

In the Matter of Merchant Mariner's Document No. Z-99853
Issued to: JACK ALLEN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

765

JACK ALLEN

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.

By order dated 13 January, 1954, an Examiner of the United States Coast Guard at New York, New York, suspended Merchant Mariner's Document No. Z-99853 issued to Jack Allen upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as Boatswain on board the American SS REMSEN HEIGHTS under authority of the document above described, on or about 8 December, 1953, while said vessel was in the port of San Francisco, California, he wrongfully failed to obey a lawful order by the Chief Engineer, Gordon P. Small, to leave the engine room.

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 counsel 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 Chief Engineer and Third Assistant Engineer.

In defense, Appellant offered in evidence the testimony of two members of the crew who witnessed the incident in question. Appellant also testified 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 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 specification. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-99853, and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of two months on six months probation.

From that order, this appeal has been taken, and it is urged that at the time of the alleged disobedience of the lawful order of the Chief Engineer, Appellant was actually carrying out another

order which had been given to him by the Chief Mate; and that Appellant tried to explain this to the Chief Engineer in a respectful manner.

APPEARANCES: William L. Standard of New York City by Morton J. Heckerling,
Esquire, of Counsel.

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

FINDINGS OF FACT

On 8 December, 1953, Appellant was serving as Boatswain on board the American SS REMSEN HEIGHTS and acting under authority of his Merchant Mariner's Document NO. Z-99853 while the ship was at San Francisco, California.

Several days prior to 8 December, 1953, Appellant had loaned to the First Assistant Engineer, the only palm, needle and sail twine which were available on the ship for sewing canvas. On 7 and 8 December, 1953, the Chief Mate told Appellant that he would have to perform certain work which required the use of the palm, needle and sail twine. Appellant had not been able to get the First Assistant Engineer to return this equipment.

On the morning of 8 December, 1953, Appellant descended the ladder to the engine room in order to locate the First Assistant Engineer and obtain the palm, needle and sail twine from him. When the Chief Engineer saw Appellant in the engine room, the Chief Engineer ordered Appellant to leave the engine room. While Appellant was explaining the reason for his presence, the Chief Engineer again ordered him to leave, grabbed Appellant's arm and pushed him to the foot of the ladder. Appellant did not resist and he was not in any way disrespectful towards the Chief Engineer. When the latter released his hold on Appellant, he fell against the ladder and held onto the rungs with his hands. The Chief Engineer immediately left the engine room and reported the incident to the Master. Appellant departed from the engine room a few seconds after the Chief Engineer had left.

Appellant has been going to sea for almost twenty years. His only prior record consists of a one-month probationary suspension in 1944 for being absent without leave.

OPINION

In a very technical sense, Appellant may have been guilty of the alleged offense when he did not immediately comply with the order of the Chief Engineer to leave the engine room. But it was unreasonable on the part of the Chief Engineer to commence shoving Appellant towards the ladder while he was explaining why he was in the engine room. In addition, the Chief Engineer stated that Appellant did not make any attempt to resist; and there is no evidence that Appellant was discourteous or disrespectful to the Chief Engineer.

The situation would have been different if the Chief Engineer had listened to Appellant's

explanation and Appellant had refused to obey the Chief Engineer's reiterated order to leave the engine room. But under the prevailing circumstances and in view of Appellant's good record, it is my opinion that the charge and specification should be dismissed.

ORDER

The Order of the Examiner dated at New York, New York, on 13 January, 1954, is VACATED, SET ASIDE and REVERSED.

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

Dated at Washington, D.C., this 8th day of September, 1954.