

In the Matter of Merchant Mariner's Document No. Z-55766-D3 and all  
other Licenses, Certificates and Documents  
Issued to: HUGO G. NEVILLE

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

802

HUGO G. NEVILLE

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 27 October 1954, an Examiner of the United States Coast Guard at San Francisco, California, suspended Merchant Mariner's Document No. Z-55766-D3 issued to Hugo G. Neville upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a Deck Maintenance man on board the American SS FLYING CLOUD under authority of the document above described, on or about 18 October 1954, while said vessel was at Oakland, California, he wrongfully assaulted the Boatswain with a knife and inflicted serious injury upon his person.

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 result of the hearing. Although advised of his right to be represented by counsel of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. 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 four unlicensed members of the crew including the Boatswain. Besides the latter, two of these witnesses were in the immediate vicinity of the Boatswain and Appellant when the Boatswain was cut with a knife.

In defense, Appellant offered in evidence the testimony of three other unlicensed members of the crew in addition to his own sworn testimony. None of these three witnesses were at the scene of the fight. Appellant testified that he did not remember cutting the Boatswain and also that he did not know how the Boatswain got cut. Appellant stated that he and the Boatswain had been drinking whiskey and other intoxicants since 1000 on the morning of the

incident.

At the conclusion of the hearing, having given both parties an opportunity to submit argument, 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-55766-D3, 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 twelve months - six months outright suspension and six months suspension on probation until eighteen months after the expiration of the outright suspension.

From that order, this appeal has been taken, and it is urged that a fist fight between Appellant and the Boatswain occurred after he slapped Appellant in the face and called him names; about an hour later the Boatswain attacked Appellant with a knife and Appellant held the hand in which the Boatswain was holding the knife; and the two men were taken off the ship by the police after other members of the crew separated them. Appellant further contends that he has never been in Oakland, California; that he did not cut the Boatswain or use any kind of weapon in the fight with him; and that Appellant is innocent of the charges brought against him.

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

#### FINDINGS OF FACT

On a foreign voyage extending from 29 July 1954 till after 18 October 1954, Appellant was serving as a Deck Maintenance man on board the American SS FLYING CLOUD and acting under authority of his Merchant Mariner's Document No. Z-55766-D3. During the course of the voyage, there was considerable friction between the Boatswain and other members of the Deck Department. Appellant had complained about the Boatswain's handling of the work on deck and there had been several arguments between the two men.

On 18 October 1954, the ship was berthed alongside a dock in the port of San Francisco, California. Both the Boatswain and Appellant had been drinking intoxicants since about 1000 on this date. At approximately 1500 or 1600, these two men engaged in an argument which led to cursing and a fight between them. They were separated once or twice by other members of the crew. The Boatswain's face was scratched in the scuffle.

Shortly afterwards, the cursing and fighting was resumed. Appellant took out a 2 1/2 inch blade folding knife which he

carried in a pouch attached to his belt and cut the Boatswain in the fleshy portion of the neck under his chin. The men were again separated and the Boatswain was taken to a hospital for medical treatment. The gash under his chin required nine stitches.

Appellant was removed from the ship by the police authorities who had possession of a knife which Appellant identified as his. Appellant was released on the night of the same date.

There is no record of prior disciplinary action having been taken against Appellant since 1944.

#### OPINION

Appellant's contentions on appeal are not convincing in view of his testimony which indicates that he does not remember the details of his fight with the Boatswain. The latter frankly admitted that he was too drunk to remember what happened.

Consequently, the determination of the issue must depend upon the testimony of the two seamen who were in the immediate vicinity of the fight. Although each of these two witnesses testified that he did not actually see Appellant cut the Boatswain, their testimony contains such strong circumstantial evidence as to constitute substantial evidence of the material facts alleged. The composite gist of the testimony of these two witnesses is that they separated the Boatswain and Appellant when they started to fight; the Appellant reached for the knife in his pouch when the fighting was resumed; and the Boatswain had received a gash on the neck by the time they were again separated. The only logical inference to be drawn from these facts is that Appellant used his knife to inflict the wound. In support of this conclusion, Appellant admitted that he was removed from the ship by the police in connection with this incident and that the police had possession of his knife. Also, Appellant repeatedly stated in his testimony that he did not remember cutting the Boatswain - not that Appellant was not the person who had inflicted the wound.

In answer to Appellant's contention that he has never been in Oakland as alleged in the specification, it is sufficient to note that Oakland is considered to be part of the port of San Francisco. Hence, it is immaterial whether the incident occurred in San Francisco proper or at Oakland.

Even though there may have been some provocation on the part of the Boatswain there was no justification for the use of a knife in a drunken brawl. There was no element of self-defense present; and a slight difference in the location of the wound might have resulted in fatal consequences to the Boatswain. For these

reasons, the order imposed by the Examiner is not considered to be excessive.

ORDER

The order of the Examiner dated 27 October 1954 at San Francisco, California, is AFFIRMED.

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

Dated at Washington, D. C., this 2nd day of May, 1955.