

In the Matter of Merchant Mariner's Document No. Z-102169-D4 and all other Licenses, Certificates and Documents

Issued to: ROY FOSTER MOSLEY

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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ROY FOSTER MOSLEY

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 February 1956, an Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended Merchant Mariner's Document No. Z-102169-D4 issued to Roy Foster Mosley upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as deck maintenancemen on board the American SS HOWELL LYKES under authority of the document above described, on or about 6 February 1956, while said vessel was at sea, he assaulted and battered a member of the crew, Oswald M. Smith, Jr.

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. Although advised of his right to be represented by counsel of his own choice, Appellant acted as his own counsel. Upon arraignment, Appellant stated that he was drunk and did not remember. The Examiner entered a plea of "not guilty" on behalf of Appellant.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of three crew members including the seaman alleged to have been assaulted and battered.

In defense, Appellant offered in evidence his sworn testimony. He vaguely stated that he was knocked down on deck by Boatswain Smith after an argument about stowing lines; and that he had no recollection of hitting the Boatswain with a bottle.

At the conclusion of the hearing, having heard the argument of the Investigating Officer, 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-102169-D4, 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.

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

FINDINGS OF FACT

On 6 February 1956, Appellant was serving as deck maintenanceman on board the American SS HOWELL LYKES and acting under authority of his Merchant Mariner's Document No. Z-102169-D4. The ship was at sea.

While securing gear on this date, Boatswain Smith ordered Appellant to leave the weather deck because he was in an intoxicated condition. Later, the Boatswain went to the messroom for coffee. Appellant got up, approached the Boatswain and started an argument with him. The Boatswain told Appellant to go to bed. Appellant did not leave. When the Boatswain turned to get up, Appellant struck the Boatswain on the back of the head with a catsup bottle filled with vinegar. The Boatswain then hit Appellant before other members of the crew separated them. The Boatswain received treatment for the cut on his head.

Appellant has no prior record during a considerable number of years at sea.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant states that he remembers what happened but though he would only receive an admonition if he said, at the hearing, that he did not remember. Appellant contends that he was knocked down twice in the messroom by the Boatswain before striking him with the bottle; Appellant was cut over one eye; and the cut on the Boatswain's head was a small one. Appellant states that going to sea is his only livelihood and the order is too severe.

OPINION

The substantial weight of the evidence, which was accepted as credible by the Examiner, refutes Appellant's claim that he acted in self-defense. Apparently, Appellant was in a belligerent mood about what had happened on deck when he approached the Boatswain in the messroom. It is difficult to believe that Appellant would not have testified to the clear-cut version of the incident which he presents on appeal, if the latter version is correct. It is equally difficult to understand, under the circumstances, how the Boatswain could have been cut on the back of his head if he had started the fight, since, presumably, he would have been facing Appellant. Consequently, it is my opinion that Appellant's contention as to who initiated the fight is without merit. Every indication is that appellant was the original aggressor.

The order is not considered to be too severe since serious injury might have resulted from such an attack. Appellant's temporary loss of ~~ORDER~~ ORDERment is necessary sequel to his misconduct.

The Order of the Examiner dated at New Orleans, Louisiana, on 27 February 1956 is **AFFIRMED**.

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

Dated at Washington, D. C., this 31st day of May, 1956.