

In the Matter of Merchant Mariner's Document No. Z-168953
Issued to: JOHN F. SHERIDAN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

676

JOHN F. SHERIDAN

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 11 March, 1953, an Examiner of the United States Coast Guard at Philadelphia, Pennsylvania, suspended Merchant Mariner's Document No. Z-168953 issued to John F. Sheridan upon finding him guilty of misconduct based upon one specification alleging in substance that while serving as second pumpman on board the American SS ATLANTIC VOYAGER under authority of the document above described, on or about 31 January, 1953, while said vessel was in a domestic port, he wrongfully entered into an affray with a member of the crew, Robert V. Anderson.

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 an attorney of his own selection and he entered a plea of "not guilty" to the charge and two specifications proffered against him. (A specification alleging assault and battery was dismissed by the Examiner at the conclusion of the hearing.)

Thereupon, the Investigating Officer and counsel made their opening statements. A deposition, and the testimony taken at the hearing against the document of Robert V. Anderson, were stipulated in evidence.

The Investigating Officer introduced in evidence the testimony of Robert V. Anderson.

In defense, Appellant offered in evidence the testimony of one crew member as well as testifying under oath in his own behalf.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and having ruled on the proposed findings of fact submitted by Appellant, the Examiner announced his findings and concluded that the charge had been proved by proof of the one specification. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-168953, and all other licenses and documents held by Appellant, for a period of one month outright from 2 March, 1953, and two months on six months' probation from the termination of the outright suspension.

From that order, this appeal has been taken, and it is urged that statements by Appellant did not justify the assault and battery by Anderson and Appellant acted in self-defense after he was struck by Anderson. It is further contended that Anderson's conduct precipitated the fight and there would have been no fight if Anderson had not struck the first blow.

APPEARANCES: Emanuel Friedman, Esquire, of Philadelphia, Pennsylvania.

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

FINDINGS OF FACT

On 31 January, 1953, Appellant was serving as second pumpman on board the American SS ATLANTIC VOYAGER and acting under authority of his Merchant Mariner's Document No. Z-168953 while the ship was at Baytown, Texas.

While ashore on this date, Appellant and another member of the crew, Robert V. Anderson, engaged in an argument pertaining to racial issues and unions. After the two men returned on board the ship, the same argument was continued but it became so heated that it led to an exchange of derogatory, personal remarks. Anderson started to leave the messroom but he was called back by Appellant and Anderson was invited to strike the first blow if he desired to fight. Anderson accepted the invitation by using his fist to strike Appellant in the eye. There followed an exchange of blows before the two men agreed to stop fighting. After a momentary lull, Anderson kned Appellant in the groin and struck him on the head with a glass jar. Appellant received serious cuts on his head and one arm from the broken glass. During the fight, Anderson was also cut with glass and otherwise injured.

There is no record of prior disciplinary action having been taken against Appellant's document.

OPINION

I agree with the Examiner's statement that Appellant was equally at fault with Anderson for starting the fight. The facts set out in the record so indicate. Possibly, there would have been no fight if Anderson had not struck the first blow. Nevertheless, there was a free exchange of provocative language by both parties and Appellant indicated his willingness to fight after calling Anderson back to the scene of the verbal battle. To some extent, Appellant induced Anderson to strike the first blow. Under these circumstances, it became relatively unimportant who struck the first blow or who ultimately received the more serious injuries.

ORDER

The Order dated at Philadelphia, Pennsylvania, on 11 March, 1953, is AFFIRMED.

Merlin O'Neill

Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 10th day of July, 1953.