

In the Matter of Merchant Mariner's Document No. Z-595149-D1 and
all other Licenses, Certificates and Documents
Issued to: RUBEN SERRA-BURGOS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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RUBEN SERRA-BURGOS

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 22 September 1954, an Examiner of the United States Coast Guard at Seattle, Washington, suspended Merchant Mariner's Document No. Z-595149-D1 issued to Ruben Serra-Burgos upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as Chief Steward on board the American SS SQUARE KNOT under authority of the document above described, on or about 9 September 1954, while said vessel was in the port of Ketchikan, Alaska, he wrongfully struck and cut a fellow member of the crew, able seaman Gosta H. Nelson, with a dangerous weapon; to wit, a vegetable chopping 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 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 Gosta H. Nelson and two other members of the crew, the chief cook and the second cook, who were nearby when the incident in question occurred.

In defense, Appellant offered in evidence his sworn testimony and the testimony of messman Flemming. Appellant stated that Nelson did not attempt to come over the table which was between the two men but that when Nelson touched Appellant while trying to grab him, Appellant picked up a knife and swung it at Nelson in self-defense.

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-595149-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 four years - one year outright suspension and three years suspension on five years probation from the date of termination of the one year outright suspension.

From that order this appeal has been taken, and it is urged that Nelson was the aggressor throughout the entire episode; and that Appellant did not use excessive force or act unreasonably in a moment of panic in seizing the only means of defending himself against his larger and stronger aggressor. Appellant further contends that shortly before this incident, he had been hospitalized with an illness which created paralysis of his neck and he was afraid that it would result in his death if Nelson grabbed Appellant by the neck.

APPEARANCES Messrs. Walthew, Oseran and Warner of Seattle, Washington, by Jay W. Hamilton, Jr., Esquire, of Counsel.

Based upon my examination of the record submitted, I hereby adopt the findings of the Examiner, as follows:

"1. That on 9 September 1954, the Appellant was serving aboard the SS SQUARE KNOT in the capacity of chief steward, acting under the authority of his duly issued Merchant Mariner's Document No. Z-595149-D1.

"2. That on 9 September 1954, the SS SQUARE KNOT was alongside the dock at the port of Ketchikan, Alaska.

"3. That at about 0015 on 9 September 1954, an able seaman, Gosta Nelson, entered the messhall of the vessel after having worked for approximately 15 hours in the vessel's hold in a longshoring capacity as is customary on the Alaska run.

"4. That upon arrival in the messhall, the seaman Nelson began demanding service from messman Flemming and when service was not immediately forthcoming, Nelson became somewhat belligerent and obscene, loudly shouting for the messman.

"5. That when service was not immediately available to him, the seaman Nelson departed the messhall and went to the alleyway at a point directly opposite the serving table on the starboard side of the vessel.

"6. That the serving table stands approximately waist high and is 3 to 4 feet in width, composed of metal and wood with no grillwork such as to make entry over the table impossible.

"7. That seaman Nelson, standing in the alleyway with the serving table between him and the pantry, again loudly demanded service and inquired in a most profane manner as to the whereabouts of the said messman.

"8. That the Appellant was having his midnight meal in the galley and upon hearing the loud demands of seaman Nelson, he left the area in the galley where he had been eating, walked around a large table, passed the range, and to the pantry area so that he was in a position directly opposite seaman Nelson with the serving table separating the two men.

"9. That seaman Nelson continued to use profane and abusive language directed both at the steward and at the messman.

"10. That the actions of the seaman Nelson were such as to indicate to the steward that he intended to lay hands upon the person of the steward and as the seaman Nelson started to grab at the steward over the serving table, the steward rapidly picked up a large French knife, otherwise known as a vegetable chopping knife, which was on the serving table, and made a sweeping motion with the knife in the direction of Nelson. The blade of the knife was about 14 inches in length.

"11. That as a result of this motion of the knife, Nelson sustained a cut in the left side of the abdomen just above the waist.

"12. That following this occurrence, Nelson became further infuriated and stating `You can't cut me,' he ran the distance of about 12 feet forward in the alleyway and wrenched a fire axe which was secured to the starboard bulkhead at the forward end of the serving table.

"13. That after securing possession of the fire axe, Nelson entered the pantry at the forward end of the serving table, ran aft in the direction of where the steward was standing, and proceeded to pursue the steward athwartship, passed the range, into the port doorway of the galley, brandishing the axe in a menacing fashion.

"14. That after having cut the seaman, the Appellant withdrew from the scene by walking backwards toward the port entrance to the galley, passed the range, and kept the knife in his possession.

"15. That the Appellant left the galley rapidly and proceeded to the captain's room and later to his own room where he locked

himself in.

"16. That the seaman Nelson was intercepted in the port passageway by one of the other crewmembers and he was there disarmed and induced to leave the scene.

"17. That Nelson reported for work later that morning but the wound in his abdomen was still bleeding and it therefore became necessary for him to report for medical assistance ashore.

"18. That medical assistance consisted of three stitches being taken in the wound inflicted and he was ordered not to work for the remainder of the voyage.

"19. That the second cook and chief cook were both standing near the ship's range about 25 feet from where the steward and Nelson were first standing but neither of these men heard the steward make any remarks whatsoever to Nelson but they did testify that Nelson's language was most profane and belligerent."

OPINION

I am fully in accord with the decision of the Examiner. His findings are supported by the testimony contained in the hearing record and his reasoning is supported by judicial authority. As stated by the Examiner, Appellant could and should have retreated at once instead of first attacking the unarmed Nelson with the vegetable chopping knife. At this point, Appellant was definitely the aggressor. He was not justified in taking the law into his own hands and inflicting punishment upon Nelson regardless of how insulting and offensive his language was. Rohrback v. Pullman's Palace Car Co. (C.C.E.D. Pa., 1909), 166 Fed. 797, 799; 5 Corpus Juris 644 citing numerous court decisions. If Appellant was in fear as a result of a recent illness, that is all the more reason why he should have taken the first opportunity to retreat. The weight of the evidence supports the view that the intervening table prevented Nelson from getting close enough to Appellant to touch him. Therefore, Appellant's conduct was not justified on the ground of self-defense. In order to conform with the proper standards of discipline, Appellant should have left Nelson's punishment to the discretion of the Master who was not informed about the incident until after Nelson was injured.

ORDER

The order of the Examiner dated at Seattle, Washington, on 22 September 1954 is AFFIRMED.

A. C. Richmond

Vice Admiral, United States Coast Guard
Commandant

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