In the Matter of Merchant Mariner's Document No. 1005532
Issued to: CHARLES E. MESSICK

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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CHARLES E. MESSICK

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.

By order dated 7 July, 1954, an Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z-1005532 issued to Charles E. Messick upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as a bell boy on board the American SS AMERICA under authority of the document above described, on or about 22 May, 1954, while said vessel was at Le Havre, France, he wrongfully assaulted and battered a fellow crew member, Camillo Savino, with a deadly weapon, a dinner knife (First Specification); and or about 24 May, 1954, while said vessel was at Bremerhaven, Germany, he wrongfully assaulted and battered a fellow crew member, messman Robert Sanders, with a deadly weapon, a straight-edge razor.

When Appellant was served with the charge and specifications on 3 June, 1954, he 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.

At the commencement of the hearing 23 June, 1954, Appellant was not represented by counsel. Appellant stated that he did not have any money to obtain counsel and that several seamen had said that the Coast Guard would furnish defense counsel. The Investigating Officer ascertained that there was no Coast Guard officer available to represent the Appellant. The Examiner then adjourned the hearing until the following afternoon in order to give Appellant an opportunity to obtain counsel.

On 24 June, 1954, Appellant appeared without counsel. The Investigating Officer again found that no Coast Guard officer was available. Appellant telephoned his union and was informed that he could obtain the assistance of a union patrolman at a later date. Because of the uncertainty as to the future availability of three witnesses who had been standing by to testify as the Investigating Officer's witnesses, the Examiner stated that the testimony of the witnesses would be taken with the understanding that Appellant's counsel would be given a copy of the transcript of testimony and he would be afforded the opportunity of cross-examination at a later date subject to the reservation that the witnesses could be produced in the future. Appellant expressed the opinion that he thought the Examiner was being very fair to him in every respect concerning this arrangement as to the Investigating Officer's witnesses. Consequently, the testimony of the two seamen allegedly assaulted and the testimony of a porter named Harper, who was a witness to the second incident, was taken on 24 June, 1954, after Appellant entered a plea of "not guilty" to the specifications and the Investigating Officer had made his opening statement. Appellant cross-examined each of the three witnesses. The hearing was then adjourned till 1 July, 1954.

The hearing was reconvened on 1 July, 1954, and Appellant was represented by Mr. George Robinson, a N.M.U. delegate or patrolman. Mr. Robinson had read the transcribed testimony of the three witnesses. After the Investigating Officer introduced in evidence certified copies of several entries in the Official Logbook of the AMERICA, he rested his case.

In defense, Appellant offered in evidence his own sworn testimony. He stated that he was drunk at the time of both incidents and although he could not deny the allegations in either

specification, he could only remember throwing his hands up in front of Savino in the messroom in order to ward him off or push him away. Appellant repeatedly stated that he could not remember anything about the Sanders incident and that he (Appellant) had no knowledge of having a straight-edge razor in his possession when Sanders was injured.

Counsel for Appellant stated that he did not desire to further cross-examine any of the three witnesses who had testified as witnesses for the Investigating Officer.

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. He then entered the order revoking Appellant's Merchant Mariner's Documents No. Z-1005532 and all other licenses, certificates, and endorsements issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that the order is too severe since this is Appellant's first offense and he has always conducted himself properly while at sea; Appellant's dependents will suffer greatly if Appellant is deprived of his livelihood; Appellant was not given a fair chance to defend himself because he was represented by inadequate and hostile counsel after having been informed that the Coast Guard would furnish Appellant with counsel; counsel did not offer anything in Appellant's defense; and counsel waived Appellant's right to cross-examination of the witnesses whose testimony was not accurate.

Appellant also contends that Savino's injury was inflicted accidentally; and that Appellant was intoxicated to such an extent on the night of 24 May, 1954, that he does not remember injuring Sanders or anything about the incident. Appellant claims that he was very intoxicated because he began drinking after not eating very much for 48 hours due to his concern over losing his job as a result of the Savino incident.

In conclusion, Appellant requests that the order of revocation be modified to a suspension for any period of time or to a probationary suspension.

Based upon my examination of the record submitted, I hereby make the Following Findings of Fact which are practically identical to those of the Examiner:

1. On a voyage including the dates of 22 and 24 May, 1954, Appellant was serving as a bell boy on the American SS AMERICA and acting under authority of his Merchant Mariner's Document No. Z-1005532. The ship was at Le Havre, France, on 22 May, 1954, and at Bremerhaven, Germany, on 24 May, 1954.

2. The Appellant had on prior occasions during this voyage teased porter Camillo Savino about talking too much referring to him as a "polly parrot."

3. On the morning of 22 May, 1954, Savino was in the messroom having his breakfast.

4. The Appellant entered and sat near Savino. Appellant made a "yak-yak" sign with hands by opening and closing the thumb and forefingers in such a way as to indicate chin movements of an excessively talkative person.

5. Savino moved to another chair and Appellant followed him. Savino moved again and Appellant followed him, sitting hear him. This time Appellant fingered Savino's face. Savino objected to having his face touched by the Appellant.

6. The Appellant stood up with two table knives in his hands facing Savino. Other crew members intervened and succeeded in wrestling one knife from the possession of the Appellant. With the other knife the Appellant succeeded in cutting the nose and nostril of Savino. the injuries required nine stitches.

7. Aboard the vessel Robert Sanders was commonly referred to during the course of this voyage as the "Prophet" because of his preaching and talking about the Holy Bible.

8. On 24 May, 1954, messman Sanders and porter Harper, another crew member, were in a bar in Bremerhaven, Germany. Sanders was having a coca cola. The Appellant entered and asked Sanders for a cigarette. Sanders got the cigarette from another person for Appellant.

9. After some more talk between the Appellant and Sanders, the Appellant started feeling Sanders' face. Sanders objected to this.

10. Some people at the bar attempted to intervene by inquiring as to why Appellant was bothering the "Prophet."

11. The Appellant walked away towards the juke box in the establishment; then came back and, without any warning, cut Sanders on the left cheek of his face with a straight-edge razor. The wound was between six and seven inches in length.

12. The object with which the cutting was done was identified as a straight-edge razor.

13. There is no record of prior disciplinary action having been taken against Appellant since he obtained his Merchant Mariner's Document in June, 1952.

OPINION

It is my opinion that there is no merit in the points raised by Appellant in his appeal. These are his first offenses as a merchant seaman but he had obtained his Merchant Mariner's Document less than two years prior to these offenses. The safety of many other seamen who might ship with Appellant, if the order of revocation were modified, must be given prior consideration to the hardship which this order will cause Appellant and his dependents.

The record contains very substantial evidence to support the findings that Appellant committed two unprovoked assaults in substantially the same manner and within a period of two days. The only evidence to the contrary is Appellant's uncorroborated testimony.

Appellant admits that he injured Savino while they were in the messroom; but Appellant claims that it was an accidental occurrence. This does not agree with Savino's version of the incident or the injury which Savino received. It is extremely improbable that Savino would have been cut more than one place if Appellant suddenly raised his arms. And it is equally unlikely that accidentally inflicted wounds, received in the manner stated by Appellant, would require as many as nine stitches. Also, Appellant repeatedly indicated that he could produce a witness named Pablo who would testify that the cutting in the messroom was not Appellant's fault. But towards the end of the hearing, Appellant specifically stated that he waived the right to have Pablo testify in his behalf.

As to the Sanders incident, Appellant does not deny that he committed the offense but contends that he was too drunk to

remember anything that happened. Hence, the only direct evidence concerning this incident is the testimony of Sanders and his testimony is substantially corroborated by the testimony of Harper. The claim of intoxication is no defense for acts of misconduct committed while a person is under the influence of the intoxicants. And the similarity to the Savino incident tends to establish a pattern of conduct which is mutually corroborative as to the two offenses.

Appellant had twenty days after service of the charge and specifications to obtain counsel or contact the Coast Guard in this manner. Apparently, he did nothing about retaining counsel. The Examiner tried twice to obtain the services of a Coast Guard officer but none was available. This was in conformance with 46 C.F.R. 137.09-5(a). In requiring the witnesses to testify before counsel for Appellant put in an appearance, the Examiner acted in accordance with 46 C.F.R. 137.09-5(d) since the future availability of the witnesses was doubtful. The Examiner adjourned the hearing once before taking the testimony of the three witnesses but Appellant still had not made any attempt to obtain counsel.

Appellant was given the opportunity to cross-examine the three witnesses and he personally took advantage of this opportunity with respect to each of them. The fact that his counsel did not request the opportunity for further cross-examination is not an adequate basis for Appellant's contention that he was not given a fair chance to defend himself. Appellant himself voluntarily stated, at the hearing, that he thought the Examiner was being very fair to Appellant when the right to further cross-examination was reserved to Appellant prior to the appearance of his counsel.

The evidence in the record convinces me that Appellant has proven, beyond doubt, in less than two years that he is not equipped with the disposition to live in the comparatively close confines of a ship with other seamen. Therefore, the order of revocation will be sustained.

ORDER

The Order of the Examiner dated at New York, New York, on 7 July, 1954, is hereby AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 29th day of November, 1954.

***** END OF DECISION NO. 776 *****

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