

In the Matter of License No. 215976 Merchant Mariner's Document No.
Z-148361 and all other Seaman Documents
Issued to: RICHARD L. TRAFTON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1025

RICHARD L. TRAFTON

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 4 October 1957, an Examiner of the United States Coast Guard at Boston, Massachusetts suspended Appellant's seaman documents upon finding him guilty of misconduct. Three specifications allege that while serving as Junior Third Mate on board the American SS PIONEER ISLE under authority of the license above described, on or about 30 September 1957, appellant created a disturbance; assaulted the Third Mate with a knife; threw a cup and saucer at the Third Mate.

At the beginning of 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 nonprofessional counsel of his own choice - the Second Mate. Appellant entered a plea of not guilty to the charge and each specification except the first one to which he entered a plea of guilty.

The Investigating Officer made his opening statement and introduced in evidence the testimony of the Third Mate and the Junior Third Assistant Engineer who was also an eyewitness to the events in question. Appellant made an opening statement and testified in his defense. He denied drawing a knife against the Third Mate but admitted throwing cups at the Third Mate to keep him away after he had punched Appellant in the face and knocked him down. This was stated to have been necessary to protect Appellant's eye which was in danger of injury after an operation.

At the conclusion of the hearing, both parties were given an opportunity to submit argument and proposed findings and conclusions. The Examiner then announced the decision in which he concluded that the charge and three specifications had been proved. An order was entered suspending all documents, issued to Appellant, for a period of twelve months. This included a prior six months'

probationary suspension.

The decision was mailed on 7 October 1957. Appeal was timely filed on 21 October and counsel was furnished with a copy of the hearing transcript on 9 December. A period of 60 days was requested within which to submit a memorandum of law but nothing further has been received.

FINDINGS OF FACT

On 30 September 1957, Appellant was serving as Junior Third Mate on board the American SS PIONEER ISLE and acting under authority of his License No. 215976 while the ship was at dock in the port of Boston, Massachusetts.

About 0100 on this date, Appellant returned to the ship in a somewhat intoxicated condition and entered a saloon. The Junior Third Assistant Engineer, Third Mate and Night Mate were also present. There had been several disagreements between Appellant and the Third Mate as a result of which the ill feeling between the two seamen preyed on Appellant's mind. Upon entering the saloon, appellant commenced directing abusive language at the Third Mate and attempted to strike him with a whiskey bottle. The Night Mate deflected the bottle and it fell to the deck and broke. At the same time, the Third Mate shoved Appellant causing him to fall to the deck. Appellant got to his feet and threw cups and saucers at the Third Mate while he stood in the doorway. The Third Mate ducked all of the objects thrown at him. Appellant then took a knife from his pocket and slashed at the Third Mate cutting the front of his shirt in two places. The Third Mate knocked the knife from Appellant's hand and left the scene uninjured. The Master was called and the police came on board to investigate.

Appellant's prior record consists of a probationary suspension in 1952 for failing to relieve the Third Mate, attacking him, creating a disturbance, and failing to perform duties; six months' suspension on twelve months' probation in March 1957 for creating a disturbance, disobedience of the Master's orders, abusive language toward the Master and intoxication.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that Appellant was denied his right to due process of law in that he was not given a fair hearing and the decision is against the weight of the credible evidence.

Appearance on Appeal: Lee Pressman, Esquire of New York City,
of Counsel.

OPINION

Appellant was informed, at the beginning of the hearing, of his various rights such as his rights to counsel, to present evidence and to cross-examine the opposing witnesses. Later in the hearing, the Examiner twice again told Appellant and his counsel of the right to present the testimony of witnesses. In these and all other respects, the record shows that Appellant's rights were fully protected. Unquestionably, he was afforded a fair hearing.

On the merits of the case, Appellant admitted by his plea of guilty that he created a disturbance. The findings concerning the other two specifications are based on substantial evidence consisting of the testimony of the Third Mate and Junior Third Assistant. On the basis of findings substantially the same as those above, the Examiner properly reached the conclusion that Appellant was not acting in self-defense. The conflicting testimony on this point, and whether Appellant had a knife, was resolved against Appellant. I see no reason to disturb such findings and conclusions.

For these reasons, it is my opinion that Appellant was not, in any manner, denied his right to due process of law. Considering Appellant's position as a ship's officer and his prior record of similar offenses, it appears that the order of twelve months' suspension was a lenient one, particularly since it included the prior suspension of six months on twelve months' probation imposed in March 1957.

ORDER

The order of the Examiner dated at Boston, Massachusetts, on 4 October 1957, is AFFIRMED.

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

Dated at Washington, D. C., this 18th day of April, 1958.