

In the Matter of Merchant Mariner's Document No. Z-802548 and All Other Seamen documents
Issued to: MARTIN E. RACKNER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1153

MARTIN E. RACKNER

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 17 July 1959, an Examiner of the United States Coast Guard at San Francisco, California suspended Appellant's seamen documents for twelve months upon finding him guilty of misconduct. The two specifications found proved allege that while serving as a steward's storekeeper on board the United States SS MONTEREY under authority of the document above described, on 3 June 1959, Appellant wrongfully engaged in a fight with the ship's Sous Chef, Pierre Normand; at the same time, Appellant wrongfully assaulted and struck Pierre Normand. The Investigating Officer stated that these were intended as alternative specifications.

At the hearing, Appellant was not represented by counsel. He entered a plea of guilty to the first specification and not guilty to the second one.

Appellant admitted striking Normand with his fists until Sous Chef fell to the deck. Appellant broke his right hand while doing this. He was extremely angry with Normand because he had subjected Appellant's wife (a waitress on the ship) to severe verbal abuse without justification. Appellant testified that his wife was called a "bitch" by Normand.

The Examiner accepted Normand's testimony that when he opened the door to his room, he was immediately attacked by Appellant and did not strike a single blow. The Sous Chef was knocked unconscious and badly bruised about the face and elsewhere on his body.

On appeal, Appellant states that the charges and order imposed were not entirely justified. He implies that he considers the order of suspension to be too severe for the offense committed.

OPINION

Appellant was guilty of assault and battery because words, no matter how abusive, do not legally justify this type of conduct. Nevertheless, in view of Appellant's prior clear record and the nature of the provocation, the order will be modified to a suspension of six months.

Since this is not a case of both parties voluntarily striking blows at substantially the same time with no serious injuries to either, the first specification should have been dismissed and is hereby so disposed of.

ORDER

The order of the Examiner dated at San Francisco, California, on 17 July 1959, is modified to provide for a suspension of six (6) months.

As so modified, the order is AFFIRMED.

A.C. Richmond
Vice Admiral, U. S. Coast Guard
Commandant

Dated at Washington, D.C., this day of March 1960.