

In the Matter of Merchant Mariner's Document No. Z-565545-D1 and all  
Others Same No. Z-565545  
Issued to: BEN HOWARD FAULK

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1175

BEN HOWARD FAULK

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 23 September 1959, an Examiner of the United States Coast Guard at New Orleans, Louisiana revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as deck engineer on board the United States SS LA SALLE under authority of the document above described, on or about 2 August 1959, Appellant assaulted and battered a Korean watchman.

At the hearing, Appellant was not represented by counsel. He entered a plea of not guilty to the charge and specification. Both parties introduced in evidence the testimony of witnesses. Appellant testified that he did not push the watchman overboard as had been testified to by all three of the Government witnesses.

At the conclusion of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. An order was entered revoking all documents issued to Appellant.

FINDINGS OF FACT

On 2 August 1959, Appellant was serving as deck engineer on board the United States SS LA SALLE and acting under authority of his Merchant Mariner's Document No. Z-565545-D1 while the ship was in the port of Inchon, Korea.

About 2200 on this date, there was an argument between the Korean watchman and the military police concerning the theft of some of the cargo which the watchman had been hired to guard. The watchman made a vulgar remark about the military police and said that all Americans were no good. Appellant was not involved in the argument but he heard what the Korean watchman said. Thereupon, Appellant suggested throwing the watchman over the side, walked up to him while he was sitting on the rail and pushed him overboard.

The Korean watchman dropped more than forty feet, struck a landing barge alongside and fell into the water. Wiper Alexander

Lukes dove overboard and rescued the watchman. He was taken immediately to a hospital. The hearing record does not show the extent of his injuries.

Appellant's prior record consists of a suspension in 1947 for failing to perform duties, absence without leave and assault and battery upon the radio officer.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that:

1. The testimony given against Appellant was prejudiced and untrue.
2. The decision is contrary to the preponderance of the evidence.
3. Not enough credibility was given to Appellant's testimony and that of his other two witnesses.
4. The Examiner was prejudiced against Appellant because he failed to retain counsel at the hearing.
5. The examiner relied too heavily on Appellant's prior record of assault and battery.
6. The seriousness of the alleged offense is not commensurate with the order imposed.

#### OPINION

There is no merit in the contentions raised on appeal. The order of revocation will be sustained.

The Examiner stated that he accepted the testimony of the three Government witnesses who testified very definitely that they saw Appellant push the watchman over the side after suggesting that this be done. Appellant denied doing this but his two witnesses simply testified that they did not know what caused the Korean to fall overboard. The Examiner observed the demeanor of all the witnesses and he refused to believe Appellant in the face of the contrary, unbiased testimony of three of his shipmates. Each of these witnesses testified that there was no animosity between him and the Appellant. The latter has presented nothing to support his claims of prejudice on the part of the witnesses and the Examiner. Hence, it is my conclusion that the choice of credibility made by the Examiner as the trier of the facts, who was in the best position to make this determination, must stand. Obviously, the testimony accepted as the truth constitutes substantial evidence in support of the allegation of assault and battery.

In view of the serious nature of this offense which presumably resulted in at least very serious injuries to the Korean watchman, the order of revocation is not considered to be excessive. Any person who indulges in such conduct as this is not fit to go to sea in the United States Merchant Marine Service.

#### ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 23 September 1959 is  
AFFIRMED.

J A Hirshfield  
Vice Admiral, United States Coast Guard  
Acting Commandant

Dated at Washington, D.C., this 22nd day of June 1960.