

In the Matter of Merchant Mariner's Document NO. Z-54073
Issued to: FILEMON BARLIZO

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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FILEMON BARLIZO

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 10 August, 1951, an Examiner of the United States Coast Guard at Galveston, Texas, suspended Merchant Mariner's Document No. Z-54073 issued to Filemon Barlizo upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as able seaman on board the American SS SUNION under authority of the document above described, on or about 20 July, 1951, while said vessel was in the port of Gibraltar, he threatened another member of the crew, Vernon Corlis, with a dangerous weapon, a knife (Second Specification); and later on the same day, while said vessel was at sea, he assaulted Vernon Corlis with a dangerous weapon, an ice pick (First Specification).

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. 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 each specification proffered against him.

Thereupon, the Investigating Officer and Appellant made their opening statements and the Investigating Officer introduced in evidence the testimony of the Master of the SUNION, the person alleged to have been assaulted, another member of the crew, and certified copies of extracts from the official log book of the SUNION.

In defense, Appellant testified under oath 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 specifications and entered the order suspending Appellant's Merchant Mariner's Document No. Z-54073 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority for a period of twelve months; three months' outright suspension and the remaining nine months on eighteen months' probation from the termination of the outright suspension.

From that order, this appeal has been taken, and it is urged that, although Appellant does not question the Examiner's findings, it is requested that clemency be granted due to the provocative action of Corlis. It is pointed out for consideration that Corlis, without cause, assaulted Appellant in the messroom shortly before the knife incident and this greatly aroused him; that Appellant was enraged to the extent of stabbing Corlis with the ice pick as a result of Corlis' retraction of his promise to pay for the plastic surgery on Appellant's face; that these two incidents are not a pattern of Appellant's usual conduct as shown by his twenty-five years of service on American vessels with no prior record of misconduct; and that Appellant is the sole means of support for his fourteen year old son in the Philippine Islands whose mother is deceased.

FINDINGS OF FACT

On 20 July, 1951, Appellant was serving as able seaman on board the American SS SUNION and acting under authority of his Merchant Mariner's Document No. Z-54073 while said vessel was at Gibraltar and thereafter, on the same date, when the vessel was at sea.

On the morning of 20 July, 1951, Corlis was sleeping on his bunk, in the forecabin which he shared with Appellant, when the latter entered and hit Corlis on the back telling him that the mate had given the order to turn to "fore and aft." Corlis got up and went out on deck prepared to work before he was informed by the mate that no such order had been given. Corlis found Appellant in the messroom and slapped him in the face for having unnecessarily aroused him. Appellant became extremely angry and with a pocket knife in his hand he pursued Corlis onto the deck of the vessel. Corlis retreated and Appellant continued to approach with the knife in his hand as though to attack Corlis. When he could retreat no farther, Corlis used his pocket knife to inflict a gash across Appellant's face. Corlis was not injured in this encounter but the ship was delayed in sailing while medical attention was obtained for Appellant.

It appears that Appellant and Corlis had been good friends prior to this time and that they became reconciled after this altercation when Corlis offered to bear the expense of plastic surgery on Appellant's face. The two men shook hands and agreed to forget about the matter while they were together having some cognac. Appellant had also been drinking prior to the time he awakened Corlis in the morning.

About two or three hours after this incident, Corlis was talking with another member of the crew named Flores. Appellant approached Corlis from the rear as though to walk past him; but Appellant stopped and stabbed Corlis in his left shoulder with an ice pick. Appellant was confined in irons until the next morning.

There is no record of any prior disciplinary action having been taken against Appellant during his many years at sea aboard American merchant marine vessels.

OPINION

Concerning the second specification Corlis stated that he slapped Appellant in the face

because he had awakened Corlis and misinformed him that an order had been given by the mate (R. 12, 16). This is not denied by Appellant in his testimony under oath. Thus, Appellant seems to have brought this slapping upon himself by his own actions. Since the two men were apparently good friends, the only reasonable explanation for Appellant having become irritated to the extent of pursuing Corlis with a knife is the fact that Appellant had been drinking - and possibly for the related reason that he did not even remember having awakened Corlis (R. 16). Since Appellant initiated the entire sequence of events and was also the aggressor with respect to the knifing incident, he was to blame, respectively, for the provocation on the part of Corlis and for threatening Corlis as alleged in the second specification. Appellant was in no danger of subsequent abuse after being slapped by Corlis since he left the messroom immediately thereafter. In fact, Corlis retreated from Appellant before defending himself with his own knife and injuring Appellant.

Appellant claims that the assault with the ice pick which is alleged in the first specification resulted from a combination of fear and anger ("lost my head" - R. 15, 16, 20) after Corlis had said he would pay for Appellant's plastic surgery and then later saying that he would kill Appellant before paying such expenses. Appellant testified that the stabbing occurred sometime after this retraction and threat by Corlis. There is nothing in the record to indicate that during this interval Appellant reported this threat to the Master, although he had ample opportunity to have done so. Failure to do this indicates the fictitious nature of the defense that Appellant stabbed Corlis in order to protect himself (R. 20, 21). In addition, Appellant could not have been in immediate danger of any physical injury to his person since he deliberately assaulted Corlis from behind while he was talking with Flores and completely unaware of the impending danger until he felt the ice pick in his shoulder. This was a serious offense which was aggravated by the fact that Corlis received no warning to defend himself and he might well have been wounded to a much greater extent. Consequently, the Examiner properly concluded that the first specification was "proved."

CONCLUSION

For these reasons, I consider the order to be comparatively light under the circumstances and there is no adequate reason for granting clemency despite Appellant's prior clear record and the effect this suspension might have upon Appellant's ability to support his son during the time of the three months' outright suspension.

ORDER

The order of the Examiner dated 10 August, 1951, should be, and it is, AFFIRMED.

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

Dated at Washington, D. C., this 19th day of October, 1951.