Master told Appellant to come back later in the morning. As the Master started to close the door, Appellant put his weight against it, grabbed the Master's left wrist, and pulled him out into the passageway. In the meanwhile, the Master had reached into a drawer of his dresser with his free right hand and gotten hold of a blackjack. When Appellant tried to throw the Master down in the passageway, he struck Appellant two or three times on the head with the blackjack in self-defense before Appellant released his grip. Appellant was dazed but he walked below and received medical attention for his head injuries. Appellant was hospitalized for twenty-one days and he was then returned to the United States as a passenger on another ship at the expense of the owner of the PETERKIN.

Appellant is 31 or 32 years old and he had no record of disciplinary action during his eight years at sea prior to the incidents referred to herein.

OPINION

Appellant's contentions are considered to be entirely without merit. Regardless of the presence or absence of log entries and forfeitures of pay for the offenses alleged in the first two specifications, both of these offenses constituted infractions of the high degree of discipline which must be maintained on board ship. The safety of lives and property requires every member of

the crew to perform his duties as well as to show the proper respect for the Master who is in command of the ship. Consequently, these two offenses were properly taken into consideration in determining the length of the suspension order.

The assault and battery upon the Master was an extremely serious offense. I find no fault with the Examiner's conclusion that the probabilities were in favor of Appellant having been the aggressor. When there is conflicting evidence, it is always necessary to arrive at the findings of fact by means of drawing the most probable inferences from the evidence as a whole. The Examiner logically concluded that Appellant grabbed the Master's left wrist before he struck Appellant with the blackjack; and this determination was based partially upon the improbability that Appellant would have grabbed the Master's left wrist in order to ward off blows from a blackjack which the Master held in his right hand. The Examiner also recognized that the evidence of Appellant's resentment and animosity towards the Master made it more probable that Appellant had taken the initial physical action after he demanded to be paid off and the Master did not comply.

The type of insubordination dealt with in the Third Specification is highly dangerous and one which could undermine the authority of all Masters who are burdened with the responsibility of the entire ship, her cargo, and her personnel. Since the censure must be severe when a member of the crew assaults the Master of the ship, the order of the Examiner is sustained.

ORDER

The Order of the Examiner dated 17 March, 1953, at New Orleans, Louisiana, is AFFIRMED.

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

Dated at Washington, D. C., this 22nd day of September, 1953.

***** END OF DECISION NO. 698 *****

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