

In the Matter of Merchant Mariner's Document No. Z-753407 and all
other Licenses, Certificates and Documents
Issued to: TU DINH NGUYEN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

816

TU DINH NGUYEN

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 3 January 1955, an Examiner of the United States Coast Guard at New York, New York, suspended Merchant Mariner's Document No. Z-753407 issued to Tu Dinh Nguyen upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as Chief Cook on board the American SS FLYING ARROW under authority of the document above described, on or about 23 January 1954, while said vessel was at San Juan, Puerto Rico, he wrongfully cut another member of the crew, Fred L. Williams, with a knife.

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 specification proffered against him.

Thereupon, the Investigating Officer and counsel for Appellant

made their opening statements. The Investigating Officer introduced in evidence the testimony of the ship's Chief Electrician who witnessed the incident in question, a Report of Personal Accident Not Involving Death (CG-924-E), a certified copy of extracts from the Shipping Articles of the FLYING ARROW, a certified copy of the criminal information against Appellant in the Superior Court of Puerto Rico of the San Juan Judicial District and a certified copy of the imposition of sentence by the Puerto Rican Superior Court. English translations of the latter two documents were also received in evidence. The Investigating Officer then rested his case.

After the Examiner denied counsel's motion to dismiss the charge on the ground that the evidence did not sustain the allegations, Appellant testified under oath in his behalf. Appellant stated that he got a plate of food from the pantry but before he had eaten anything Williams told Appellant to clean of the messhall tables; Williams struck Appellant when he went to complain to the Chief Steward; Appellant returned to the messhall to get a sandwich when he could not find the Chief Steward; two other seamen grabbed Appellant which he was cutting bread for his sandwich; and Williams was accidentally cut by the bread knife when Appellant twisted around to get free from the two seamen. Appellant also testified that he was induced to plead "guilty" by his lawyer at the trial in Puerto Rico; and that Appellant could not understand anything at the trial.

The injured seaman, Williams, testified as a rebuttal witness for the Investigating Officer. His version of the incident agrees with the testimony of the Chief Electrician. Williams also stated that he had entered into a settlement agreement with the shipowner.

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 specification. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-753407, and all other licenses, certificates and document issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of twenty-four months - twelve months outright suspension and twelve months suspension on twelve

months probation from the time of termination of the outright suspension.

From that order, this appeal has been taken, and it is urged that the findings of the Examiner are against the weight of the evidence which shows that Williams was the aggressor, Appellant was not intoxicated and he was improperly led to enter a plea of "guilty in Puerto Rico; the order of the Examiner was excessive because Appellant was deprived of the use of his document after 23 January 1954; and Appellant should be given the benefit of the reasonable doubt upon reconsideration of the entire case. In conclusion, it is requested that the charge be dismissed or the order reduced to conform with the surrounding facts and circumstances.

APPEARANCES: Henry L. Nowve', Esquire, of New York City of Counsel.

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

FINDINGS OF FACT

On 23 January 1954, Appellant was serving as Chief Cook on board the American SS FLYING ARROW and acting under authority of his Merchant Mariners Document No. Z-753407 while the ship was at San Juan, Puerto Rico.

At about 1700 on this date, Appellant returned to the ship and went to the messhall in order to eat his evening meal. Appellant served himself in the pantry and took his plate into the adjoining messhall where Fred L. Williams, a deck maintenance man, was working as a messman in place of one of the regularly assigned messmen. Appellant was staggering to some extent and he spilled some of the food from his plate on one of the messhall tables, which had been cleaned by Williams. Williams told Appellant to clean up the food but Appellant refused to do so.

Appellant left the messhall by way of the pantry and re-entered the messhall a short time later while Williams was drying glasses. Appellant approached Williams from the rear and offered to fight him. When Williams turned to face Appellant, the

latter swung a large bread knife at Williams and cut him on the right side of his face near his ear. The Chief Electrician and several other seamen were also present in the messhall. The Chief Electrician and the Third Cook disarmed Appellant about the time the Chief Mate arrived on the scene. Williams was hospitalized; the cut from the knife left a scar about three inches long.

Appellant was placed under arrest by the local police authorities. On 11 March 1954, he was represented by a lawyer before the Superior Court of Puerto Rico, San Juan Judicial District, and he was convicted on his plea of "guilty" to the charge of illegally and with criminal intent assaulting and injuring Fred L. Williams on 23 January 1954. On 12 July 1954, Appellant was sentenced to one to six months in the penitentiary.

There is no record of prior disciplinary action having been taken against Appellant by the Coast Guard. I take official notice of the records which show that Appellant was issued his original Merchant Mariner's Document in March 1947.

OPINION

The above findings, which are in accord with those of the Examiner in all material respects, are supported not only by the testimony of a disinterested witness, the Chief Electrician, and the testimony of Williams but also by Appellant's conviction in the Puerto Rican court. The Examiner, as the trier of the facts who saw and heard the witnesses, specifically stated that he did not accept the version of the incident presented by Appellant in his testimony. There is substantial evidence to show that Appellant was the aggressor at the time he cut Williams with the bread knife; and that Appellant was staggering when he entered the messhall with his plate of food.

Although the conviction is not conclusive in this administrative proceeding, it constitutes substantial evidence in the same manner as does a State court conviction under 41 CFR 137.15-5(b). This is true because the Puerto Rican courts (except the U. S. District Court for Puerto Rico) are organized pursuant to the authority contained in the Constitution of Puerto Rico which is in the nature of a compact between the United States and Puerto Rico; and because Puerto Rico has been likened to a State. *Mora*

v. Mejias (CAL, 1953), 206 F2d 377; *Mora v. Mejias* (D. C. Puerto Rico, 1953), 115 Fed. Supp. 610. The Constitution of Puerto Rico became effective on 25 July 1952. See 48 U.S.C. 731d.

Appellant cannot now attempt to reject his plea of "guilty" before the Puerto Rican court. Presumably, he would have been permitted to vacate his plea if he had made application to the court showing that the plea had been unfairly obtained or given through ignorance. *Kercheval v. U. S.* (1927), 274 U. S. 220. By this plea of "guilty", Appellant admitted the "criminal intent" and availability of proof "beyond a reasonable doubt", neither of which are essential in this proceeding. *Stone v. U. S.* (1897), 167 U.S. 178. Only the lesser degree of proof - substantial evidence - is required herein.

Even considering the additional time during which Appellant was deprived of the use of his document, unduly harsh treatment did not result therefrom in view of the leniency of the Examiner's order and the serious nature of the assault and battery. Consequently, the order of suspension imposed will be sustained.

ORDER

The order of the Examiner dated at New York, New York, on 3 January 1955 is AFFIRMED.

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

Dated at Washington, D. C., this 14th day of June, 1955.

***** END OF DECISION NO. 816 *****

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