

In the Matter of Merchant Mariner's Document No. Z-906881 and all
other Seaman Documents
Issued to: ZACK JULY, JR.

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1062

ZACK JULY, 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 2, March 1958, an Examiner of the United States Coast Guard at Mobile, Alabama suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification alleges that while serving as an able seaman on board the American SS SANTO CERRO under authority of the document above described, on or about 12 March 1958, Appellant assaulted a member of the crew, Joe D. Kidd, with a dangerous weapon, to wit: a knife.

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 made his opening statement. He then introduced in evidence the testimony of the crew member allegedly assaulted and that of an eyewitness to the incident in question, able seaman Burgdorf.

In defense, Appellant offered in evidence his sworn testimony. Appellant admitted that he shoved Kidd but denied that he had a weapon of any kind at the time.

At the conclusion of the hearing, both parties were given the opportunity to submit oral argument as well as 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 six months.

The decision was served on 28 March. Appeal was timely filed

on 2 April.

FINDING OF FACT

On 12 March 1958, Appellant was serving as an able seaman on board the United States SS SANTO CERRO and acting under authority of his Merchant Mariner's Document No. Z-906881 while the ship was in the port of San Francisco, California.

On this date, ordinary seaman Joe D. Kidd entered the quarters he shared with Appellant and began to undress after turning off the fan. Appellant questioned Kidd about the fan. Seaman Kidd said he did not want the fan blowing on him while he was perspiring. An argument followed during which Kidd arose from a chair and was shoved backward onto a bunk by Appellant. The latter pulled a pocketknife from his pocket, opened the blade and held the knife in his right hand. Kidd grabbed Appellant's hand and managed to hold on as the two seamen scuffled on the bunk until able seaman Bergdorf entered and took the knife out of Appellant's hand. Kidd had been frightened by the knife. There were no injuries to either seaman and no further trouble between them.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the evidence does not support the charge because it is inconceivable that neither man would have received so much as a scratch if Appellant had held an open knife. Appellant was guilty only of engaging in a scuffle with seaman Kidd. The order is too severe in view of Appellant's clear record during seven years at sea. It is respectfully submitted that the order should be modified by placing Appellant on probation.

Appearance on Appeal: Collins, Galloway & Murphy of Mobile, Alabama, by Fred G. Collins, Esquire, of Counsel.

OPINION

The allegations were proved by substantial evidence. Both ordinary seaman Kidd and the disinterested witness Bergdorf testified that Appellant has an opened knife in his hand. The Examiner stated that he accepted their testimony as the truth of the matter. There were no injuries because Kidd was fortunate enough to be able to hold Appellant's wrist until Bergdorf arrived. Hence, Appellant was guilty of more than merely scuffling with Kidd.

The order of six months' suspension will not be modified since it is not considered to be excessive despite Appellant's

prior clear record.

ORDER

The order of the Examiner dated at Mobile, Alabama, on 28
March 1958, is AFFIRMED.

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

Dated at Washington, D. C., this 15th day of August, 1958.