

In the Matter of Merchant Mariners Document No. Z-271217 and All Other Seaman Documents
Issued to: JAMES ALLEN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1207

JAMES ALLEN

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 11 April 1960, an Examiner of the United States Coast Guard at New York, New York, suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a messman on board the United States SS EXMINSTER under authority of the document above described, on or about 7 February 1960, Appellant threatened the Chief Steward with a dangerous weapon.

When Appellant was served with the charge and specification, he was fully informed of his rights and the necessity for him to appear at the hearing on 1 April in order to present his defense. Appellant was neither present nor represented by counsel on this date. Consequently, the hearing proceeded in absentia after the Examiner entered a plea of not guilty to the charge and specification on behalf of Appellant.

The Investigating Officer introduced in evidence the testimony of the ship's Master and Chief Steward.

After considering the evidence, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of twelve months.

FINDINGS OF FACT

On 7 February 1960, Appellant was serving as a messman on board the United States SS EXMINSTER and acting under authority of his document while the ship was in the port of Calcutta, India.

Appellant was noisy and belligerent while serving the evening meal in the officers' saloon on this date. The Chief Steward told Appellant to behave and a scuffle followed during which Appellant's back was injured. Appellant left the saloon, got a long-bladed bread knife, and approached the Chief Steward from the rear. The Master shouted a warning when Appellant was about four feet from the Chief Steward, jumped on Appellant, and disarmed him with the

help of others.

Appellant's prior record consists of two admonitions.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the entire decision should be vacated or a new hearing scheduled since Appellant did not realize that he should have been present at the hearing.

The true facts are that Appellant picked up the knife to keep the Chief Steward at a distance after Appellant's back had been injured by the Chief Steward and he was threatening to kill Appellant.

APPEARANCE: Klien, Field and Nolan of New York City, of Counsel.

OPINION

The Investigating Officer testified under oath at the hearing that he told Appellant, among other things, that the hearing would proceed without him if he did not appear on 1 April and that he would not have another opportunity to submit his defense. Consequently, consideration will not now be given to Appellant's contentions that he did not realize this and that the circumstances were different than as indicated by the testimony given at the hearing.

The Examiner accepted the testimony of the Master and the Chief Steward that Appellant obtained the knife after the initial scuffle was over and the two participants were some distance apart. Under these circumstances, or even those depicted by Appellant, there was no justification for Appellant to utilize the assistance of a large bread knife.

Appellant's misconduct, as indicated by the above findings of fact, warrants the order of suspension imposed.

ORDER

The order of the Examiner dated at New York, New York, on 11 April 1960, ~~is~~ **AFFIRMED**.

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

Signed at Washington, D. C., this 14th day of November 1960.