

In the Matter of Merchant Mariner's Document No. Z-514040 and all
other Licenses, Certificates and Documents
Issued to: WILLIAM GAINS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

873

WILLIAM GAINS

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 16 September 1955, an Examiner of the United States Coast Guard at Philadelphia, Pennsylvania, suspended Merchant Mariner's Document No. Z-514040 issued to William Gains upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a messman on board the American SS P. C. SPENCER under authority of the document above described, on or about 13 August 1955, while said vessel was in the port of Amuay Bay, Venezuela, he assaulted the Second Assistant Engineer by pushing 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 counsel of his own choice and he entered a plea of "not guilty" to the charge and specification proffered against him.

The Investigating Officer made his opening statement. He then introduced in evidence the testimony of the Second Assistant Engineer and the Third Mate who was a witness to the incident in question.

In defense, Appellant offered in evidence his sworn testimony. Appellant stated that he had left the officer's pantry when the Second Assistant tried to close the door between the pantry and the galley; the Second Assistant's elbow struck Appellant in the side; the Second Assistant grabbed Appellant's wrist and swung him across the galley; and then Appellant shoved the Second Assistant because he had his arm around Appellant's waist.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel, the Examiner announced his decision and concluded that the charge and specification had been proved. He then entered the order

suspending Appellant's Merchant Mariner's Document No. Z-514040, and all other licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of six months on probation for twelve months.

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

FINDINGS OF FACT

On 13 August 1955, Appellant was serving as a messman on board the American SS P. C. SPENCER and acting under authority of his Merchant Mariner's Document No. Z-514040 while the ship was in the port of Amuay Bay, Venezuela.

At about 0030 on this date, the Second Assistant Engineer and the Third Mate were in the officer's mess drinking coffee when they heard someone in the officer's pantry. Appellant was taking some meat out of the refrigerator in the officer's pantry. The Second Assistant went to the pantry. He told Appellant that he had no business being there and ordered him to get out. Words were exchanged between the two men. Appellant walked to the far side of the doorway between the pantry and the galley. When the Second Assistant attempted to close this door, Appellant grabbed the Second Assistant, turned him around and pushed him backwards across the galley. The Third Mate heard the noise and entered the pantry in time to see the Second Assistant attempting to regain his balance. Either when the Second Assistant was again approaching the door in order to close it or before he had fully recovered from the first shove, he was pushed by Appellant a second time. The Third Mate told them to stop and departed to call the Master upon the request of the Second Assistant. Appellant went to his quarters. Appellant weighed about 215 pounds and the Second assistant about 150 pounds.

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

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the decision of the Examiner is not supported by reliable, probative and substantial evidence; there have been errors of law; the testimony of the Third Mate is contradictory and confused; and the testimony of the Second Assistant is contradictory to that of the Third Mate. It is respectfully submitted that the decision of the Examiner should be reversed and the charge of misconduct dismissed.

APPEARANCES ON APPEAL: Sol C. Berenholtz, Esquire, of Baltimore, Maryland, of Counsel.

OPINION

The conflicting testimony of the Second Assistant Engineer and Appellant presented an issue of credibility which was resolved by the Examiner against Appellant. The Examiner, as the trier of the facts who heard and saw the witnesses, was in the best position to judge their credibility.

Although the testimony of the Third Mate is not identical to that of the Second Assistant and is somewhat confused, it is substantially in accord with the testimony of the Second Assistant in all material respects. A person's recollection of his observations at a disorderly scene is subject to error as to details. Therefore, the slightly differing testimony of the two officers, concerning at just what point of Appellant's recovery the second shove took place (see findings of fact), is not a reflection upon the credibility of either officer.

The testimony of the Third Mate is not too clear. But the gist of it is that he heard the argument while still sitting in the officer's mess although he was not in a position to see what was taking place until he went to the pantry after the first time the Second Assistant had been shoved. The Third Mate incorrectly referred, at times, to "two pushes" because he apparently assumed from the Second Assistant's position that he had already been shoved once by the time the Third Mate could see what was happening.

For these reasons, it is my opinion that the reliable, probative and substantial evidence rule has been fully complied with by means of the testimony of the Second Assistant and the Third Mate.

Conduct such as this tends to undermine the authority of officers which is necessary in order to maintain the required discipline on board ships.

ORDER

The order of the Examiner dated at Philadelphia, Pennsylvania, on 16 September 1955 is AFFIRMED.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D.C., this 6th day of April, 1956.