

In the Matter Merchant Mariner's Document No. Z-760441-D2 and all  
other Seaman Documents  
Issued to: ARTHUR J. MATZKE

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1050

ARTHUR J. MATZKE

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 31 December 1957, an Examiner of the United States Coast Guard at Jacksonville, Florida, suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification alleges that while serving as an ordinary seaman on board the American SS MORMACSUN under authority of the document above described, on or about 20 November 1957, Appellant assaulted and battered Ricardo Deas, a member of the crew.

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. 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 specification.

The Investigating Officer and Appellant made their opening statements. The Investigating Officer then introduced in evidence the testimony of Ricardo Deas and two other members of the crew. One of the latter two seamen, Goetz, was an eyewitness to the incident in question. Appellant declined to submit evidence in his defense stating that the testimony of the witness Goetz was satisfactory to Appellant.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant 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 charge and specification had been proved. An order was entered suspending all documents, issued to Appellant, for a period of three months outright and three months on eighteen months' probation.

### FINDINGS OF FACT

On 20 November 1957, Appellant was serving as an ordinary seaman on board the American SS MORMACSUN and acting under authority of his Merchant Mariner's Document No. Z-760441-D2 while the ship was in the port of Jacksonville, Florida.

About 0100 on this date, appellant and ordinary seaman Ricardo Deas engaged in an altercation in the crew's messroom. Other members of the crew prevented this heated argument from developing into a fight. Deas left the messroom and went to his room. Shortly thereafter, Appellant went to Deas' room and knocked on the door. When Deas opened the door, angry words followed before Appellant started an exchange of blows by striking Deas in the mouth. The fight continued in Deas's room until other crew members arrived to find Deas on top of Appellant and attempting to choke him. Appellant had been severely cut on the head by a water glass wielded by Deas. The latter suffered minor injuries.

Appellant's prior record consists of a probationary suspension in 1951 for failure to join and absence without leave; also, an admonition in 1955 for failure to perform his duties due to intoxication and possession of liquor on board a merchant vessel.

### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that he was unjustly charged since the cut on his head required 20 stitches and there was no apparent injury to Deas. The information supplied by witnesses at the hearing supports Appellant's cause.

### OPINION

Seaman Goetz was an eyewitness to the beginning of the fight at the entrance to Deas' room. Goetz testified that Appellant and Deas "started swinging simultaneously" whereas Deas testified that Appellant struck the first blow. The Examiner merely stated in his findings that the two seamen "engaged in a fight." Although the Examiner should have made a specific finding concerning the material fact as to who started the physical combat, this error was sufficiently cured by the Examiner's statements, in the opinion section of his decision, to the effect that he considered Appellant to have been the aggressor to the extent that he was the first to attack. The implication is that the Examiner concluded that Appellant was guilty of assault and battery on Deas because the Examiner accepted Deas's version that Appellant struck the first blow. In addition to Deas's testimony, this position is supported by the probability that Appellant intended to start a fight when he

went to Deas' room very shortly after the two seamen had a heated argument in the crew's messroom. Accordingly, my findings of fact above have altered those of the Examiner to find that Appellant struck the first blow.

In connection with this matter, the Examiner should also have made a specific finding that he accepted, as the truth, the version of the beginning of the fight as testified to by Deas rather than by Goetz.

Since Appellant started the fight, he was guilty of assault and battery rather than mutual combat alone as would have been the case if he and Deas has started swinging at each other at the same time. The fact that Appellant was seriously injured as the result of the use of unnecessary force by Deas in repelling Appellant's attack does not exonerate Appellant from the initial blame in this matter. Therefore, the order of suspension imposed will be sustained.

ORDER

The order of the Examiner dated at Jacksonville, Florida, on 31 December 1957, is AFFIRMED.

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

Dated at Washington, D. C., this 9th day of July 1958.