

In the Matter of Merchant Mariner's Document No. Z-347510 and All Other Seaman Documents
Issued to: GEORGE JAMES

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1208

GEORGE JAMES

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 4 November 1959, 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 five specifications found proved allege that while serving as fireman-watertender on board the United States SS COAL SHIPPER under authority of the document above described, on or about 2 December 1958, Appellant refused to carry out a lawful order of the Chief Engineer; he assaulted and battered the First Assistant Engineer; Appellant used foul and abusive language to the Master; he assaulted the Master with a dangerous weapon; and Appellant threatened to kill the Master. These specifications are listed in the order of occurrence.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of guilty of the charge and each specification.

The Investigating Officer introduced in evidence the testimony of the Master, Chief Engineer, First Assistant Engineer and Third Mate. A logbook entry was also submitted. Appellant gave testimony in which he denied most of the allegations. Both parties introduced depositions in evidence.

After considering the evidence, the Examiner rendered the decision in which he rejected Appellant's denials, concluded that the charge and five specifications had been proved, and entered an order spending all documents, issued to Appellant, for a period of six months outright plus six months on eighteen months' probation.

FINDINGS OF FACT

On 2 December 1958, Appellant was serving as a fireman-watertender on board the United States SS COAL SHIPPER and acting under authority of his document while the ship was on Subic Bay, Philippines.

Following an argument between the First Assistant Engineer and

Appellant on this date, the Chief Engineer ordered Appellant to leave the fireroom. Appellant did not obey until the order had been repeated twice.

On the night of the same day, Appellant was under the influence of intoxicants when he approached the First Assistant from behind using abusive language. As the First Assistant was turning to face Appellant, the latter used his fist to strike the First Assistant on the face. The blow caused the First Assistant's eyeglasses to fall to the deck. A scuffle ensued which was quickly stopped when other members of the crew separated the First Assistant and Appellant. The former reported the incident to the Master.

The Master located Appellant on deck and ordered him to go to his room. Appellant failed to obey while addressing the Master with foul and abusive language. The Master tried to force Appellant to obey and both men fell to the deck. As they were getting up, Appellant pulled an ice pick out of a rear pocket. The Third Mate struck Appellant on the head with a flashlight and the Master disarmed Appellant. The Master and Third Mate took Appellant to his room.

While the Master and Appellant were alone in his room, Appellant said several times that he was going to kill the Master. Shortly thereafter, Appellant was taken ashore for medical treatment of the wound suffered from the blow by the flashlight.

Appellant's prior record consists of a two months' outright suspension and probation in 1951 for threatening and striking a crew member, and for destroying ship's property.

OPINION

This appeal is taken on the grounds that the decision of the Examiner is arbitrary, contrary to the law, and not in accord with the evidence; the order is too severe. Appellant has not specified any reasons for these contentions.

A minute re-examination of the record is not required under these circumstances. Review of the Examiner's decision should be limited to specific exceptions and clear errors on the record. Attorney General's Manual on the Administrative Procedure Act (1947), p. 84, note 5; Commandant's Appeal Decisions Nos. 939, 940, 1005, 1016, 1046, 1070, 1121.

In view of the blanket nature of this appeal, it is sufficient to state that the Examiner's findings are supported by substantial evidence and the suspension imposed is not excessive on the basis of the findings.

ORDER

The order of the Examiner dated at New York, New York on 4 November 1959, is AFFIRMED.

A. C. Richmond
Admiral, United States Coast Guard
Commandant

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