

In the Matter of Merchant Mariner's Document No. Z-937348
Issued to: ELIO MORALES

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

722

ELIO MORALES

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 1 October, 1953, an Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z-937348 issued to Elio Morales upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as an auditorium attendant on board the American SS CONSTITUTION under authority of the document above described, on or about 8 May, 1953, while said vessel was at sea, he wrongfully molested Eleanor Sette, an infant female passenger.

At the commencement of the hearing on 25 May, 1953, 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 counsel 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 specification proffered against him.

Thereupon, the Investigating Officer made his opening

statement and two character witnesses appeared in behalf of Appellant. The hearing was then continued to await the taking of depositions in the form of interrogatories and cross-interrogatories propounded to Sara Graham, Eleanor Sette and Mrs. Edward Sette, the mother of Eleanor Sette.

On 28 September, 1953, the hearing was reconvened. The Examiner had received the depositions of Sara Graham and Mrs. Edward Sette. The Officer in Charge of the U. S. Coast Guard Merchant Marine Detail at Naples, Italy, reported that Eleanor Sette was not available for questioning. The Investigating Officer agreed to proceed without the deposition of Eleanor Sette.

The Investigating Officer offered in evidence the two depositions and a certified copy of an extract from the official Logbook of the CONSTITUTION. The deposition of Sara Graham and the log entry were received in evidence without reservation. The Examiner admitted the deposition of Mrs. Edward Sette conditionally subject to re-examination as to whether it constituted an exception to the hearsay rule.

The Investigating Officer then rested his case and Appellant declined the opportunity to testify in his own behalf.

At the conclusion of the hearing, having heard the argument of the Investigating Officer 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 specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-937348 and all other licenses and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

The Examiner excluded the deposition of Mrs. Sette on the ground that it was not part of the res gestae but that it was hearsay evidence which could have been used as circumstantial evidence in corroboration of the evidence obtained from Eleanor Sette if her deposition had been taken and placed in evidence.

From the order of revocation, this appeal has been taken, and it is urged that there is a reasonable doubt as to the sufficiency of the evidence because Appellant was deprived of the opportunity

to cross-examine Eleanor Sette or her mother as a result of the failure to obtain the deposition of the former and the exclusion of the deposition of the latter. It is requested that the order be modified to something less than revocation because Appellant has had a clear record during ten years at sea, he is married and is the father of four children.

APPEARANCES: Leon Luria, M. D., LL.M., of New York City, of Counsel.

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

FINDINGS OF FACT

On 8 May, 1953, Appellant was serving as an auditorium attendant on board the American SS CONSTITUTION and acting under authority of his Merchant Mariner's Document No. Z-937348 while the ship was at sea.

During the afternoon of 8 May, 1953, Appellant took three cabin class passengers (Eleanor Sette, age 11 1/2; Sara Graham, age 11 1/2; and Richard Graham) into the room adjoining the ship's movie auditorium on the pretext of showing them around the room. While in the room, Appellant grabbed Eleanor Sette and attempted to throw her down. The other two children were frightened and they ran out of the room. Eleanor Sette managed to free herself after pinching Appellant.

At a hearing conducted by the Staff Captain on the following day, Appellant was confronted and identified by Eleanor Sette and Sara Graham as the man who had molested Eleanor Sette on the preceding day. Appellant admitted having grabbed her but he stated that he did this in order to get her out of the room.

OPINION

Appellant was afforded ample opportunity to cross-examine not only Eleanor Sette but also an eyewitness to the incident, Sara Graham, at the time when he was confronted and identified by the two girls before the Staff Captain of the ship. Appellant also

submitted cross-interrogatories which were answered by Sara Graham when her deposition was taken.

Although the deposition of Mrs. Sette was excluded by the Examiner because it consisted of statements made to Mrs. Sette by her daughter several hours after the molestation occurred, the deposition of Sara Graham and the log entry concerning the incident constitute substantial evidence to support the allegations contained in the specification.

Because of the seriousness of the offense of molesting a passenger on a ship of the United States Merchant Marine, the order will be sustained despite Appellant's prior clear record and the hardship which this order will place upon his family.

ORDER

The order of the Examiner dated at New York, New York, on 1 October, 1953, is AFFIRMED.

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

Dated at Washington, D. C., this 31st day of December, 1953.

***** END OF DECISION NO. 722 *****

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