

In the Matter of Merchant Mariner's Document No. Z-316034
Issued to: JAMES W. COOK

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD
566

JAMES W. COOK

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 30 August, 1951, an Examiner of the United States Coast Guard at Norfolk, Virginia, revoked Merchant Mariner's Document No. Z-316034 issued to James W. Cook upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as messman on board the American SS SEACORONET under authority of the document above described, on or about 27 July, 1951, while said vessel was in the port of Liverpool, England, he (a) addressed foul and abusive language, without reasonable cause, to the Chief Mate; and (b) he assaulted and wounded the Chief Mate with a deadly weapon; to wit, an ice pick.

Although served with a subpoena on 24 August, 1951, to appear at the hearing set for 27 August, 1951, Appellant failed to so appear and the proceeding was conducted in *absentia*.

Appellant had been given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing; of his right to be represented by an attorney of his own selection and to call and cross-examine

witnesses, etc. When Appellant failed to appear, the Examiner entered a plea of "not guilty" to the charge and each specification proffered.

Thereupon, the Investigating Officer made his opening statement and the Investigating Officer introduced in evidence the testimony of three witnesses (Chief Mate, Second Assistant Engineer and Chief Steward); an excerpt from the vessel's official log; and certified copy of documents from the American Consulate at Liverpool, England. The Examiner then adjourned the hearing until 2:00 P.M. 30 August, 1951, to afford Appellant further opportunity to appear.

At the appointed time the hearing was reconvened; Appellant had neither appeared nor been heard from or found, so the Examiner announced his findings and concluded that the charge had been proved by proof of the specifications and entered the order revoking Appellant's Merchant Mariner's Document and all other valid documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged:

1. Appellant did not remain at Norfolk for the hearing because he had to return to New Orleans as his wife was sick;
2. The testimony before the Examiner was not true;
3. The Chief Mate had a quarrelsome disposition;
4. In twenty years' service at sea, this Chief Mate is the first person with whom he has had trouble.

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

FINDINGS OF FACT

On 27 July, 1951, Appellant was serving as saloon-messman on board the American SS SEACORONET and acting under authority of his Merchant Mariner's Document No. Z-316034. The vessel was then in port at Liverpool, England.

During service of the noon meal, the Chief Mate complained to Appellant that a chipped glass was before him; and threatened to

dispose of it. As the Chief Mate finished his meal, Appellant approached and addressed foul and abusive language to him; and in an altercation which ensued, the Chief Officer was slightly injured by an ice pick which Appellant had been holding.

OPINION

I am not impressed by any point raised by this appeal. Appellant should have challenged the veracity of the witnesses before the Examiner - not on appeal. He was told of his rights - particularly with respect to representation by counsel and cross-examination of witnesses, but elected to waive those rights by going to New Orleans without advising anyone of his intentions.

However, I am not satisfied the Chief Mate's wound was willfully caused; but rather was accidentally caused by an instrument in Appellant's possession - and for which he was responsible. Appellant initiated the altercation and is responsible for its consequences.

ORDER

The Examiner's Order dated 30 August, 1951, is MODIFIED to provide for suspension of Appellant's Merchant Mariner's Document No. Z-316034 and all other valid documents issued him by the Coast Guard or its predecessor authority for a period of one year commencing on the date said documents are surrendered in compliance herewith. MODIFIED.

A. C. Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 2nd day of July, 1952.

***** END OF DECISION NO. 566 *****

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