

In the Matter of Merchant Mariner's Document No. Z-37377
Issued to: ROY E. NAHL

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

573

ROY E. NAHL

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 31 January, 1952, an Examiner of the United States Coast Guard at Seattle, Washington, revoked Merchant Mariner's Document No. Z-37377 issued to Roy E. Nahl upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as oiler on board the American SS SIOUX FALLS VICTORY under authority of the document above described, on or about 25 June, 1951, while said vessel was moored at Seattle, Washington, he unlawfully assaulted and battered a fellow crew member, C. J. Carlton, with a deadly weapon; to wit, a fire axe handle.

Appellant obtained a postponement of the hearing which was to have commenced on 30 July, 1951, and on the latter date he was served with a subpoena to appear for a hearing on 6 August, 1951. On this date, Appellant appeared and demanded in a very belligerent manner that he be granted a continuance and also that the charges be dismissed. Before the Examiner could restore order or take any further action, Appellant departed from the hearing room.

Due to the doubtful future availability of witnesses who were present at the hearing on 6 August, 1951, the hearing was conducted in absentia on this date. The Examiner entered a plea of "not guilty" to the charge and specification on behalf of Appellant.

Thereupon, the Investigating Officer made his opening statement and the testimony of his two witnesses was taken. The Investigating Officer also introduced in evidence a certified copy of a log book entry concerning the alleged assault and a certified copy of the proceedings against Appellant in the Justice Court of King County, State of Washington. The hearing was then adjourned in order to provide Appellant an opportunity to present his defense.

Since Appellant did not indicate his desire to submit evidence at any time up to and including 31 January, 1952, the hearing was reconvened in absentia on this date and the Examiner rendered his decision revoking Appellant's Merchant Mariner's Document No. Z-37377 and all other licenses, certificates of service and documents issued to him.

From that order, this appeal has been taken in which it is contended that the charges are contrary to the decision of the King County Justice's Court; the Examiner's decision is contrary to the sea-going manpower shortage; The Examiner's decision was made six months after Appellant had been led to believe that the "phony" charges had been dismissed; Appellant did not commit the offense alleged; the hearing was postponed on 30 July because the complainant did not appear; and the Examiner refused to subpoena witnesses to appear in Appellant's defense.

FINDINGS OF FACT

On 25 June, 1951, Appellant was serving as an oiler on board the American SS SIOUX FALLS VICTORY and acting under the authority of his Merchant Mariner's Document No. Z-37377 while the ship was berthed at Pier 59 in Seattle, Washington.

Appellant had been sent to the ship as a relief oiler on this date and he was standing the 1600 to 2400 watch. Shortly after 1700, the mate on watch heard considerable noise on the main deck and he ran aft to investigate. Carlton was lying on the deck and bleeding profusely from a deep cut on his head which extended from the center of his head, back across his skull, and was about four inches long. Appellant was standing over Carlton with a fire axe handle in his hand. The second cook attempted to disarm Appellant while the mate summoned the police and an ambulance. Appellant ran down the gangway and escaped.

Appellant was subsequently apprehended and brought to trial on 2 July, 1951, on the complaint of Carlton, before Justice of the Peace William Hoar, Seattle Precinct, County of King, State of Washington. Appellant was charged with "Assault in the Third Degree" and entered a plea of "Not Guilty." He was convicted on the testimony of Carlton and sentenced to sixty days in the county jail, with credit from 29 June, 1951, and one-half of the sentence was suspended.

OPINION

I do not consider that there is merit in any of the several points raised by Appellant in this appeal. He was afforded more than adequate opportunity by the Examiner to make known his desire to reconvene the hearing for the purpose of introducing testimony or other evidence in his defense. The Examiner refrained from taking any action for almost six months and only after this period of time did he revoke Appellant's document.

Judging from the evidence in the record, which is corroborated by Appellant's conviction in the King County Court, this was an unprovoked assault and was aggravated by the use of a weapon which quite conceivably could have produced critical injuries. For this reason, I will sustain the order of revocation.

ORDER

The order of the Examiner dated 31 January, 1952, should be, and it is, AFFIRMED.

Merlin O'Niell
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 17th day of June, 1952.