

In the Matter of Merchant Mariner's Document No. Z-109336-D1
Issued to: DANIEL I. BUTTS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

709

DANIEL I. BUTTS

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 16 July, 1953, an Examiner of the United States Coast Guard at New York, New York, suspended Merchant Mariner's Document No. Z-109336-D1 issued to Daniel I. Butts upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as Boatswain on board the American SS HURRICANE under authority of the document above described, on or about 4 July, 1953, while said vessel was at sea, he wrongfully molested two female passengers aboard the vessel (First Specification); and he wrongfully entered a passenger's room aboard the vessel (Second Specification).

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. Appellant was represented by an attorney of his own selection and he entered a plea of "not guilty" to the charge and each specification proffered against him. Later, Appellant changed his pleas to "guilty" with the understanding that there was no evidence of physical contact

between Appellant and the two female passengers referred to in the specifications. On this basis, the Examiner accepted the change of plea.

Thereupon, the Investigating Officer made his opening statement and counsel for Appellant made a statement in mitigation. He stated that Appellant had a previously unblemished record during 28 years at sea; he held a position of responsibility and trust during the last war; his actions were without malice; there was no physical contact with the passengers; and both specifications relate to the same offense.

At the conclusion of the hearing, having 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 plea to the two specifications. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-109336-D1, and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of twelve months outright and twelve months on twelve months probation from the time of the termination of the outright suspension.

From that order, this appeal has been taken, and it is urged that the order of the Examiner is unjust, unreasonable, too severe, and it should be substantially modified. It is submitted that Appellant is a person of high character and background with no prior record; the Examiner stated that Appellant's acts were not "dictated by an impulsive desire" and were "not those of one bent upon the precipitate accomplishment of a purpose"; Appellant was not aware of what he was doing; the Master did not confine Appellant because the offense was not considered by the Master to be serious; and the order should not be compounded merely because there were two specifications based on the same incident. Therefore, it is suggested that the proper order should have been nothing more than an admonition.

APPEARANCES: Mr. Seymour W. Miller of New York City by Irving A. Logue, Esquire, of Counsel.

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

FINDINGS OF FACT

On 4 July, 1953, Appellant was serving as Boatswain on board the American SS HURRICANE and acting under authority of his Merchant Mariner's Document No. Z-109336-D1 while the ship was at sea enroute to the port of New York.

At about 0100 on this date, Appellant was standing in the doorway of a stateroom which was occupied by two female passengers. The women told Appellant to go away and he left. They locked the door and turned the lights out a short time later. At about 0200, the same two passengers heard a noise and saw Appellant in the bathroom which adjoined their stateroom. Appellant said something as he approached them; but he unlatched the door and departed when they again told him to go away. The Master saw Appellant as he was leaving the stateroom. Upon inquiry, the Master was informed by the occupants that Appellant had not been invited to their room. The Master then took Appellant to his quarters and ordered him to stay out of the passengers' areas. Appellant said that he had been drinking and did not know why he had been there. The Master did not confine Appellant at any time before the ship arrived at New York on the following day.

There is no record of prior disciplinary action having been taken against Appellant.

OPINION

The record discloses that Appellant made no attempt to come into physical contact with either of the two female passengers and that he immediately obeyed them when they told him to go away. The record also bears out counsel's contention that Appellant is considered to be a very good seaman and that his prior conduct has been beyond reproach during many years at sea. Although my action is not to be considered as condoning the seriousness of Appellant's misconduct in the instant case, the outright suspension will be mitigated because of Appellant's long service with an otherwise perfectly clear record. Ordinarily, the offense of unauthorized entry into the passengers' spaces would be met with a much more severe order.

ORDER

The order of Examiner dated at New York, New York, on 16 July, 1953, is modified to read the Merchant Mariner's Document No. Z-109336-D1, and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority, are hereby suspended for a period of twelve (12) months, the first four (4) months of said suspension to be effective as of 16 July, 1953. The last eight months of said suspension shall not be effective provided no charge under R.S. 4450, as amended (46 U.S.C. 239), is proved against Appellant for acts committed within twelve (12) months after the expiration of the four (4) months outright suspension.

If this probation is violated, the order for which probation was granted shall become effective with respect to all certificates and licenses here involved, and also any certificate or license acquired by you during the period of probation, at such time as designated by any Coast Guard Hearing Officer, finding the violation and may be added to, or form a part of any additional order which is entered by such Hearing Examiner.

As so MODIFIED, said order is AFFIRMED.

Merlin O. Neill

Dated at Washington, D.C., this Second day of November, 1953.

***** END OF DECISION NO. 709 *****

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