

In the Matter of Merchant Mariner's Document No. Z-194525-D4 and
all other Seaman Documents

Issued to: SIDNEY ANDERSON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1087

SIDNEY ANDERSON

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 11 July 1958, and Examiner of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification alleges that while serving as a messman on board the United States MV DEL CAMPO under authority of the document above described, on or about 26 June 1958, Appellant assaulted and battered messman Clarence Osborne with a scrub brush.

At the hearing, Appellant appeared without counsel and entered a plea of not guilty to the charge and specification. After considering the testimony of Clarence Osborne and the Appellant, as well as the other evidence submitted, the Examiner 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 26 June 1958, Appellant was serving as a messman on board the United States MV DEL CAMPO and acting under authority of his Merchant Mariner's Document No. Z-194525 while the ship was at sea.

On this date, Appellant and messman Clarence Osborne engaged in an argument; Osborne threatened to "get" Appellant before the end of the voyage; Appellant indicated that this was the day for Osborne to do something about it; and a fist fight followed between the two seamen. Appellant testified that he was beating Osborne when the latter picked up a cup. Appellant picked up a scrub brush and inflicting two deep gashes on Osborne's head - one over his right eye and the other on the left side. Osborne received emergency medical treatment from the Purser for these wounds. There is no evidence that Appellant was injured.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that character-testimony for Appellant should have been obtained from passengers on the ship. The Examiner ignored the fact that Osborne verbally threatened Appellant and that Appellant was not the aggressor in the fight but acted in self-defense without the use of excessive force. The evidence was insufficient to prove the offense charged.

In conclusion, Appellant requests reversal of the case as a matter of law, or, alternatively, that the case be remanded to receive additional evidence.

Appearance on appeal: Donald S. Klein, Esquire, of New Orleans, Louisiana, of Counsel.

OPINION

There was no burden on the Investigating Officer to produce witnesses for the appellant. He was fully informed by the Examiner of the right to have witnesses subpoenaed to appear at hearing.

The Examiner stated that he considered it immaterial as to which seaman struck the first blow in the first fight. The testimony of Appellant and Osborne is conflicting on this point although Appellant admits that he was winning the fight when Osborne picked up a cup. Osborne denies that he picked up a cup and the Examiner improperly failed to make a finding as to credibility on this important issue. Also, there are no findings of fact in addition to the bare finding that Appellant assaulted and battered Osborne with a scrub brush as alleged in the specification. It is necessary to have more detailed findings made by the Examiner, as the trier of the facts, in order to determine on appeal, as a matter of law, whether Appellant went beyond the permissible limits of self-defense and used excessive force when he inflicted two deep cuts on Osborne's head with the scrub brush.

In view of this incomplete state of the record, the finding that Appellant was guilty of assault and battery is set aside. The case is remanded to the same Examiner for revision of his decision either based solely on the evidence contained in the present record or after consideration of such additional evidence as the Examiner, in the exercise of his discretion, considers it advisable to receive. This accedes to Appellant's alternative request on appeal.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 11 July 1958, is VACATED. The record is REMANDED for further proceedings not inconsistent with this decision.

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

Dated at Washington, D. C., this 20th day of January, 1959.