

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-1004131
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Ramon L. VARGAS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1936

Ramon L. VARGAS

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 29 June 1972, an Administrative Law Judge of the United States Coast Guard at New York, New York suspended Appellant's seaman's documents for one month outright plus three months on 12 months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a Passenger Room Steward on board the SS PRESIDENT JACKSON under authority of the document above captioned, on or about 22 January 1972, Appellant did engage in mutual combat with crewmember Victor Weddington.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence excerpts from the Shipping Articles and Official Ship's Log, a statement made by Victor Weddington and a deposition of Pennsylvania Curry.

In defense, Appellant offered in evidence certain medical reports and records and his own testimony.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and first specification had been proved. The Administrative Law Judge then entered an order suspending all documents, issued to Appellant, for a period of one month outright plus three months on 12 months' probation.

The entire order was served on 10 July 1972. Appeal was timely filed on 25 July 1972.

FINDINGS OF FACT

On 22 January 1972, Appellant was serving as a Passenger Room Steward on board the SS PRESIDENT JACKSON and acting under the authority of his document while the ship was at sea.

On the evening of this date Appellant and three shipmates were drinking intoxicants in Appellant's room aboard ship. After a large amount of alcohol had been consumed, an argument arose between Appellant and two of the other men, Victor Weddington and Pennsylvania Curry. Following a long period of arguing, Weddington took particular offense to one of Appellant's comments and stood, taking a couple of steps toward Appellant. Appellant picked up a broom handle and struck Weddington twice on the shoulder and back. A fight ensued in which Appellant was injured.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that the decision is contrary to the weight of the evidence and the order is excessive.

APPEARANCE: Appellant, by Irving Zwerling, Esq.

OPINION

The question of weight to be accorded to the evidence is for the Administrative Law Judge to determine and, unless it can be shown that the evidence upon which the Administrative Law Judge relied was inherently incredible, his findings cannot be said to be against the weight of the evidence. The test is whether a reasonable man could have made the same findings as reached by the Administrative Law Judge, not whether he would have agreed with those findings. I hold that the Government has born its burden of proving the charge and first specification by substantial evidence of a reliable and probative nature.

Administrative Law Judge's have wide latitude in determining appropriate orders of suspension. When his findings are supportable, there is no reason to reduce a suspension ordered unless it is clearly inappropriate. I find that the suspension order of one month outright with a probationary period to be reasonable and not excessive.

ORDER

The order of the Administrative Law Judge dated at New York, New York on 29 June 1972, is AFFIRMED.

T.R. SARGENT
Acting Admiral, U.S.Coast Guard
Commandant

Signed at Washington, D. C., this 7TH day of JUNE 1973.

INDEX

Appeals

Examiner's findings upheld unless based on
evidence inherently incredible

Decisions of Examiners

Review of, limitations on

Examiners

Findings affirmed unless clearly erroneous

Evidence

Weight of, determined by examiner

Revocation & Suspension

Examiner has wide latitude in ordering

***** END OF DECISION NO. 1936 *****

[Top](#)