

In the Matter of License No. 233985 Merchant Mariner's Document  
No. Z-303924 and al other Seaman Documents  
Issued to: GERDON RYAN

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1065

GERDON RYAN

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 7 March 1958, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of misconduct. Four specifications allege that while serving as an able seaman on board the United States SS LOYOLA VICTORY under authority of the merchant mariners document above described, on or about 5 September 1957, Appellant wrongfully possessed a sheaf knife; he assaulted Third Cook Adams with this knife; Appellant wrongfully created a disturbance in an ammunition cargo hold; and he wrongfully failed to turn to.

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 each specification except the one alleging wrongful possession of a sheaf knife to which he pled guilty.

The Investigating Officer and Appellant made their opening statements. The Investigating Officer introduced in evidence the testimony of the Chief Mate, certified copies of entries in the ship's Official Logbook, the deposition of Third Cook Adams and the deposition of a Coast Guard seaman who was the safety supervisor during the unloading of ammunition.

In defense, Appellant offered in evidence his sworn testimony. With respect to the specification charging assault, Appellant stated that he showed the knife to the Third Cook when he asked to see it.

At the conclusion of the hearing, the oral arguments of the

Investigating Officer and Appellant were heard. The Examiner later rendered the decision in which he concluded that the charge and four specifications had been proved. An order was entered suspending all documents, issued to Appellant, for a period of six months outright and six months on twelve months probation.

The decision was served on 10 March. Appeal was timely filed on 14 March.

#### FINDINGS OF FACT

On 5 September 1957, Appellant was serving as an able seaman on board the United States SS LOYOLA VICTORY and acting under authority of his Merchant Mariner's Document No. Z-303924 while the ship was at a dock in the port of Honolulu, Territory of Hawaii.

Appellant returned on board in an intoxicated condition early in the morning on this date. About 0730, he entered the galley and told the Third Cook that he, Appellant, was "on the warpath". Appellant failed to turn to at 0800 and shortly thereafter, the Chief Mate told Appellant to go to his room because of his continued intoxication. Appellant invited the Third Cook to have a drink. When the latter two seamen were in Appellant's quarters, he removed a five to six-inch blade knife from its sheaf, said that he would show the cook how to use it and held it in his hand with the blade exposed. The other seaman was in apprehension of bodily injury. He managed to knock the knife out of Appellant's hand and pick it up. After some opposition from Appellant, the Third Cook left the room with the knife and turned it over to the Boatswain.

Later in the morning, Appellant approached a hatch from which ammunition was being discharged. Appellant dumped a carton of cigarettes into the hold for the stevedores. He then jumped two or three feet into the hold and commenced throwing dunnage. The Coast Guard seaman, who was supervising the unloading with respect to safety precautions, called the Chief Mate who ordered Appellant to get off the deck. A short time later, Appellant was permanently removed from the ship after another incident which occurred on the dock.

Appellant's prior record consists of two admonitions.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that he is being deprived of his only livelihood. Appellant did not threaten the Third Cook, Appellant was not charged by the union, he did not turn to at 0800 because he overslept, Appellant was not intoxicated and he has never been in

serious trouble.

### OPINION

It is my opinion that three of the specifications were proved by substantial evidence. A plea of guilty was entered to the fourth specification alleging wrongful possession of a sheaf knife.

The Chief Mate's testimony is adequate proof that Appellant did not turn to and perform his duties on this day and that Appellant was in no condition to work.

Both the Chief Mate and the Coast Guard seamen testified concerning the disturbance caused by Appellant at the hold where ammunition was being unloaded. Certainly, Appellant's conduct which distracted the stevedores in the hold is sufficient proof that there was a very serious disturbance caused by Appellant since the stevedores were performing the dangerous task of moving the ammunition from the hold to the dock. This conduct created an unnecessary hazard.

Concerning the assault on the Third Cook, the evidence does not support the Examiner's finding that Appellant brandished (waved menacingly) the knife or specifically offered to inflict bodily harm on him. Nevertheless, I think Appellant's earlier statement to the cook that he was going "on the warpath", coupled with the act of taking the knife out of its sheath and indicating that he intended to use it, was sufficient to create a reasonable or well-founded apprehension of immediate peril on the part of the cook since he was the only other person in the room with Appellant. Hence, the facts are adequate to prove the offense of assault regardless of what Appellant's intention actually was. The Examiner specifically stated that he did not accept Appellant's testimony that he was merely showing the knife to the cook (after he had asked to see it).

The testimony of all the witnesses is that Appellant was intoxicated to some extent. He even admitted drinking whiskey on board the ship. Consequently, this contention has no merit but this has no particular significance since Appellant was not charged with intoxication.

The fact that Appellant was not brought up before the union on these charges has no bearing on the outcome of these remedial, administrative proceedings. The same is true with respect to the personal hardship involved while Appellant is without his documents for six months and on probation for an additional year. These offenses justify the order imposed by the Examiner despite Appellant's prior good record.

ORDER

The order of the Examiner dated at New York, New York, on 7  
March 1958, is AFFIRMED.

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

Dated at Washington, D. C., this 22nd day of August 1958.