

In the Matter of Merchant Mariner's Document No. Z-55516
Issued to: ALEXANDER CALDERON

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

504

ALEXANDER CALDERON

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 6 April, 1951, an Examiner of the United States Coast Guard at New York City suspended Merchant Mariner's Document No. Z-55516 issued to Alexander Calderon upon finding him guilty of misconduct based upon one specification alleging in substance that while serving as oiler on board the American SS INDEPENDENCE under authority of the document above described, on or about 21 February, 1951, while said vessel was at the port of Gibraltar, he assaulted a crew member.

The Record in this case is most unsatisfactory. Appellant was interviewed by the Investigating Officer on 5 April, 1951; and with knowledge that the vessel was "paying off" that day, and Appellant might be delayed for that reason, the hearing was nevertheless set for 3:00 p.m. - and Appellant was not present. (R.1).

Without hearing an opening statement to determine whether reasonable grounds were present for the proceeding, the Examiner received testimony from the complainant (and one other most casual witness) (R.2-6). A statement was then made by the Investigating Officer, and during a colloquy which followed, Appellant appeared "at ten minutes past 4:00" (R.7). The hearing was then adjourned until 10:00 a.m. the following day.

At that hour, Appellant again was not present; at 10:30 a.m., the hearing was resumed (R.8) and the Examiner announced his findings and conclusions, but reserved decision and entry of an order pending receipt of a report on Appellant's previous service. (R.10).

On the same day, at 1:00 p.m., the Examiner reopened the hearing because Appellant had appeared "a couple of hours late." Appellant was then advised of his rights and privileges - including the right to representation by counsel. But, this detail was not given its usual emphasis in such cases; and Appellant never was given an election in the matter of representation. (R.11, 12).

Appellant then testified in his own behalf and contradicted the story told by the complainant; he was cross-examined briefly.

At the conclusion thereof, it was shown in the Record that a witness subpoenaed on behalf of Appellant, and served by Appellant, had failed to appear. (R.14, 15).

This witness was known to, but not interviewed by, the Investigating Officer (R.15). It seems to me this omission was important because it would probably have clearly defined this case as the trivial matter it is.

Because of my dissatisfaction with this Record, and my opinion that Appellant was not properly accorded all the rights to which he was entitled as a person under charges in a Coast Guard proceeding under 46 United States Code, 239 (R.S. 4450), as amended, I direct

ORDER

This case be remanded to the United States Coast Guard Examiner at New York City, and that his order dated 6 April, 1951, probationally suspending Appellant's Merchant Mariner's Document No. Z-55516 be VACATED, SET ASIDE and REVERSED. The charge in this case is DISMISSED.

A. C. Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 15th day of June, 1951.