

In the Matter of Merchant Mariner's Document No. Z-739489-D3 and
all other Licenses, Certificates and Documents
Issued to: JAMES P. PENDERGRASS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

804

JAMES P. PENDERGRASS

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 10 November 1953, an Examiner of the United States Coast Guard at Mobile, Alabama, suspended Merchant Mariner's Document No. Z-739489-D3 issued to James P. Pendergrass upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a messman on board the American SS WARRIOR under authority of the document above described, on or about 8 October 1953, while said vessel was in the port of Pauillac, France, he assaulted and battered a member of the crew, Levy L. Williamson, by beating and biting him.

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 Williamson, the victim, and of King who was also present at the scene of the alleged offense. Before resting his case, the Investigating Officer introduced in evidence a report from the American Consulate at Bordeaux, France, concerning this incident. This report consists of a certification as to Appellant's hospitalization, a report to the U. S. Consul by the Bordeaux Port Police Commissioner and statements by ten members of the crew of the WARRIOR, including Appellant and the two witnesses of the Investigating Officer.

In defense, Appellant offered in evidence his sworn testimony. Appellant stated that he was beaten by several members of the crew including Williamson while they were in a bar ashore; that Williamson and Elliott argued with and attacked Appellant after he returned to the ship; and that Williamson cut Appellant while he was holding Elliott and trying to push Williamson away.

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-739489-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 six months.

From that order, this appeal has been taken, and it is urged that although Appellant was not without fault, the six months suspension is too severe in view of the very serious injuries received by Appellant and his prior good record. Since Appellant is destitute and has a family to support, it is requested that the last three months of the order be made probationary.

APPEARANCES: Ross Diamond, Jr., Esquire, of Mobile, Alabama, of Counsel.

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

FINDINGS OF FACT

On a foreign voyage including the date of 8 October 1953, Appellant was serving as a messman on board the American SS WARRIOR and acting under authority of his Merchant Mariner's Document No. Z-739489-D3 while the ship was at Pauillac, France.

The ship arrived at Pauillac on 7 October and some members of the crew visited various bars that night. While Appellant was ashore, he was the instigator of several fights and arguments with his shipmates including Williamson and Elliott. Appellant was put out of one bar because of his quarrelsome attitude.

At approximately 0130 on 8 October, Williamson, Elliott and King were in the crew's messhall when Appellant returned on board and entered the messhall. All of these men had been drinking while ashore. Appellant was still in a belligerent mood, and he started a heated argument with Williamson about what had happened ashore. Appellant invited Williamson to go out on the dock but he declined. (Appellant is about 40 pounds heavier than Williamson.) Appellant then jumped on Williamson, bent him backwards across a table and pinned him in that position as Appellant used his other hand to hit Williamson. In reply to Williamson's repeated request to "turn me loose," Appellant commenced biting Williamson's right arm. When one of Appellant's hands reached towards his pocket, Williamson

thought Appellant was going to take out a knife. Williamson managed to use his right hand to take out his pocket knife, open the blade and cut Appellant twice in the stomach before he released Williamson and ran away. As a result of his injuries, Appellant was hospitalized for almost a month.

There is no record of prior disciplinary action having been taken against Appellant. He has been going to sea since 1945 or 1946.

OPINION

Appellant's testimony at the hearing deserves little credence in view of the divergence between this testimony and his sworn statement which was taken before an American Vice Consul at Bordeaux, France, on 15 October 1953. In the latter statement, Appellant repeatedly denied that he had any arguments or disputes while ashore on 8 October. At the hearing, Appellant went into a lengthy discussion concerning the beating he had been given while ashore, and he positively stated that Williamson was there at the time. Also in the sworn statement before the Vice Consul, Appellant claimed that he was attacked by three unknown members of the crew in the messhall; that two of these men hit him while the third one cut him; and that he did not remember seeing the man who cut him ashore. At the hearing, he testified very definitely as to the manner in which he had been attacked by Williamson and Elliott in the messhall. In addition to these obvious contradictions in his statements while under oath at two different times, it is apparent that he must have seen, in one of the bars ashore, the person who cut Appellant because there is no doubt that Williamson did it.

On the other hand, Williamson and King consistently stated, both in their statements included in the Consular report and in their testimony at the hearing, that Appellant had Williamson pinned backwards across a table. Williamson's testimony that Appellant started the fight in the messhall is corroborated by Elliott's statement in the Consular report. The version of the latter two seamen is further supported by the evidence of Appellant's generally belligerent attitude as contained in the Consular report. The statements of five additional seamen indicate that while Appellant was ashore, he was the aggressor in several fights in different bars. Also, these statements are directly contradictory to both of Appellant's versions as to what happened ashore. Consequently, there is little doubt that Appellant provoked the incident in the messhall which was a direct outgrowth of the trouble in the bars ashore, and that Appellant was the aggressor in the fight which resulted in serious injuries to himself.

Due to the considerable personal loss which Appellant has suffered as a result of this incident and also because of his prior clear record, the period of suspension will be reduced by a period of two months.

ORDER

The order of the Examiner dated at Mobile, Alabama, on 10 November 1953 is modified to provide that Merchant Mariner's Document No. Z-739489-D3, and all licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority, are suspended for a period of four (4) months.

As so MODIFIED, said order is

AFFIRMED.

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

Dated at Washington, D. C., this 11th day of May, 1955.