

In the Matter of Merchant Mariner's Document No. Z-688768  
Issued to: LUIS APONTE

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

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LUIS APONTE

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 3 November, 1952, an Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z-688768 issued to Luis Aponte upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a bedroom steward on board the American SS EXCALIBUR under authority of the document above described, during a voyage of said vessel between 21 May, 1952, and 9 July, 1952, he wrongfully used narcotics aboard the vessel. The Examiner concluded that a second specification which alleged wrongful possession of narcotics during the same voyage was merged with the first specification and not proved as an independent act.

At the hearing which commenced on 6 October, 1952, 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 entered a plea of "not guilty" to the charge and each specification proffered against him.

The Investigating Officer then made an opening statement; and testimony taken at a prior hearing, which was based upon the same incident as the present proceedings, was stipulated in evidence. The Investigating Officer then introduced in evidence the testimony of Customs Agent Polcuch and a member of the crew of the EXCALIBUR on the voyage in question.

In defense, Appellant offered in evidence the testimony of two men who had been members of the crew of the EXCALIBUR during the voyage alleged in the specification. Appellant also testified under oath in his own behalf. He stated that he had never used marijuana and that he had been beaten, at the police station, by 6 or 7 men until he "confessed" to having smoked narcotics.

At the conclusion of the hearing, having heard the argument of Appellant's counsel 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 above specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-688768 and all other valid licenses, certificates

of service and documents issued to this Appellant.

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

- "1. That the government has failed to make out a case against him supported by believable testimony.
- "2. That the testimony offered by the government relating to respondent-licensee's confession should not have been admitted into evidence on the ground that said confession was obtained from the respondent-licensee by force, duress and fear and further bodily harm."

APPEARANCE: Nathan Langsam, Esq., of Brooklyn, New York, of Counsel.

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

#### FINDINGS OF FACT

On a voyage between the dates of 21 May, 1952, and 9 July, 1952, Appellant was serving as a bedroom steward on board the American SS EXCALIBUR and acting under authority of his Merchant Mariner's Document No. Z-688768.

The day after the completion of the subsequent voyage of the EXCALIBUR which was from 16 July, 1952, to 3 September, 1952, Appellant and several other crew members of the EXCALIBUR were apprehended on suspicion of implication with narcotics, taken to a police station, and questioned as to whether they had smoked marijuana on board the EXCALIBUR. Finally, Appellant admitted that he had committed the act of which he was suspected. Appellant was then released on the night of 4 September, 1952, and no penal action was taken against him in connection with this confession.

#### OPINION

I do not think that the requirement of substantial evidence has been met in this case. The testimony of the several witnesses is vague, conflicting, and self-contradictory on many important points such as whether Appellant was induced by fear, or other means of force, to confess to something of which he was innocent; if Appellant's admission was a true confession, during what period of time had he smoked marijuana on the ship; and why was Appellant released on the same day he was arrested. In short, what are the facts with respect to the allegations contained in the specification? I am satisfied that the evidence in the record does not comprise the clarity which is necessary to sustain the decision of the Examiner.

#### ORDER

The Order of the Examiner dated at New York, New York, on 3 November, 1952, is VACATED, SET ASIDE and REVERSED. The charge and specifications in this case are ~~DISMISSED~~ DISMISSED.

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

Dated at Washington, D.C., this 12th day of June, 1953.