

In the Matter of Merchant Mariner's Document No. Z-391976-D1
Issued to: ROBERT NORVIE WHITE

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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ROBERT NORVIE WHITE

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 6 January, 1954, an Examiner of the United States Coast Guard at Mobile, Alabama, revoked Merchant Mariner's Document No. Z-391976-D1 issued to Robert Norvie White upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as second steward on board the American SS ALCOA CLIPPER under authority of the document above described, on or about 24 December, 1953, while said vessel was at sea, he assaulted and battered another member of the crew, John D. Zanca, with a dangerous weapon; to wit, a knife.

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 specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of the Master, a machinist, Zanca, and the chief cook. All of these men were on the ship at the time of the incident and the machinist was an eyewitness to the entire episode.

In defense, Appellant offered in evidence his own testimony and that of one other member of the crew. Appellant stated that he was afraid of Zanca; that Zanca hit Appellant when Zanca entered the galley with the dishes; and that Appellant then picked up the knife in a fit of rage while he did not know what he was doing.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-391976-D1 and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that the hearing should be reopened for the purpose of taking the testimony of an eyewitness of the assault who did not testify at the original hearing; that the evidence does not support the decision of the Examiner; and that the order should be reduced to a suspension of not more than six months.

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

FINDINGS OF FACT

On 24 December, 1953, Appellant was serving as second steward on board the American SS ALCOA CLIPPER and acting under authority of his Merchant Mariner's Document No. Z-391976-D1 while the ship was at sea enroute from Venezuela to Mobile, Alabama.

At about 1300 on 24 December 1953, Appellant and Zanca (steward utilityman) engaged in a very loud and heated argument while both men were in the ship's galley. Zanca was trying to dissuade Appellant from "picking on" and scaring another member of the Steward Department. The two seamen commenced fighting but the chief cook stopped them before either one of them was noticeably injured.

The chief cook and Zanca walked towards the scullery where Zanca worked. Appellant was cursing and saying nobody was going to push him around or he would kill the person.

Approximately five minutes later, Zanca returned to the galley with some dishes and the argument was continued. Zanca told Appellant to get out of the way. When he did not do so, Zanca walked around Appellant and put down the dishes. At this time, Appellant picked up a knife, threatened to kill Zanca and lunged at him with the knife. By the time the chief cook had again separated the two men, Zanca had received nine wounds from the knife wielded by Appellant - three or four cuts on his head and the balance on the upper part of his body. Some of the cuts were serious enough to require stitches and Zanca was still receiving medical treatment for his wounds as late as 5 January, 1954. There is no evidence that Appellant was injured. About fifteen minutes after the fight, Appellant told the Master of the ship that any time Appellant felt a person was pushing him around or taking advantage of him, he was going to settle it in his own way and this was one of the cases.

During approximately eleven years at sea, Appellant's prior disciplinary record consists of a suspension for two months in 1944 for wearing a United States Army uniform and being absent without leave in a restricted military area.

OPINION

Zanca's testimony concerning the events leading up to the stabbing was completely corroborated by the machinist who witnessed the sequence of events. They both testified that Appellant attacked Zanca with the knife just after Zanca had put the dishes down in the galley. Consequently, there was no immediate danger of serious bodily injury which justified Appellant's conduct. His two prior threats to kill Zanca, his statement to the Master fifteen minutes later and his own testimony indicate that he was extremely angry and attacked Zanca with the intent to do serious bodily harm to him with the knife. Any prior provocation was not, in any degree, a justification for this vicious attack which might well have resulted in very serious injury or even

death.

The seriousness of the offense was not altered by the facts that Zanca had some experience as an amateur boxer and that he had struck Appellant one or two blows about two months prior to the date of this incident. Any injury received by Appellant, at that time, was very minor.

There is no doubt that the evidence in the record supports the decision of the Examiner including the order of revocation imposed by him. In view of the conclusive nature of the evidence and the fact that Appellant admitted knifing Zanca, it is my opinion that it would serve no useful purpose to reopen the hearing. Appellant states that a prospective witness, who was an eyewitness to the fight, did not testify at the hearing because of intimidation. But Appellant has failed to state any reason why this was not mentioned during the hearing or what this person saw which would be favorable to Appellant's cause if the hearing were reopened in order to take additional testimony. For these reasons, the order of the Examiner will be sustained.

ORDER

The Order of the Examiner dated at Mobile, Alabama, on 6 January, 1954, isAFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washing, D. C., this 16th day of August, 1954.