

In the Matter of Merchant Mariner's Document No. Z-60264
Issued to: JOE TORRES SANTOS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

749

JOE TORRES SANTOS

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.

By order dated 15 April, 1954, an Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z-60264 issued to Joe Torres Santos upon finding him guilty of misconduct based upon three specifications alleging in substance that while serving as a cabin class bedroom steward on board the American SS AMERICA under authority of the document above described, on or about 21, 22 and 23 December, 1953, while said vessel was at sea, he wrongfully molested a female passenger, Mrs. Beverly Burdish, by kissing her on 21 December; and immorally attacking her on each of the latter two dates above.

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 counsel of his own selection and he entered a plea of "not guilty" to the charge and each specification proffered against him.

In defense, counsel for Appellant did not offer any evidence

but he made a statement to the effect that Mrs. Burdish's statement and deposition are not in accord and Appellant's innocence is indicated by the fact that he has never had any trouble during 31 years of going to sea and working for passengers.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence Mrs. Burdish's statement and deposition are not in accord and Appellant's innocence is indicated by the fact that he has never had any trouble during 31 years of going to sea and working for passengers.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel 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 three specifications. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-60264 and all other licenses, certificates, endorsements and 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 that the deposition by Mrs. Burdish and her statement attached to the log entry differ in several respects; a deposition should be obtained from the woman passenger who shared the cabin with Mrs. Burdish; and Appellant's clear record for 31 years at sea indicates that he is a responsible seaman.

APPEARANCES: Mr. St. Clair Parris, N.M.U. Representative.

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

FINDINGS OF FACT

On a voyage including the dates of 21 through 23 December, 1953, Appellant was serving as a cabin class bedroom steward on board the American SS AMERICA and acting under authority of his Merchant Mariner's Document No. Z-60264. The Ship was at sea during most of the above three dates.

Appellant's duties included servicing the cabin which Mrs. Burdish shared with her two daughters who were one and three years

old. Another woman shared the cabin until she disembarked on 22 December,

At about 0700 on 21 December, 1953, Appellant entered Mrs. Burdish's cabin while she was still asleep in the upper berth. He climbed up the ladder to her berth and awakened her by kissing her on the face. Mrs Burdish pushed Appellant away and he left the cabin. At this time, the other woman who occupied the cabin was asleep.

At approximately 2100 on the evening of 22 December, 1953, Mrs. Burdish let Appellant come into her cabin while she was putting her children to bed. Appellant entered the cabin on the pretext of showing Mrs. Burdish a new coat he had purchased. She looked at the coat and he then refused to leave when she told him to do so. Instead, Appellant used physical force in trying to persuade her to have sexual relations with him while he was exposing himself and attempting to press himself against her. Mrs. Burdish finally persuaded Appellant to leave her cabin.

At about 1100 on 23 December, 1953, Appellant entered Mrs. Burdish's cabin while she was sitting in the lower berth with her feet on the deck. Appellant pushed her back on the berth and again used physical force by pressing his body against her. Mrs. Burdish pushed Appellant away and he left the cabin.

Shortly thereafter, Mrs. Burdish reported these three incidents, and several prior ones of a less serious nature, to the Cabin Class Purser.

OPINION

The points raised on appeal are considered to be without merit. The depositions of Mrs. Burdish, dated 4 March, 1954, is in substantial agreement, in al material respects, with her prior statement of 23 December, 1953, which was attached to the ship's Official Logbook.

Appellant had ample opportunity during the course of the hearing to obtain the deposition of the other woman who shared the cabin with Mrs. Burdish. The hearing was continued, from time to

time, over a period of more than three months; and the Examiner made it perfectly clear to Appellant and his counsel that they would have to submit an application to take a deposition as well as submitting a copy of interrogatories to the Examiner and the Investigating Officer. The record does not disclose that Appellant or his counsel made any attempt to follow this procedure.

In view of the flagrantly improper advances made by Appellant, the order of revocation will be sustained despite his prior unblemished record over a long period of years. The shipowners and their employees owe a duty to protect their passengers against immodesty of approach and any interference with the passengers' person. Appellant has grossly abused the privilege to be able to work on American merchant vessels and he has thereby forfeited this privilege.

ORDER

The order of the Examiner dated at New York, New York, on 15 April, 1954, is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 29th day of June, 1954.

***** END OF DECISION NO. 749 *****

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