

In the Matter of Merchant Mariner's Document No. Z-696233
Issued to: JAMES A. WEDDINGTON

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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JAMES A. WEDDINGTON

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 31 March 1955, an Examiner of the United States Coast Guard at San Francisco, California, revoked Merchant Mariner's Document No. Z-696233 issued to James Weddington upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a messman on board the American SS PRESIDENT JEFFERSON under authority of the document above described, on or about 19 August 1954, while said vessel was in the port of Manila, Philippine Islands, he wilfully assaulted and injured the Chief Steward of said vessel, James A. Lockwood, by burning him with hot water.

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 specification proffered against him.

Thereupon, the Investigating Officer made his opening

statement and introduced in evidence the testimony of the Chief Steward and two other witnesses to the incident. The Investigating Officer made his opening statement and introduced in evidence the testimony of the Chief Steward and two other witnesses to the incident. The Investigating Officer also offered in evidence a certified copy of the Information as well as the Judgement and Order of Probation in the case of the *United States v. James Weddington* from assaulting James A. Lockwood on 19 August 1954.

In defense, Appellant offered in evidence his sworn testimony. Appellant stated that the Chief Steward invited Appellant to go to bed at a hotel with the Chief Steward; Appellant vehemently declined to do so; the Chief Steward continued to make immoral advances towards Appellant; and the water accidentally spilled on the Chief Steward when he grabbed Appellant. 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 revoking Appellant's Merchant Mariner's Document No. Z-696233 and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority.

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

1. The decision is not supported by the evidence. The failure of the Chief Steward to deny that he made indecent proposals to Appellant, as testified to by the latter, detracts from the Examiner's finding that he rejected Appellant's testimony. This also indicates that Appellant's conduct was not "wilful" as alleged.

2 and 3. The Examiner should not have received in evidence and relied exclusively upon the Federal Court judgement of conviction since the ultimate fact to be established herein is not whether Appellant was convicted but whether he committed a "wilful" assault; and a conviction based on a plea of nolo contendere cannot be used to prove the underlying facts of the conviction. Also, "wilfulness" is not essential for a conviction under 18 U.S.C. 113(d) and was not alleged in the Information against Appellant. An earlier Indictment alleging

that Appellant's acted "wilfully and knowingly" was dismissed on motion of the U. S. Attorney.

4. The order of revocation was excessive since it has made Appellant an economic outcast. Appellant has completed without incident the period of probation imposed by the Federal Court. The order should be modified to coincide with the length of time Appellant has already been without his document.

APPEARANCES: Messrs. Gladstein, Andersen, Leonard and Sibbett of San Francisco, California, by Norman Leonard, Esquire, of Counsel.

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

FINDINGS OF FACT

On 19 August 1954, Appellant was serving as a messman on board the American SS PRESIDENT JEFFERSON and acting under authority of his Merchant MARINER'S DOCUMENT NO. Z-696233 while the ship was in the port of Manila.

At about 0930 on this date, the Chief Steward noticed a dirty mop and bucket of dirty water in the crew's messroom. The Chief Steward told Appellant to get a new mop or to wash the dirty one. Nothing more was said as the Chief Steward continued on his regular inspection tour.

At approximately 1130 when Appellant was serving meals in the messroom, the Chief Steward again saw the same dirty mop and bucket of water practically in the middle of the passageway outside the messroom. The Chief Steward remarked to Appellant that these items did not look very appetizing. Appellant did not reply but, shortly thereafter, he obtained a metal pitcher of scalding hot water, approached the Chief Steward and intentionally threw the water on him from close range. The water burned the Chief Steward on his face, neck, chest and arms.

The Chief Steward retreated along athwartship passageway and

then went aft with Appellant in pursuit holding another or the same pitcher containing hot water. When the Chief Steward came to a closed door at the end of the passageway, he turned to face Appellant, struck at him and knocked the pitcher to the deck. In the process of doing this, more of the hot water got on the Chief Steward. The Chief Steward grabbed a fire axe from the passageway bulkhead and chased Appellant. The Chief Steward released his hold on the axe because of his burned hands. He then ran to the Chief Mate's room while screaming that he had been burned.

As a result of this incident, the Chief Steward was hospitalized for three weeks at Manila for treatment of first and third degree burns.

Prior to the incident Appellant and his superior, the Chief Steward, had been unfriendly, but there had been no previous physical encounter between them.

On 27 September 1954, Appellant appeared in person, and with counsel, before the United States District Court for the Northern District of California, Southern Division, and was convicted on his plea of nolo contendere to the offense, alleged in the Information, of assaulting the Chief Steward and wounding him with hot and scalding water on 19 August 1954 in violation of 18 U.S.C. 113(d). Appellant was sentenced to six months imprisonment and to pay a fine of \$500. Execution of the sentence of imprisonment and the fine was suspended and Appellant was placed on probation for a period of six months.

Appellant's prior disciplinary record consists of a probationary suspension in 1951 for assaulting and wounding, with a knife, a fellow crew member.

OPINION

The Examiner stated that he accepted as true the testimony of the Chief Steward which was corroborated by the testimony of the Investigating Officer's other two witnesses. The Examiner also specifically stated that he rejected the Appellant's testimony *in toto*. These findings as to credibility are not detracted from by any failure on the part of the Chief Steward to deny Appellant's

accusations that the Chief Steward made indecent proposals to Appellant and that the water spilled on the Chief Steward denied that he had any conversation with Appellant except with reference to the bucket and denied touching any part of Appellant's body (R.25). Therefore, I accept the credibility findings of the Examiner who heard and observed the witnesses.

As further stated by the Examiner, the specification alleging a "wilful" assault is fully supported by the evidence without reference to Appellant's conviction in the Federal Court. The latter evidence is superfluous to the decision. Nevertheless, since the Information before the Federal Court and the specification herein are both based on the same set of facts, the Federal Court judgement of conviction on a plea of *nolo contendere* must be held to be conclusive in this proceeding in accordance with 41 CFR 137.15-5(a) for the reasons stated in Appeal No. [601](#), pages 4, 5.

The corroborated testimony of the Chief Steward clearly established that Appellant's conduct, in throwing the hot water on the Chief Steward, was "wilful" and intentional as distinguished from having been accidental as claimed by Appellant in his testimony. It is immaterial whether it was alleged to have been a "wilful" assault since the offense of assault (and battery) connotes wilful, intentional conduct as distinguished from accidental conduct. 45 *Words and Phrases*, Cum. Supp., pp 43, 75, 78; 5 *Corpus Juris* 615. The injury to the Chief Steward was the probable consequence of Appellant's wilful act of throwing the hot water on the Chief Steward. Hence, Appellant was to blame for the result of his conduct whether or not he intended to so seriously burn the Chief Steward that he would be hospitalized for three weeks. Appellant's propensity towards behavior injurious to his shipmates is indicated by his prior record as well as by this unjustified attack upon the Chief Steward. Consequently, it is my opinion that no clemency should be granted at the risk of danger to many other merchant seamen despite the effect of the order of revocation upon Appellant's economic status.

ORDER

The order of the Examiner dated at San Francisco, California,

on 31 March 1955 is

AFFIRMED.

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

Dated at Washington, D. C., this 9th day of December, 1955.

***** END OF DECISION NO. 841 *****

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