

In the Matter of Merchant Mariner's Document No. Z-275088-D1 and all other Seaman Documents

Issued to: VINCENTE A. ROBLES

1209

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

VINCENTE A. ROBLES

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 29 February 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 bedroom steward on board the United States SS UNITED STATES under authority of the document above described, on or about 18 November 1959, Appellant wrongfully engaged in undue familiarity with a female passenger.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence a logbook entry and the testimony of the Second Steward who testified concerning Appellant's presence in a linen locker with Miss Swejda.

In defense, Appellant offered in evidence the testimony of Miss Swejda. She stated that she went to get some pills or powder for seasickness from Appellant; she went into the linen locker of her own accord, when Appellant opened the door, and remained there for five or ten minutes sitting in a chair near the door drinking tea until someone opened the door from the outside. Appellant did not testify.

At the end of the hearing, 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 nine months outright plus three months on eighteen months' probation.

FINDINGS OF FACT

On 18 November 1959, Appellant (age 41) was serving as a bedroom steward on board the United States SS UNITED STATES and acting under authority of his document while the ship was at sea.

About 1530 on this date, the Second Steward received information (from a source which he refused to identify) that Appellant was in a linen locker with a female passenger. The Second Steward and Chief Steward went to the linen locker, observed that the door was closed, and sent for the Staff Captain.

The locker was about eight feet by eight feet with shelves using up some of the space. The light was on in the locker and talking could be heard coming from it, but the Second Steward could not understand what was said.

The Staff Captain arrived between five and ten minutes after he was sent for. The door was opened with a key since it was locked to outside access. Appellant and Miss Lucia Swejda, a nineteen year old passenger came out of the locker. Miss Swejda was asked to go to her room and she inquired as to what wrong she had done. Appellant did not have a tie on; his uniform jacket was open and wrinkled. Although Appellant was off duty at the time, he was supposed to wear a tie and have his coat buttoned while in passenger areas.

An entry was made in the ship's Official Logbook, on the basis of these facts, that Appellant had been "in a locked linen locker with a female passenger." Appellant's reply was: "Nothing to say. I wasn't doing anything wrong in the locker."

It is a violation of the rules and regulations of the United States Lines for members of the crew to associate with passengers except to the extent required by their duties on the ship.

Appellant's prior record consists of a probationary suspension in 1944 for failure to perform duties and an admonition in 1951 for gambling.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the decision is contrary to the evidence; the Examiner had prejudged the case prior to the hearing; and the Examiner considered facts not in evidence.

APPEARANCE: Zwerling and Zwerling of New York City by Sidney Zwerling,
Esquire, of Counsel.

OPINION

As stated by the Examiner, Appellant was guilty of undue familiarity with a female passenger because he remained in the close confines of the linen locker with Miss Swejda for about ten minutes or more while the door was closed. Proof of the specification is based on this fact alone without conjecture that something more might have happened than testified to by Miss Swejda. The condition of Appellant's apparel while he was not on duty is not an adequate basis for drawing any unfavorable inference with respect to his conduct in the locker.

According to the passenger, she was the instigator of this situation by going into the closet and asking for some tea after Appellant had told her that it was not right for a passenger to be there. But although Appellant recognized the impropriety of the circumstances, there is no evidence that he requested her to leave, that he was preparing to leave, or that he attempted to alleviate the privacy of the situation by keeping the door open. Instead, after Appellant's initial protest to the passenger, the Second Steward's testimony indicates that Appellant was content to remain and engage in conversation with Miss Swejda.

The contentions raised on appeal are considered to be without merit. The decision is based on the evidence in the record and there is nothing to indicate that the Examiner prejudged the case. There are a few minor errors of fact in the Examiner's decision which are irrelevant to the final outcome. Nevertheless, in view of the nature of this offense as compared with others involving passengers, the order will be modified to an admonition.

ORDER

The order of the Examiner dated at New York, New York, on 29 February 1960, is modified to an admonition. Appellant is hereby advised that this admonition is a matter of official record.

A. C. Richmond
Admiral, U. S. Coast Guard
Commandant

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