

In the Matter of Merchant Mariner's Document No. Z-842829 and all
other Seaman Documents
Issued to: JAMES JOHNSON, JR.

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1033

JAMES JOHNSON, JR.

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 14 October 1954, an Examiner of the United States Coast Guard at San Francisco, California suspended Appellant's seaman documents upon finding him guilty of misconduct. Two specifications allege that while serving as assistant cook on board the American SS COASTAL SENTRY under authority of the document above described, on or about 20 November 1953, Appellant attacked a fellow crew member with a butcher knife and cut him severely on the wrist.

On 29 December 1953, Appellant was served with the charge and specifications and ordered to appear before the Examiner at Seattle, Washington, on 30 December 1953. Appellant failed to appear. The hearing was initiated in absentia and the Examiner granted a change of venue to San Francisco, California, on motion of the Investigating Officer inasmuch as essential witnesses at that time on the COASTAL SENTRY were expected to be first available in the San Francisco area, and the further fact that the person charged was living in that city.

On the availability of witnesses the hearing was commenced de novo at San Francisco, California, on 6 August 1954. 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 elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and each specification.

The Investigating Officer made an opening statement and introduced in evidence a certified copy of and extract from the Shipping Articles of the COASTAL SENTRY, and the Official Logbook; Vernon G. Mayfield, the alleged victim of the attack, was called to testify. Appellant testified in his own behalf, and called

messman William Bartlow as a witness of the incident.

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

Attempt to serve the decision by registered mail on 19 October 1954, as assented to by Appellant, was unsuccessful. Appellant's whereabouts were unknown until early 1957 when he again signed foreign articles. The decision was served on 11 September 1957. Appeal was timely filed on the same day.

FINDING OF FACT

On 20 November 1953, Appellant was serving as assistant cook on board the American SS COASTAL SENTRY and acting under authority of his Merchant Mariner's Document No. Z-842829 while the ship was underway departing the port of Kure, Japan.

An altercation and scuffle originated in the quarters occupied by both the Appellant and Vernon G. Mayfield, another member of the crew. Appellant left the room first and went to the galley. Mayfield followed to the pantry which was adjacent to the galley. Both men armed themselves with large knives and Appellant retreated into the passageway as Mayfield entered the galley from the pantry. The second cook who was present in the galley grabbed Mayfield to restrain him as he advanced toward Appellant who was standing outside the doorway. Mayfield strove to free himself from the grasp of the cook and in such attempt he grabbed the door frame with his right hand. As he did so Appellant slashed his right wrist and ran from the scene.

Appellant has no prior disciplinary record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the injury was inflicted on Mayfield in self-defense and that the Coast Guard was unreasonably dilatory in serving the Examiner's decision upon him.

OPINION

The points raised by Appellant are without merit. By his own admission Appellant established that after leaving the galley at

Mayfield's advance he turned and waited in the doorway. He further corroborated the testimony of Mayfield that the latter was being restrained by the second cook. During the period of Mayfield's advance and the restraint by the second cook, even if brief, Appellant had more than ample opportunity to retreat from any immediate danger. When he fail to do so and instead slashed out at Mayfield who at that point was at least distracted by the restraint, he became if not the sole aggressor, at least in pari delicto with Mayfield for which there is no justification.

At the hearing the Examiner clearly explained the proposed method of service of the decision by registered mail. Appellant specifically assented to service in this manner and provided the address to which mail was to be sent. He not only failed to notify the Coast Guard of any change in address prior to the attempted service but left no forwarding address, and at no time from 14 October 1954 until he was finally located through the signing of foreign articles did he attempt to advise the Coast Guard of his whereabouts. Therefore, the suspension shall commence to run at the date of receipt by Appellant and not at date of rendition as requested on appeal.

ORDER

The order of the Examiner, dated at San Francisco, California, on 14 October 1954, is hereby AFFIRMED.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 25th day of April 1958.