

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-566521-D4 AND
ALL OTHER SEAMAN DOCUMENTS
Issued to: Alfred Marsh, Jr.

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1546

Alfred Marsh, Jr.

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 19 May 1965, an Examiner of the United States Coast Guard at New Orleans, Louisiana revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a messman on board the United States SS AIMEE LYKES under authority of the document above described, on 29 March 1965, Appellant wrongfully struck crew member Buckner with his fist and pushed him against an air conditioning unit causing Buckner to be injured.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of the injured crew member Buckner and another eyewitness to the incident, extracts from the Shipping Articles for the voyage, and entries in the Official Logbook with attached statements by five

members of the crew.

In defense, Appellant testified only that he had nothing to add to what was in the logbook about the incident.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification has been proved, and entered the order of revocation.

FINDINGS OF FACT

On 29 March 1965, Appellant was serving as a messman on board the United States SS AIMEE LYKES and acting under authority of his document while the ship was at sea.

About 2200 on this date, Appellant was steward utilityman Buckner engaged in an argument in the room of two other messmen. Buckner addressed Appellant with vulgar language which was repeated at Appellant's request. Thereupon, Appellant struck Buckner several blows in the face with his fist and shoved Buckner against the air conditioning unit in the room. When Buckner's head hit the unit, he received a cut on the forehead about two inches long but not very deep. Appellant was restrained by the two messmen who lived in the room and he left. The wound was treated by the Chief Mate.

Appellant's prior record consists of a probationary suspension in 1961 for throwing a plate which struck and injured another member of the crew.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that appellant was not guilty of "misconduct" within the meaning of the regulations. Evidence that Appellant grabbed a towel rack with which to attack Buckner after shoving him was prejudicial and improperly admitted because it was not alleged in the specification. Since Appellant's conduct did not threaten life or property so as to justify revocation of his document, no action should have been taken.

It is submitted that the order is excessive under the Circumstances, particularly because of the verbal provocation by Buckner.

APPEARANCE: Mandell and Wright of Houston, Texas by Sidney Ravkind, Esquire, of Counsel.

OPINION

Appellant concedes that verbal abuse does not justify assault and battery in the eyes of the law. It has been stated in many of these merchant seaman appeal decisions that the standard of conduct necessary to maintain discipline on ships requires recognition of this principle of law. Therefore, Appellant was guilty of misconduct.

Evidence that Appellant grabbed a towel rack was admissible as an event which occurred during the incident under consideration. If Appellant had hit Buckner with the towel rack, it would have been improper to have considered this factor as part of the assault and battery because it is omitted from the allegations which specify the means by which Appellant committed the offense. Since Buckner was not hit with the towel rack, no such fact could be considered as part of the offense. Appellant was not unfairly prejudiced by the admission of this evidence.

Actions against seaman's documents are not limited to cases where orders of revocation will result if the seamen are found guilty. Due to the nature of the offense in the present case, I agree that the order of revocation is excessive and it will be modified for the purpose of uniformity with similar cases. The verbal provocation by Buckner has been considered as a mitigating factor.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 19 May 1965, is modified to provide for an outright suspension of three (3) months and an additional suspension of three (3) months which is not to become effective unless Appellant is found guilty

of an offense committed within twelve (12) months after completion of the outright suspension.

As MODIFIED, the order is AFFIRMED.

E. J. ROLAND
Admiral United States Coast Guard
Commandant

Signed at Washington, D. C., this 25th day of February 1966.

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