

In the Matter of Merchant Mariner's Document No. Z-556965
Issued to: WALTER F. DILLWORTH

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

912

WALTER F. DILLWORTH

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 20 April 1956, an Examiner of the United States Coast Guard at San Francisco, California, suspended Merchant Mariner's Document No. Z-556965 issued to Walter F. Dillworth upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as an oiler on board the American SS CHINA TRANSPORT under authority of the document above describe, on or about 23 March 1956, while said vessel was in the port of Kobe, Japan, he assaulted and battered, with his fists, the Chief Steward of the ship.

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 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.

The Investigating Officer made his opening statement. He then introduced in evidence the testimony of two eyewitnesses to the incident and two documentary exhibits.

Appellant stated that he had no witnesses and did not desire to testify in his behalf.

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-556965 for a period of six months - three months outright suspension and three months suspension on probation until fifteen months after the termination of the outright suspension.

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

FINDINGS OF FACT

On 23 March 1956, Appellant was serving as an oiler on board the American SS CHINA TRANSPORT and acting under authority of his Merchant Mariner's Document No. Z-556965 while

the ship was in the port of Kobe, Japan.

At approximately 0500 on this date, Appellant was sitting in the messhall with other members of the crew. The Chief Steward entered the messhall and approached Appellant while Appellant was criticizing the meals on the ship. An argument followed between the two seamen. The Chief Steward asked Appellant if he wanted to make something out of it. Appellant arose, crowded the Chief Steward and pressed him backward against the bulkhead. The Chief Steward picked up a bottle off a table but the bottle was taken away from him immediately by the Second Electrician who testified at the hearing. Appellant then struck the Chief Steward several blows. The two men fought briefly as the Chief Steward retreated into the passageway adjoining the messhall. The Chief Steward the declared that he had enough. Appellant was considerably larger and younger than the Chief Steward.

Appellant has no prior record.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the evidence is insufficient to support the findings because no evidence of injuries to the Chief Steward was introduced; the Chief Steward provoked the fight by his query when he entered the messhall; and the Chief Steward was the aggressor at all times since he picked up a bottle. Appellant did not testify because of a prior agreement with the Chief Steward that neither of them would press charges. Appellant was not discharged from the ship. For these reasons, it is submitted that the Examiner's decision should be reversed.

Appearance on appeal: Samuel E. Bennett, Esquire, of Counsel.

OPINION

The evidence clearly establishes the fact that Appellant was the physical aggressor at all times. The initial assault and battery occurred when Appellant forced the Chief Steward backward against the bulkhead. Provocation by words does not justify assault and battery. The later attack by Appellant with his fists was not justified because the Chief Steward did not have hold of the bottle long enough to attempt to use it and Appellant used considerably more force than was necessary to subdue the Chief Steward.

The absence of proof of injuries to the Chief Steward does not justify this breach of discipline on board ship; nor is the failure of the company to discharge Appellant any justification. The purpose of these proceedings is to promote safety at sea by deterring seamen from committing this type and other kinds of offenses. The fact that Appellant and the Chief Steward agreed not to testify against each other is immaterial to the furtherance of this purpose. Appellant had ample opportunity to testify in his behalf if he cared to do so at the hearing.

There is no reason to disturb the findings, conclusions or order of the Examiner.

ORDER

The order of the Examiner dated at San Francisco, California, on 20 April 1956 ~~IS~~ FIRMED.

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

Dated at Washington, D. C. this 5th day of September, 1956