

In the Matter of Merchant Mariner's Document No. Z-66538 and all other Seaman Documents
Issued to: GEORGE W. KAHELA

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1179

GEORGE W. KAHELA

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 12 February 1960, an Examiner of the United States Coast Guard at San Francisco, California suspended Appellant's seaman documents for three months upon finding him guilty of misconduct based on his plea of guilty to a single specification. The specification alleges that while serving as a messman on board the United States SS FLYING EAGLE under authority of the document above described, on or about 24 November 1959, Appellant assaulted and battered a member of the crew named Chang.

At the hearing, Appellant was represented by nonprofessional counsel. Appellant voluntarily made a statement that he lost his temper and struck Chang with a single blow after he refused to stop verbally abusing Appellant about some missing coffee cups.

After concluding that the charge and specifications had been proved by plea, the Examiner entered an order suspending all documents, issued to Appellant, for a period of three months.

Appellant has no prior record during more than twenty-five years at sea.

On appeal, it is urged that Appellant intended to plead guilty to the act of striking Chang but not to the charge of misconduct; Chang was the seaman who was guilty in this matter but no action was taken against him; the injury to Chang consisted of a simple "black eye"; the suspension ordered by the Examiner was grossly excessive.

APPEARANCE: Graham, James and Rolph of San Francisco, California by Francis L.
 Tetreault, Esquire, of Counsel

OPINION

It is not disputed that Chang followed Appellant, directing abusive language at him, until Appellant became angered and struck Chang in the eye. Admittedly, Chang was the instigator of this act by Appellant but verbal abuse alone is not justification for assault and battery. Therefore, Appellant was properly found guilty of misconduct regardless of whether he intended to plead guilty

to the charge.

As to the extent of the injury, it was stipulated at the hearing that this information would be made part of the hearing record, at a later date, by the Examiner. No such evidence is contained in the hearing record, and there is no support for the Examiner's statement, in his decision, that this injury rendered Chang unfit for duty for more than a week. Hence, it must be assumed that Chang merely suffered a normal "black eye" as Appellant contends. In my opinion, it follows that the order of three months' suspension is excessive, particularly in view of Appellant's prior clear record.

ORDER

The order of the Examiner dated at San Francisco, California, on 12 February 1960, is modified to provide for a suspension of one month.

As so MODIFIED, said order is AFFIRMED.

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

Dated at Washington, D. C., this 30th day of June, 1960.