

In the Matter of Merchant Mariner's Document No. Z-133408
Issued to: FELIPE RIVERA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

510

FELIPE RIVERA

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.

On 4 May, 1951, an Examiner of the United States Coast Guard at New York City suspended Merchant Mariner's Document No. Z-133408 issued to Felipe Rivera upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as third baker on board the American SS INDEPENDENCE under authority of the document above described, on or about 21 April, 1951, while said vessel was at sea, he (1) wrongfully disobeyed the direct orders of one P. Hunziker.

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 an attorney of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer made his opening

statement and the Investigating Officer introduced in evidence a certified copy of the official log of the SS INDEPENDENCE for 21 April, 1951, and the testimony of one witness.

In defense, Appellant offered in evidence the testimony of his immediate superior on the vessel and testified in his own behalf.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant 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 two specifications and entered the order suspending Appellant's Merchant Mariner's Document No. Z-133408 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority for a period of six months from 4 May, 1951.

From that order, this appeal has been taken on nine specified grounds, of which only one is necessary to discuss here.

APPEARANCES: Messrs. Buxton & Miller of New York City for Appellant.

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

FINDINGS OF FACT

On 21 April, 1951, Appellant was serving as third baker on board the American SS INDEPENDENCE and acting under authority of his Merchant Mariner's Document No. Z-133408. The vessel was then at sea.

In the routine administration of the Steward's Department, Appellant was directly subordinate to the chief baker, who, in turn, was subordinate to a "sous chef" named Hunziker.

On this date, the chief baker had ordered Appellant to remain in the bakeshop until he was relieved; a short time later, the "sous chef" ordered Appellant to duty in the confectionery. When

Appellant refused to leave the bakeshop, Hunziker undertook to enforce his order; and in the argument that ensued, Appellant remarked that Hunziker had been beaten up on an earlier occasion and would be beaten again. No blows were struck and after this incident there were no further instances of discord affecting Appellant. Appellant was "logged" two days' pay for disobedience of orders and threatening the "sous chef."

OPINION

While I thoroughly disapprove any conduct that savors of disobedience of orders by seamen under articles, this case suggests that Appellant was more sinned against than sinful because in his obedience to one superior's lawful order he had to disobey another superior's order that did not follow the usual pattern with which he was familiar.

I am not satisfied that the evidence supports either specification or the charge.

ORDER

The Order of the Coast Guard Examiner dated at New York City, on 4 May, 1951, is VACATED, SET ASIDE AND REVERSED. The charge against this Appellant is DISMISSED.

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

Dated at Washington, D. C., this 3rd day of July, 1951.

C-1452 TREASURY CGHQ. WASH.D.C.

***** END OF DECISION NO. 510 *****

[Top](#)