

In the Matter of Merchant Mariner's Document No. Z-940959
Issued to: JUAN BORJA BARROS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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JUAN BORJA BARROS

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 21 March, 1952, an Examiner of the United States Coast Guard at New York City revoked Merchant Mariner's Document No. Z-940959 issued to Juan Borja Barros upon finding him guilty of misconduct based upon one specification alleging in substance that while serving as crew porter on board the American SS AMERICA under authority of the document above described, on or about 12 March, 1952, while said vessel was at sea, he wrongfully assaulted James M. Trimble, a crew member, with a dangerous weapon, a knife, inflicting injury.

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 an attorney of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. A plea of "not guilty" to the charge and specification was entered for him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of the person assaulted (Trimble); another person who was present; and excerpts from the vessel's official log.

Appellant testified in his own behalf.

At the conclusion of the hearing, having given both parties an opportunity to submit proposed findings and conclusion, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification and entered the order revoking Merchant Mariner's Document No. Z-940959 and all other licenses, certificates of service, endorsements and documents issued to this Appellant.

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

1. Appellant was in an extreme state of intoxication;
2. Appellant acted in self defense;

3. The specification is not supported by probative and substantial evidence.

APPEARANCES: Leon Luria, M.D., LL.M., of New York City, for Appellant.

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

FINDINGS OF FACT

On 12 March, 1952, Appellant was serving as crew porter on board the American SS AMERICA and acting under authority of his Merchant Mariner's Document No. Z-940959 while that vessel was at sea enroute from LeHavre, France to Cobh, Ireland.

Appellant was in an advanced state of intoxication because of his indulgence during the day ashore, and after he returned to the vessel, when about 11 P.M. he undertook to retire in Crew Room C-62 which he shared with Trimble, and two other men - Valentine and Castaing.

Trimble and Valentine had retired when Appellant entered the room. Appellant's bunk was immediately above Trimble's; and Appellant started to enter Trimble's bunk, from which he was promptly evicted by Trimble.

At this point the sequence of events becomes somewhat confused; but it does appear that Appellant next managed to reach his bunk, but almost immediately fell to the deck for some reason which is not explained. Appellant then again tried to get into Trimble's bunk, and the latter then more forcibly shoved Appellant who crossed the space between the bunks and fell against the bunk occupied by Valentine.

Evidently feeling aggrieved because he had been "shoved" by Trimble, Appellant then drew a small bladed pocket knife and attacked Trimble; cutting Trimble on the chest above the heart - the wound extending to the abdomen. As Trimble retreated and attempted to ward off blows, Appellant again cut him - this wound extending from the cap of his left shoulder down the back and across the ribs.

During the altercation, or as a result of his fall to the deck, Appellant sustained a small laceration above his left eyebrow.

The attack upon Trimble continued until he escaped and other crew members escorted Appellant from the scene. The ship's surgeon took 51 or 52 stitches to bind Trimble's wounds, and he was thereafter unable to work for the remainder of the voyage to New York.

No doubt exists that Appellant was intoxicated at the time of his attack upon Trimble; nor that Appellant was an aggressor throughout the scene and confined his attack to Trimble alone.

Appellant has had a clear record with the Coast Guard since he started sailing in 1946.

OPINION

It is considered that my Findings dispose of the contentions on appeal. There is certainly no element of self defense presented by the testimony as mitigation of Appellant's conduct; and while he still professes absolute ignorance of what transpired, I am not impressed thereby. The Examiner saw and heard the witnesses; and is the best qualified to evaluate their testimony.

I agree with the Examiner's views respecting the legal question presented by Appellant's intoxication; except that "misconduct" does not necessarily require evidence of criminal intent to sustain a charge lodged under the law administered here by the Coast Guard.

CONCLUSION

Appellant's memorandum brief has been given very careful consideration, but I find no sound reason has been advanced to justify my interference with or modification of the Examiner's order.

ORDER

The Order of the Examiner dated at New York, N. Y., on 21 March, 1952, isAFFIRMED.

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

Dated at Washington, D. C., this 3rd day of September, 1952.