

In the Matter of Merchant Mariner's Document No Z-506869 and All Other Seaman Documents
Issued to: ANDRES HALL

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1115

ANDRES HALL

This appeal has been taken in accordance with Title 46 United States Code 239 (g) and Title 46 Code of Federal Regulation 137.11-1.

By order dated 16 December 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. Two specifications allege that while in the service of the United States SS WOLVERINE STATE as an oiler, acting under authority of the document above described, on or about 13 July 1958, Appellant wrongfully used abusive language directed toward the ship's Master, Alfred Preede; on or about 13 July 1958, Appellant wrongfully detained the Master by holding his arm.

At the hearing, Appellant acted as his own counsel. He entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the testimony of the Master and able seaman Hart. Appellant offered in evidence his sworn testimony and that of five other witnesses, two of whom testified by deposition. Appellant denied the allegations contained in both specifications. He stated that he was insulted by the Master's refusal to listen when Appellant tried to apologize for going ashore without a pass. Appellant also submitted copy of an entry in the ship's Official Logbook covering the incident in question.

At the conclusion of the hearing, the Examiner rendered the decision in which he concluded that the charge and two specifications had been proved. An order was entered suspending all documents, issued to Appellant, for a period of one month outright plus five months on twelve months' probation.

Notice of appeal was timely filed on 7 January 1959. No supplementary memorandum or brief has been received to date.

FINDINGS OF FACT

On 13 July 1958, Appellant was in the service of the United States SS WOLVERINE STATE as an oiler and acting under authority of his Merchant Mariner's Document No. Z-506869 while the ship was in

the port of Bremerhaven, Germany.

On this date, Appellant went ashore without obtaining a pass from the Master. Appellant was in the Cafe Rote Muhle when the Master entered. Appellant approached the Master and attempted to apologize for being ashore without a pass. The Master refused to listen, stating that it was a matter to be discussed on board the ship. Appellant felt that he had been insulted. He became excited and loud. The Master left the cafe followed by Appellant who stood in front of the Master blocking his path along the sidewalk. When the Master Still refused to listen to Appellant, he directed vulgar and abusive language toward the Master. As the latter started to walk away, appellant held the Master's arm and briefly detained him. Appellant then left the scene with other members of the crew after a crowd had gathered on the sidewalk.

Appellant has been going to sea for fourteen years without any prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the decision of the Examiner is improperly based upon his belief of the Master's testimony although the testimony of the other witnesses does not lend credence to that of the Master. Considering the testimony of all the witnesses, there is insufficient evidence to prove the specifications.

Alternatively, the order imposed is too severe.

APPEARANCE: Standard, Weisberg, Harolds and Malament of New York City by Malcolm B. Rosow. Esquire, of Counsel.

OPINION

The contention that the evidence is insufficient is considered to be without merit. The testimony of the Master was accepted by the Examiner who heard and saw the witnesses at the hearing and this testimony is substantially corroborated by that of able seaman Hart as to the above facts which are material to the proof of the specifications.

Appellant's seamen witnesses testified that they did not hear or see the things alleged but admitted that they were not near the scene outside the cafe until the incident was practically over. The two barmaids, whose testimony was taken by deposition, did not deny or affirm the allegations. They observed the sidewalk incident through a cafe window and one of them stated that Appellant was standing in front of the Master preventing him from leaving. This also tends to corroborate the Master's testimony as to Appellant's offensive attitude.

A ship's Master is entitled to be treated with respect by members of his crew while ashore as well as on the ship. Appellant's behavior was improper regardless of the Master's refusal to listen to his apology. This disrespectful conduct in a public place justified the suspension imposed despite

Appellant's prior clear record for fourteen years.

ORDER

The order of the Examiner dated at New York, on 16 December 1958, is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C. this 28th day of September, 1959.