

In the Matter of License No. 94417  
Issued to: BENJAMIN P. GIMBERT

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

470

BENJAMIN P. GIMBERT

This appeal comes before me by virtue of Title 46 United States Code 239(g) and 46 Code of Federal Regulations Sec. 137.11-1.

On 11 July, 1950, an Examiner of the United States Coast Guard at Philadelphia, Pennsylvania, suspended License No. 94417 issued to Benjamin P. Gimbert upon finding him guilty of "misconduct" based upon a specification alleging in substance, that while serving as Chief Mate on board the American S. S. NEW LONDON, under authority of the document above described, on or about 5 May, 1950, while said vessel was in a foreign port, he assaulted a member of the crew named Hans Mooshage. A charge of negligence based on another specification was dismissed without prejudice on motion of the Investigating Officer and without objection by counsel.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. He was represented by counsel of his own selection and he entered a plea of "not guilty" to the charge and specification.

Thereupon, the Investigating Officer and Appellant made their

opening statements before the former introduced in evidence the testimony of various crew members. He then rested his case.

In defense, Appellant offered in evidence the testimony of another member of the crew and also testified under oath in his own defense.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant, the Examiner found the charge "proved" by proof of the specification and entered an order suspending Appellant's License No. 94417 and all other valid licenses held by him, for a period of two months on six months probation.

From that order, this appeal has been taken, and it is urged that Appellant was justified in acting as he did both on the grounds of self-defense and provocation; and that only by a very strict application of an extreme technicality was the Examiner able to find Appellant guilty of the alleged offense.

APPEARANCES: Mr. Benjamin B. Sterling of New York.  
Seymour W. Miller, Esquire, of Counsel,  
presently appearing for Appellant.

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

*FINDINGS OF FACT*

On 5 May, 1950, Appellant was serving as Chief Mate on board the American S. S. NEW LONDON, under authority of his License No. 94417, while said vessel was mooring to a dock at the port of Ras Tanura in the Persian Gulf.

During the docking operation, it had been necessary to use the ship's port anchor. When the docking operation had been practically completed, the boatswain issued an order to the deck maintenance man, Overson, who was helping to secure the windlass brake. Overson refused to obey the order and Appellant instructed Overson to do as the boatswain had directed. At this point,

Mooshage left his station and approached the chief mate. Mooshage interjected himself into the argument by addressing the Chief Mate in an insolent manner at such close range that saliva from Mooshage's mouth sprayed the Chief Mate's face and chest. Thereupon, the Chief Mate pushed Mooshage away by shoving his open hand against Mooshage's face and ordered him to leave the forecastle. Mooshage himself admits that he was not in any way injured by this shove.

There is no record of any prior disciplinary action having been taken against Appellant during his eighteen years at sea.

#### *OPINION*

Under the circumstances of the case, Appellant was justified in using the method he employed to prevent the crew member Mooshage from continuing to expectorate on his face. It is generally conceded that a person may use that degree of force which is necessary to repulse the assault of another. Mooshage not only provoked the second in command on the ship by using insolent language directed towards him but also assaulted the latter by spraying his face with saliva. As Appellant has appropriately asked, "What was he supposed to do?" It does not seem that the Chief Mate could have adequately resisted Mooshage in any more satisfactory manner. If Mooshage had been attacked and injured by the Chief Mate, then the issue presented would be entirely different.

Another factor which enters into my decision in this case is the high degree of discipline which must be maintained on shipboard. This is not to insinuate that the crew members may be treated in any fashion whatsoever in order to obtain their cooperation. But it does mean that so long as the men are fairly treated, they are bound to strict obedience of, and respect for, the Master of the ship and his officers. This element has caused some divergence between the law of self-defense ashore and the law of the sea in that what might be considered an assault ashore would, in some cases, be said to be excusable if done at sea by a ship's officer in an attempt to preserve discipline. It would be an extremely difficult task to maintain any amount of discipline aboard ships if Chief Mates were required to submit meekly to the type of abuse exemplified herein.

*CONCLUSION*

Appellant's conduct did not constitute an illegal attack upon Mooshage and the charge and specification must be found "not proved."

*ORDER*

The Order of the Examiner dated 11 July, 1950, is REVERSED, VACATED and SET ASIDE.

Merlin O'Neill  
Vice Admiral, United States Coast Guard  
Commandant

Dated at Washington, D.C., this 24th day of October, 1950.

\*\*\*\*\* END OF DECISION NO. 470 \*\*\*\*\*

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