

In the Matter of Merchant Mariner's Document No. Z-50196 and all other Licenses, Certificates and Documents

Issued to: JOHN DEMICKIS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

919

JOHN DEMICKIS

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 January 1956, an Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z-50196 issued to John Demickis upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as bedroom steward on board the American SS INDEPENDENCE under authority of the document above described, on or about 15 October 1955, while said vessel was at sea, he wrongfully molested a female passenger by kissing her without her consent on two occasions .. once at approximately 1300 (First Specification) and again at 2015 (Second Specification).

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 each specification proffered against him.

Thereupon, the Investigating Officer made his opening statement. The Investigating Officer introduced in evidence the testimony of the passenger referred to in the specifications, Miss Margaret Sochor, and a certified copy of an entry in the Official Logbook relating that Miss Sochor stated that Appellant had kissed her

In defense, Appellant offered in evidence a statement made by Miss Sochor, on 16 October 1955, to a Coast Guard officer of the Merchant Marine Detail at Naples, Italy, Appellant did not testify in his behalf.

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 decision and concluded that the charge and two specifications had been proved. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-50196 and all other licenses, certificates, and documents issued to Appellant by the United States Coast Guard or its predecessor authority.

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

FINDINGS OF FACT

On 15 October 1955, Appellant was serving as a bedroom steward on board the American SS INDEPENDENCE and acting under authority of his Merchant Mariner's Document No. Z-50196 while the ship was at sea.

Miss Margaret Sochor was a 16 year old passenger who was travelling with her parents on the INDEPENDENCE. Appellant was assigned to the room occupied by Miss Sochor and her parents. Hence, Miss Sochor and Appellant had spoken to each other in a friendly manner prior to this date.

About 1300 on 15 October 1955, Miss Sochor and Appellant met in a passageway. They stopped and talked for a short time. Then without warning or consent, Appellant kissed Miss Sochor on her forehead. She departed immediately but did not report the incident to anyone at this time.

At approximately 2015 on the evening of the same day, Miss Sochor again encountered Appellant in a passageway near her stateroom. Appellant prevented her from passing by placing his arm across the passageway and his hand against the bulkhead. Appellant stated that he would miss her since she was moving to another room on the following day. Appellant then placed one hand on each of Miss Sochor's shoulders while kissing her on the forehead and cheek. Again, Appellant's behavior was without Miss Sochor's consent. Miss Sochor immediately left and went to meet a young female friend. The two girls discussed the incident together and then with two medical students who were also passengers. They decided to report the matter to the ship's personnel. Miss Sochor reported the two incidents to the Chief Steward and then to the Staff Captain of the ship at approximately 2145 after telling her mother what had happened.

On 16 October, Miss Sochor made a statement about these incidents to an officer attached to the Coast Guard Merchant Marine Detail at Naples, Italy.

Appellant's prior record consists of a revocation in 1942 for using abusive language in the presence of women and children, threatening the steward and refusing to obey an order of the Master of the ship. In 1945, Appellant was authorized to obtain a new document.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that:

POINT I. The only probative evidence presented by the Investigating Officer was the testimony of Miss Sochor. All other evidence was self-serving, cumulative and of no probative value. This category of evidence includes the statements by Miss Sochor to the Chief

Steward, to the Staff Captain, and to the Coast Guard at Naples on 16 October. Such evidence bears upon the credibility of the witness but it is not corroborative since it is not independent proof of the acts alleged. This also applies to the log entry concerning the incident.

POINT II. Several inconsistencies cast doubt upon Miss Sochor's story:

(a) In her statement to the Coast Guard on 16 October, Miss Sochor said the second incident occurred while she was on her way to dinner. In her testimony, Miss Sochor stated that the second incident took place after she had returned from dinner and was on her way to meet a friend.

(b) She testified concerning conversations with Appellant but stated that she could not remember the subject matter of any of the conversations.

(c) Miss Sochor casually reported the matter to the Chief Steward and was reluctant to tell her story to the Staff Captain.

(d) It is improbable that her room steward would have molested Miss Sochor in an open passageway when he had the opportunity to do so in her cabin.

CONCLUSION. For these reasons, it is respectfully submitted that the order appealed from should be vacated.

APPEARANCES: Benjamin Sneed, Esquire, of New York, New York, of Counsel.

OPINION

The version presented by Miss Sochor is not inconsistent except for the minor discrepancy as to precisely when the second incident occurred - before or after dinner. This variance concerned a collateral matter which did not have any hearing on the proof of the allegations which were adequately sustained by Miss Sochor's testimony alone. Her testimony was not contradicted and it was accepted by the Examiner who saw and heard her testify. The fact that she reported this matter to the Chief Steward shortly after the second incident tends to confirm her testimony rather than to weaken it. Her reluctance to report it might well have been caused by the resulting embarrassment. There is nothing in the record to indicate any reason or motive for Miss Sochor's to fabricate such a story. Since Miss Sochor's testimony constitutes substantial evidence to support the allegations contained in the specifications, there is no need to discuss further the probative value of the evidence referred to in Appellant's Point I on appeal.

The fact that Miss Sochor could not remember the subject matter of unimportant conversations with Appellant more than two months prior to the time when she so testified is not adequate basis upon which to attack her credibility.

The fact that the incidents in questions occurred in a passageway is not significant. It might be true that there was a greater possibility that witnesses might be present in the passageway than in a stateroom; but it is also true that Miss Sochor was staying in the same room with her parents.

As stated by the Examiner, such an invasion of the privacy of a passenger is a serious matter and deserves the most severe censure. Hence, the order of revocation will be sustained.

ORDER

The order of the Examiner dated at New York, New York, on 27 January 1956, is ~~REVERSED~~ **FIRMED**.

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

Dated at Washington, D. C., this 4th day of October, 1956.