

In the Matter of Merchant Mariner's Document No. Z-622063 and all  
other Seaman Documents  
Issued to: REYNOLD PILGRIM

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

1047

REYNOLD PILGRIM

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.

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 12 July 1957, an Examiner of the United States Coast Guard at Norfolk, Virginia, 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 AMERICAN PRODUCER under authority of the document above described, on or about 3 July 1957, Appellant used foul and abusive language to the Second Assistant Engineer (First Specification); Appellant's Assistant, was disposed of by the Examiner in his decision. (First Specification); Appellant threatened to kill the Second Assistant Engineer (Second Specification). A third specification, alleging assault on the Second Assistant, was disposed of by the Examiner in his decision.

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. He entered a plea of not guilty to the charge and each specification.

The Investigating Officer made his opening statement and introduced in evidence the testimony of the Second Assistant Engineer.

In defense, counsel for Appellant made an opening statement and Appellant testified in his behalf. Appellant called the Master to testify.

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Engineer.

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At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant's counsel were heard and both parties were given an opportunity to submit proposed findings and conclusions. The Examiner then announced the decision in which he concluded that the first and second specifications had been proved, but that the third specification had not been proved. An order was entered suspending Appellant's documents for 6 months on 18 months probation.

The decision was served on 26 July 1957. Appeal was timely filed on 31 July 1957.

#### FINDINGS OF FACTS

On 3 July 1957, Appellant was serving as an oiler on board the American SS AMERICAN PRODUCER and acting under authority of his Merchant Mariner's Document No. Z-622063 while the ship was in the port of Baltimore, Maryland.

On this date, Appellant was standing the 1600 to 2000 oiler's watch.

At 1600, he relieved the fireman so that he could go to the toilet. At 1620 the fireman had not returned and the Second Assistant Engineer, on watch, commented that neither the fireman nor the oiler was performing his job properly. In the course of the discussion that ensued, the Appellant directed foul and abusive language toward the Second Assistant. Three other seamen were present in the engine room. The normal functioning of the engine room was not disrupted by the incident and both men continued to stand the same watch on the day in question as well as on the following two days. The Second Assistant reported the incident at 1800 on the same day to the Chief Engineer when he came to the engine room upon getting underway for Norfolk; but it was not logged, the Chief Engineer did not mention it to Appellant, nor was it reported to the Master until 2030 on Examiner. Some time after the vessel had reached Norfolk. The Master did not record the incident in the ship's log. On 6 July, Appellant was ordered off the ship by the Master without being given an opportunity to state his version of the verbal altercation which had been reported by the Second Assistant.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the this appeal has been taken from the order imposed by the Examiner.

Appellant's contentions are:

1. The evidence was in sufficient to prove the first and second specifications.
2. The explanation of the Appellant was sufficient to raise a reasonable doubt of his guilt, because three persons were standing within hearing distance of any argument or loud speaking and they did not hear anything; the Appellant was not relieved after the incident occurred but continued to stand watch under the supervision of the Second Assistant; there was never any log entry of the occurrence made; the incident was not reported to the Master for more than two days.

APPEARANCE ON APPEAL: George J. Engelman, Esquire, of New York, of Counsel.

#### OPINION

The degree of proof required in these proceedings is substantial evidence rather than proof beyond a reasonable doubt as implied by Appellant's contentions on appeal. Otherwise, the contentions of Appellant are not without some merit. It is unusual that this occurrence, which the Second Assistant Engineer testified caused him to fear for his life, was not logged at all nor reported to the Master for more than two days; and, that the parties continued to work together during that period without any attempt by the Second Assistant to have Appellant removed. Moreover, the record of hearing fails to disclosed why the other three seamen in the engineer room at the time were not called to testify. The Second Assistant merely asserted that they could not hear the conversation. There is no corroboration of that questionable statement.

The Second Specification, alleging that Appellant threatened to kill the Second Assistant if the latter reported the incident, is not sufficiently supported by the record. The finding that this specification was proved is based on entirely on the Second Assistant's assertions. It was denied by Appellant and the Master failed to indicate, when questioned as to what he was told by the Second Assistant, that the Second Assistant reported any such statement to him. The Master twice failed to answer when questioned as to the basic for his statement that Appellant had threatened to kill the Second Assistant. Also, failure of the Hearing Examiner to make an affirmative determination as to the

credibility of the witnesses weakens this finding, based solely on the contradicted, uncorroborated testimony of one person. Considering all of these circumstances, it is my opinion that the finding of guilty as to the Second Specification should be, and is, reversed. The specification is dismissed.

The Appellant admitted using foul and abusive language toward the Second Assistant Engineer after this officer first directed foul epithets toward Appellant. Therefore, the First Specification must stand as proved.

The order will be modified in view of the dismissal of the more serious of the two remaining specifications.

ORDER

The order of the Examiner dated at Norfolk, Virginia, on 12 July 1957, is modified to an admonition. Appellant is hereby admonished, and he is advised that this admonition will be made a matter of official record.

As so MODIFIED, said order is

AFFIRMED.

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

Dated at Washington D. C., this 19th day of June, 1958.