

In the Matter of Merchant Mariner's Document No. Z-292351-D1  
Issued to: STERLING FRANCIS CULLISON

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

791

STERLING FRANCIS CULLISON

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 25 November, 1953, an Examiner of the United States Coast Guard at San Francisco, California, suspended Merchant Mariner's Document No. Z-292351-D1 issued to Sterling Francis Cullison upon finding him guilty of misconduct based upon five specifications alleging in substance that while serving as Chief Steward on the American SS SEACLIFF under authority of the document above described, on or about 7 July, 1953, while said vessel was at Nagoya, Japan, he wrongfully assaulted, bettered and injured messman Price (Second Specification); on or about 6 August, 1953, while the ship was at Pusan, Korea, he wrongfully used vile and abusive language in threatening Second Officer Tvedt with bodily harm (Third Specification); on or about 14 August, 1953, while at Pusan, he wrongfully cursed Radio Officer Frye and threatened him with bodily harm (Fourth Specification); and on or about 22 August, 1953, while ashore at Pusan, he wrongfully assaulted, bettered and injured oiler Law (Seventh Specification). One of the original eleven specifications was stricken by the Examiner on motion of the Appellant and five of the specifications were found "not proved."

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 each specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of the Master and four other of the ship's officers. The Investigating Officer also introduced in evidence several documentary exhibits including numerous entries (and attachments) from the Official Logbook of the ship and a Consular report from the American Embassy at Pusan, Korea, with thirty-two enclosures. By stipulation of the parties, various evidence was placed in the record. This includes the incorporation into the record of the evidence previously taken at the hearings in the cases of Second Officer Tvedt and Radio Officer Frye. (The charges and specifications in those two cases were later dismissed by the same Examiner who conducted this hearing.)

In defense, Appellant offered in evidence his own sworn testimony as well as the testimony of five other unlicensed members of the crew. After the Investigating Officer had recalled three

witnesses in rebuttal, both parties rested.

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 above five specifications. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-292351-D1, 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 six months outright and for an additional period of twelve months on probation until twenty-four months after the date of the termination of the above six months outright suspension.

From that order, this appeal has been taken, and it is urged that the evidence does not support the findings; inadmissible evidence was erroneously admitted; and the findings are contrary to the law and facts involved. With respect to the individual specifications, the following contentions are made:

First Specification. The Master was not a fair witness because he was motivated by spite and malice. The alleged threat against the Master was not a "threat" in the eyes of the law since Appellant's words were not accompanied by any threatening gestures or movements; the Master was not in any danger due to the presence of the Chief engineer and Third Mate; and the fact that the Master was subsequently alone with Appellant indicates that the Master did not consider the threat to be serious and he was not afraid of the Appellant. The American Consul at Pusan, Korea, did not consider Appellant's verbal attacks to be serious enough to remove him from the ship for gross misconduct as requested by the Master. In view of the sharp conflict in the testimony given by the licensed and unlicensed personnel concerning this incident, the only reliable findings are those of the American Consul at Pusan who conducted an investigation and concluded that the charges against Appellant were not substantiated. Due to these circumstances, this specification should be dismissed.

Second Specification. Messman Price did not testify at the hearing and his ex parte statement was admitted in evidence, over objection, in violation of the hearsay rule. In addition, Price's statement had no probative value because he was constantly intoxicated; he made three contradictory statements concerning this incident; Price did not report any injuries to the Master; no entry was made in the logbook concerning this alleged incident; there is no medical testimony concerning any injuries to Price; and Price continued to work without complaint after his alleged injuries occurred. This specification should have been dismissed.

Third Specification. Second Officer Tvedt did not testify that he was threatened in the manner alleged. The specification should have been dismissed since it failed in proof as to the date, the type of threat and the language used.

Fourth Specification. Radio Officer Frye went into the pantry and commenced abusing messman Crane because there was no coffee in the urn. After the Radio Officer pushed the messman, there was an argument and an exchange of hot words between the Radio Officer and

Appellant. In his testimony, the Radio Officer denied having pushed Crane. The weight of the evidence is in direct variance with the allegations and the specification should be dismissed.

Seventh Specification. Oiler Law did not testify at the hearing and no attempt was made to take his deposition. The American Consul at Pusan, Korea, absolved Appellant because the statements of the only two known witnesses to the incident indicate that Law provoked the fight by striking Appellant from behind.

Conclusion. Appellant is a Steward of proven ability and the Master failed in three attempts to have Appellant removed from the ship. The Master caused the crew to be divided into two rival factions - the officers against the rest of the crew - and he had no concern for the welfare of the crew as indicated by the fact that he would not authorize taking on board sufficient supplies until he was forced to sign an agreement at Aberdeen, Washington. Newly discovered evidence indicates that the Master attempted to bribe the Military Police at Pusan, Korea, in order to have Appellant removed from the ship. The Master alone was at fault but no action was taken against him. It is respectfully requested that this case be reversed on appeal, remanded for further hearing in view of the newly discovered evidence, or modified to remove the suspension imposed against Appellant's document.

APPEARANCES: Messrs. Robbins and Robbins of Seattle, Washington, by Burton S. Robbins, Esquire, of Counsel.

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

#### FINDINGS OF FACT

On a foreign voyage extending from 16 June, 1953, to 4 November, 1953, Appellant was serving as Chief Steward on board the American SS SEACLIFF and acting under authority of his Merchant Mariner's Document No. Z-292351-D1.

Before the ship departed from Aberdeen, Washington, a disagreement arose between the Master and Appellant regarding additional stores and provisions to be taken on board prior to sailing for the Far East. The bad feelings created by this original disagreement prevailed throughout the voyage and extended to other members of the crew in such a manner as to produce considerable friction and strained relationships between most of the officers, on one side, and the unlicensed members of the crew on the other side. The following five incidents involving Appellant occurred on this voyage:

On 7 July, 1953, while the ship was at sea, the Master was inspecting the Chief Engineer's quarters in company with the Appellant. When the Master complained to Appellant about the dirty condition of these quarters, Appellant became annoyed and stated that he would kill the Master. In addition to the Master (R.18), this language was heard by the Chief Engineer (R.93) and the Third Mate (R.215).

The ship was at Nagoa, Japan, on 24 July, 1953, when a crew member, messman Price, returned to the vessel in an intoxicated condition. Between 1400 and 1600, Appellant awakened Price and ordered him to turn to. A short time later, the two men met in a passageway and an argument followed because Price had been neglecting his duties by absence and intoxication. Appellant became angry and struck Price repeatedly knocking him to the deck. Several days later, Price received medical treatment from a Japanese doctor for a wound on his forehead and a fractured rib as a result of this incident which was witnessed by the ship's Second Officer (R.227). On the following morning, Appellant received treatment on board the vessel for his bruised and swollen right hand (R.228). Price was discharged from the vessel at Pusan, Korea, by mutual consent on 3 September, 1953 (R.28; Exhibit 2).

On 6 August, 1953, the ship was at Pusan, Korea, when Appellant directed vile and abusive language towards Second Officer Tvedt and threatened to "knock your four eyes out." (The Second Officer was wearing glasses.) This incident occurred in the ship's galley after an argument had started between the two men and Appellant was warned by the Second Officer that he would make a report to the Master and the Coast Guard if Appellant did not stop cursing the Second Officer. This incident was reported immediately to the Master by the Second Officer (R. 192, 193).

On 14 August, 1953, while the ship was still at Pusan, Korea, Radio Officer Frye went into the pantry to get a hot cup of coffee after breakfast. The Radio Officer pushed by messman Crane in order to reach the coffee urn and when he found that the urn was empty he asked why there was no coffee. Appellant commenced arguing with the Radio Officer because he had pushed the messman. The Radio Officer returned to the saloon and Appellant followed him. In the saloon, heated words were exchanged by the two men. Appellant cursed the Radio Officer, challenged him to hit Appellant, and threatened to "slip something sharp into you and lay you open." The Radio Officer replied that he would take a baseball bat if he went off the ship with Appellant (R1.36).

While ashore at Pusan, Korea, on 22 August, 1953, Appellant engaged in a fight with oiler Law and seriously injured him because Appellant believed that Law had been reporting incidents which occurred in the Stewards Department to the Master. Law was hospitalized and treated for cuts and lacerations on his face (Exhibits 8, 9). Law was removed from the vessel at Yokohama, Japan, on 18 September, for hospitalization (Exhibit 2).

Appellant's prior record consists of a probationary suspension in 1943 for attempting to assault crew members with a dangerous weapon, failure to turn to, and failure to stand his watch.

#### OPINION

It is my opinion that the contentions raised on appeal are completely without merit. Although there is a considerable amount of conflicting testimony contained in the record, the findings of the Examiner will be upheld since he, as the trier of the facts who saw and heard the witnesses in this proceeding as well as in the two associated hearings which were stipulated in evidence, was in the best position to judge the credibility of the witnesses. Since inconsistencies in testimony are matters of credibility to be weighed and determined by the trier of facts, the

findings of the Examiner are not arbitrary or capricious when there is substantial evidence in the conflicting testimony to support such findings. In the present case, I conclude that there is substantial evidence to sustain the findings pertaining to each of the five specifications found proved by the Examiner. Concerning the points raised on appeal with respect to the individual specifications, the following comments are considered to be pertinent.

#### FIRST SPECIFICATION

The allegations are supported by the testimony of the Master and directly corroborated by the testimony of the Chief Engineer and the Third Mate. The Examiner accepted the version told by the latter three men and rejected Appellant's denials that he threatened to kill the Master.

There is no doubt that Appellant's statement that he would kill the Master constituted a legal "threat" regardless of whether there was any danger to the Master or action taken by Appellant to carry out his threat. United States v. Metzdorf (D.C. Montana, 1918), 252 Fed. 933. Subsequent lack of fear by the Master could not alter the fact that the offense was consummated when Appellant made the threat. In addition, such language challenged the supreme authority of the Master to exercise command of his ship and thereby tended to undermine the high degree of discipline which must be maintained at sea in order to protect life and property by the efficient performance of duties by shipboard personnel.

Although the American Consul at Pusan, Korea, did not find Appellant guilty of "gross misconduct" and remove him from the vessel in accordance with the Master's request, the Consular report stated that "it was not clearly established to this office that the removal of Cullison from the vessel would solve the disciplinary problem existing on board the vessel" but that "time and the shortage of personnel in this office did not permit a thorough investigation." (Exhibit 7). But the Consul did not determine that Appellant should not be subjected to disciplinary action for his conduct and the Examiner's conclusions were based upon the results of a thorough investigation after the ship returned to the West Coast of the United States.

#### SECOND SPECIFICATION

Proof of the assault and battery upon messman Price is established by the testimony of Second Officer Tvedt which is corroborated by Price's statement, logbook entries referring to the incident and the treatment Appellant received for his hand, an attachment to the logbook in the form of a medical certificate signed by the Japanese doctor who diagnosed Price's injuries, and documentary evidence indicating Price requested his discharge from the ship because he feared further physical violence. Price did not testify at the hearing because he was discharged in Korea and was not present when the investigation and hearing took place immediately after the return of the vessel to the United States. But his statement about the incident appears not only as a separate document in the record (Exhibit 5) but also as an attachment to the logbook and as an enclosure with the Consular report. (At the hearing, counsel for Appellant conceded that any attachment in the logbook is admissible in these proceedings. R.294) In addition, it is significant that Appellant did not attempt to subpoena Price to appear at the hearing or to obtain his deposition.

Some of the above documentary evidence indicates that Price's fear of bodily harm was the reason why he made contradictory statements as to how he received his injuries and why he continued to work without reporting this incident or his injuries to the Master until a later date. As stated above and contrary to Appellant's contention, there was a log entry made concerning this incident. The entry was made by the Second Officer and witnessed by the Master.

#### THIRD SPECIFICATION

The alleged threat against Second Officer Tvedt is supported by his testimony as to the date (R.191, 193), the type of threat (R.193) and the language used (R.192). This is substantially corroborated by a logbook entry and a sworn statement made by the Second Officer before the American Consul in Pusan.

#### FOURTH SPECIFICATION.

Despite testimony to the contrary, the Examiner accepted the Radio Officer's testimony that Appellant threatened to slip something sharp into the Radio Officer. This version was corroborated by the testimony of the Master as well as a logbook entry and a logbook attachment. (R.146, 147). The direct testimony by the Radio Officer constitutes substantial evidence even without corroboration. The degree of proof required in these administrative proceedings is substantial evidence and not proof beyond a reasonable doubt as Appellant contends.

#### SEVENTH SPECIFICATION.

Regardless of how the fight started between oiler Law and Appellant, it is apparent from the diagnosis of Law's injuries that Appellant became the aggressor and went far beyond and reasonable assertion of self-defense. Further corroboration of Law's statement that he was beaten by Appellant is furnished by the Consular report which states that the first complaint against Appellant was made by Law, and by Appellant's own letter wherein he stated that he "worked over a phony oiler that had been taking news topside to the old man." (Exhibit 10.)

Again the failure of the persona assaulted to appear at the hearing is accounted for by the fact that Law left the ship at Yokohama. As in the case of Price, the record does not disclose that Appellant attempted to subpoena Law or to take his deposition.

#### CONCLUSION

Regardless of any faults on the part of the Master, the above five incidents thoroughly show that Appellant had little or no respect for the officers on the ship and that he was not reluctant to settle his differences with the unlicensed crew members by means of physical force. Such repeated acts of the same type of conduct indicate that Appellant had a very strong tendency to abuse the authority and discipline which is required in a high degree for the safe navigation and management of ships. For these reasons, it is my opinion that the order imposed by the Examiner was entirely justified and it will be sustained despite Appellant's attempt to exonerate himself by casting the

blame for Appellant's conduct upon the Master.

ORDER

The Order of the Examiner dated at San Francisco, California, on 25 November 1954, is ~~REVERSED~~ **AFFIRMED**.

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

Dated at Washington, D. C., this 1st day of March, 1955.