

In the Matter of Merchant Mariner's Document No. Z-50351-R and all
other seaman Documents
Issued to: ANIBAL LOPEZ

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

994

ANIBAL LOPEZ

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 18 January 1957, an Examiner of the United States Coast Guard at New York, New York, suspended Appellant's seaman documents upon finding him guilty of misconduct. Two specifications allege that while serving as an oiler on board the American SS AFRICAN PLANET under authority of the document above described, on or about 7 January 1956, Appellant wrongfully addressed abusive language toward the Chief Engineer of the ship and wrongfully struck the Junior Third Assistant Engineer.

At the beginning of the hearing on 24 February 1956 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.

The Investigating Officer made his opening statement and submitted a request to take the deposition of the Junior Third Assistant Engineer. The hearing was completed nearly a year later after numerous adjournments awaiting the return of the completed deposition and the obtaining of oral testimony from the Chief Engineer and Appellant.

Appellant testified that he did not direct abusive language toward the Chief Engineer at any time and that the Junior Third Assistant struck Appellant, without provocation, right after he left the Chief Engineer's table to return to the bar.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant's counsel were heard. The Examiner then announced the decision in which he concluded that the charge and two specifications had been proved. An order was entered suspending all documents, issued to Appellant[, for a

period of two months outright and four months on twelve months' probation.

The decision was served on 22 January 1957. Appeal was timely filed on 28 January 1957. Counsel for Appellant submitted a brief on appeal in July 1957. Appellant has been issued three successive temporary documents.

FINDINGS OF FACT

On 7 January 1957, Appellant was in the service of the American SS AFRICAN PLANET as an oiler and acting under authority of his Merchant Mariner's Document No. Z-50351-R while the ship was on a foreign voyage.

The ship was in the port Lourenco Marques, Mozambique on 7 January 1957. The Chief Engineer and Junior Third Assistant Engineer were ashore sitting at a table in the restaurant portion of a combination bar and restaurant at approximately 1300 on this date. When the Junior Third Assistant left the table temporarily, Appellant entered the restaurant from the bar and approached the Chief Engineer. Appellant asked whether another oiler could stand Appellant's 1600 to 2000 watch that day. The Chief Engineer indicated that this would be satisfactory if the other oiler agreed. The discussion which followed about crew members swapping watches did not satisfy Appellant and he returned to the bar.

The Chief Engineer and Junior Third Assistant prepared to leave the restaurant as soon as the latter returned to the table. The Junior Third Assistant picked up his papers and eyeglasses. He held the glasses in his hand as he followed the Chief Engineer toward the door by way of the bar. Appellant confronted the Chief and directed foul and abusive language toward him. The Junior Third Assistant stepped in front of the Chief and told Appellant to leave the Chief alone. Appellant swung his fist at the Junior Third Assistant and struck him a grazing blow on the lip cutting it slightly. The blow was partially deflected by the Junior Third Assistant's hand which he had raised in defense. The eyeglasses held in his hand were broken. The Chief Engineer and Junior Third Assistant were able to leave the restaurant-bar before another blow was struck. they returned to the ship. Appellant stood his 1600 to 2000 watch.

Appellant's prior record consists of a two months' outright suspension and a probationary suspension in 1947 for assaulting and battering a Chief Engineer and for other offenses.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the Chief Engineer's testimony as to the language used by Appellant should not be believed because the Chief's testimony on this point is not supported by that of the Junior Third Assistant. The injury to the latter's lip was so minor that he made no complaint about it. Appellant has been sufficiently punished by the loss of employment after this incident. At most, he should be placed on probation for a reasonable length of time.

APPEARANCES: Bernard Rolnick, Esquire, of New York City, by himself and Milton H. Spiero, of Counsel.

OPINION

The decision in this case rests solely upon the question of credibility as between the testimony of the Chief Engineer and the deposition of the Junior Third Assistant Engineer, on one side, and the testimony of Appellant on the other side. The Examiner who saw and heard two of these seamen testify at the hearing accepted the version presented by the two engineering officers and rejected conflicting testimony given by the Appellant. The latter's testimony is not supported by other evidence while that of the two officers is in agreement in all material respects concerning the alleged wrongful striking of the Junior Third Assistant by Appellant. As to the specification alleging abusive language by Appellant, it is understandable that the Junior Third Assistant did not hear what Appellant said because the Junior Third Assistant stopped to pick up his belongings before he followed the Chief Engineer toward the exit. Consequently, the Examiner's determinations will accepted since he was in the best position to judge the credibility of the witnesses who appeared before him; and it does not appear that he has used any irrational test of credibility.

Breaches of discipline such as these against the persons of the ship's officers cannot be condoned. The striking of the Junior Third Assistant was a serious act of misconduct despite the minor nature of the injury. Appellant's prior record of assault and battery upon a Chief Engineer must be considered despite the fact that the record of the offense is nine or ten years old. Any loss of employment by Appellant after this incident has been through no fault of the Coast Guard. At all time pending the outcome of this appeal, Appellant has had possession of, or has been entitled to hold possession of, either his regular document or a perfectly valid temporary document. For these reasons, the order of the Examiner will be sustained.

ORDER

The order of the Examiner dated at New York, New York, on 18
January 1957, is AFFIRMED.

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

Dated at Washington, D. C., this 22nd day of November, 1957.