

In the Matter of Merchant Mariner's Document No. Z-704295  
And All Other Licenses, Certificates and Documents  
Issued to: RUDOLPH MELGOSA

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

847

RUDOLPH MELGOSA

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 16 September 1955, an Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended Merchant Mariner's Document No. Z-704295 issued to Rudolph Melgosa upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a wiper on board the American SS ORION COMET under authority of the document above described, on or about 20 May 1955, while said vessel was at sea, he assaulted and battered, with his fist, a member of the crew named Clarence Garrabrant.

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. Although advised of his right to be represented by counsel of his own choice, Appellant chose to act in his own behalf. He entered a plea of "guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and Appellant made a statement in mitigation. He stated that Garrabrant stepped on Appellant's heel while they walking along the passageway; Appellant turned around and hit Garrabrant; and Garrabrant grabbed Appellant and pulled him down on top of Garrabrant on the deck in order to make it look like he had been badly hurt by Appellant. This occurred soon after Appellant was told by the Master to stop fighting with the members of the crew.

At the conclusion of the hearing, the Examiner announced his decision and concluded that the charge and specification had been proved by plea. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-704295, and all other licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of three months.

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

#### *FINDINGS OF FACT*

On 20 May 1955, Appellant serving was serving as a wiper on board the American SS ORION COMET and acting under authority of his Merchant Mariner's Document No. Z-704295 while the ship was at sea.

On this date, Appellant had an argument with Garrabrant pertaining to the use of a mop. The argument terminated in a scuffle which was stopped by the First Assistant Engineer. He told the two seamen to see the Master. Appellant was warned by the Master not to get in another fight with any of the crew. Shortly thereafter, Appellant was walking along a passageway in front of Garrabrant and one of his shoes came into contact with Appellant's heel. Appellant turned around and used his fist with which to batter Garrabrant.

There is no record of prior disciplinary action having been taken against Appellant during his one and a half years at sea.

#### *BASIS OF APPEAL*

This appeal has been taken from the order imposed by the Examiner. It is urged that Appellant entered a plea of guilty because he lacked funds to secure competent counsel and he thought a plea not guilty would entail a long wait in New Orleans. It is also contended that the Examiner should have considered the element of self-defense since Garrabrant stomped on Appellant's heel after a previous altercation and Appellant thought Garrabrant intended to attack Appellant. Counsel on appeal: John F. Roake, Esquire, of San Francisco, California, of Counsel

*OPINION*

It is my opinion that the points raised on appeal are without merit. The record does not indicate that Appellant would have had a prolonged stay in New Orleans if he had entered a plea of not guilty. On the contrary, the Investigating Officer presumably had evidence ready to produce but the need for this was obviated by Appellant's plea of guilty.

As to the claim of self-defense, it is most probable that, in view of the laws of human nature, Appellant's version of the incident was the one most favorable to his cause. The evidence of the Investigating Officer would probably have presented a different picture. Nevertheless, I do not think that Appellant was justified in acting in self-defense even if his version is the correct one. He had no reason to assume, to the extent of striking another seaman with his fist, that the contact with his heel was not accidental or that it was done with the intention of a following attempt to attack Appellant. The offense was aggravated by the fact that it was committed soon after Appellant was warned by the Master not to engage in such breaches of discipline.

The order of the Examiner dated at New Orleans, Louisiana on 16 September 1955 is AFFIRMED.

A. C. Richmond  
Vice Admiral, U. S. Coast Guard  
Commandant

Dated at Washington, D. C., this 16th day of December 1955.

\*\*\*\*\* END OF DECISION NO. 847 \*\*\*\*\*

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