

In the Matter of Merchant Mariner's Document No. Z-932979 and all other Seaman Documents
Issued to: ROBERTO PEREZ

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1185

ROBERTO PEREZ

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 15 July 1959, an Examiner of the United States Coast Guard at New York, New York revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a bedroom steward on board the United States SS CONSTITUTION under authority of the document above described, on or about 1 February 1958, Appellant wrongfully placed his hands on the person of a young passenger, Miss Sherrie Wales.

At the beginning of the hearing on 28 July 1958, Appellant was represented by counsel of his own choice. Due to Appellant's absence, counsel entered a plea of not guilty on behalf of the Appellant.

The Examiner granted the Investigating Officer's application to take the depositions, by written interrogatories, of Miss Wales, her father and Miss Janice Bragg, another passenger on the ship who was approximately ten years of age at the time of the incident in question. Counsel submitted cross-interrogatories in connection with the taking of Miss Bragg's deposition in Morocco on 17 September 1958. Counsel expressed the desire to be personally present when the other two depositions were taken in Spain. Counsel's address in Paris was forwarded, by the Examiner, with the direct interrogatories to the U.S. Air Force Base authorities in Spain. The latter and counsel were requested to contact each other, after counsel arrived in Paris, in order to set a date for the taking of the depositions. These two parties failed to establish contact although counsel was in France in August 1958. Eventually, the two depositions were taken on the direct interrogatories only, on 22 October 1956, at Seville, Spain and sent to the Examiner. After counsel returned to the United States, he declined the opportunity to submit cross-interrogatories based on the answers to the direct interrogatories.

The deposition of Miss Bragg was received in evidence, without objection, after the answers to two questions had been stricken.

Counsel strenuously objected to the introduction in evidence of any portion of miss wales' or her father's deposition because counsel did not have the opportunity of attending the taking of the depositions and orally interrogating the two witnesses. The objections were overruled and the depositions were admitted in evidence after the father's answer to one question, allegedly stating what his daughter said happened, was stricken as hearsay.

Other documentary evidence was submitted by the Examiner and the Investigating Officer. Counsel for Appellant rested without offering any evidence in behalf of the Appellant. The last day of the open hearing was on 29 June 1959. The delays since the beginning of the hearing were incurred primarily as a result of the two depositions taken in Spain.

At the conclusion of the hearing, the Examiner decided that the charge and specification had been proved. He then entered the order revoking all documents issued to Appellant. An appeal was taken on 29 July. A transcript of the hearing record was forwarded to counsel on 10 March 1960.

FINDINGS OF FACT

On 1 February 1958, Appellant was serving as a bedroom steward on board the United States SS CONSTITUTION and acting under authority of his Merchant Mariner's Document No. Z-932979 while the ship was at sea.

On this date, one of the ship's staterooms was occupied by Captain John K. Wales, U.S.A.F., his wife, daughter Sherrie (age 11 1/2) and son Kenneth (age 5). When their parents went to dinner at 2000, the two children remained in the stateroom. The door was locked and a "Do Not Disturb" sign was left on the outside of it.

Appellant was the bedroom steward assigned to this stateroom. About 2030, he unlocked the door, entered the room and began making the beds with Sherrie's permission. Appellant then approached Sherrie, unfastened a pin which she was wearing on the left side of a sweater above her breast, and pinned it lower down on the sweater. Sherrie moved away and went into the bathroom. When she returned, Appellant was making the beds and talking to her brother. Appellant twice took Sherrie into the stateroom hallway and asked her to kiss him. She refused to do so both times.

Sherrie then took her brother out of the stateroom while Appellant was still there. Sherrie met Janice Bragg, another passenger, and told her what had happened. A short time later, they met Captain Wales when he returned from dinner. Sherrie told her father about the incident and he filed a complaint with one of the ship's officers.

Entries regarding this matter were made in the ship's Official Logbook. Appellant was confined in the ship's brig pending a Coast Guard investigation upon arrival at Naples, Italy. Captain Wales and his family left the ship at Algecira, Spain before the ship reached Naples where the Coast Guard investigation was conducted.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the Government did not make out a prima facie case; the decision is based upon assumptions, conjecture and uncorroborated testimony of a child; the Examiner erred in admitting irrelevant evidence; the delay of eight months before receiving a copy of the hearing transcript worked a tremendous hardship on Appellant.

It is respectfully submitted that the order of revocation is excessive even if Appellant did touch the pin on Sherrie's sweater.

APPEARANCE: Zwerling and Zwerling of New York City.

OPINION

It is my opinion that the evidence in the record justifies the conclusions of the Examiner and the order of revocation imposed by him. There have been no reasons submitted on appeal for the contentions raised therein. Hence, little or no discussion is required relative to them.

I do not think it would be proper to refuse to consider the depositions of Sherrie Wales and her father as counsel requested at the hearing. Counsel for Appellant was given every opportunity to submit cross-interrogatories after arrangements for counsel's personal appearance at the taking of the depositions were not completed for some unknown reason. There was no fault on the part of the Coast Guard with respect to this matter.

The three depositions in evidence contain substantial evidence in support of the charge and specifications. The details of the incident which are in the above findings of fact are taken from the deposition of Sherrie Wales. In answer to several preliminary questions, Sherrie indicated that she understood the necessity for telling the truth when testifying under oath. Her statement of the incident is corroborated by her father's and Janice Bragg's testimony that Sherrie complained to them about it soon afterward. Testimony as to such a complaint, without the details, is admissible and constitutes corroborating evidence (Commandant's Appeal Decisions Nos. 1052, 1174) although corroboration is not necessarily required depending upon the circumstances of the individual case. Additional corroboration is contained in Janice Bragg's testimony that Sherrie "looked like she was going to cry but she didn't." This was immediately after Sherrie left the stateroom with her little brother. Appellant made no attempt to rebut the prima facie case made out by this evidence.

The delay in preparing the hearing transcript is unfortunate but I do not think this either did, or could have, prejudice Appellant's cause on appeal in any manner.

For more than a century, our courts have held that a passenger's right to complete personal

privacy should be inviolated. When a seaman molests a female passenger, revocation of his documents is the only appropriate order. The Examiner has set forth, in his decision, the reasons for this in some detail.

ORDER

The order of the Examiner dated at New York, New York, on 15 July 1959, is AFFIRMED.

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

Dated at Washington, D.C., this 11th day of August, 1960.