

In the Matter of Merchant Mariner's Document No. Z-443753 and all other Seaman Documents
Issued to: ARTHUR BROWN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1222

ARTHUR BROWN

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 18 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 specification found proved alleges that while serving as a fireman-watertender on board the United States SS MORMACRIO under authority of the document above described, on or about 21 August 1959, appellant assaulted and battered a member of the crew, messman Jennings.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and specification. Appellant, Jennings, and several other members of the crew testified. The testimony of these other crew members indicated that they did not witness the alleged assault and battery. Logbook entries were also submitted in evidence.

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 six months outright plus six months on twelve months' probation.

FINDINGS OF FACT

On 21 August 1959, Appellant was serving as a fireman-watertender on board the United States SS MORMACRIO and acting under authority of his document while the ship was in the port of Beira, Mozambique.

About 0100 on this date, Appellant returned on board under the influence of intoxicants and attempted to borrow money to spend ashore. Appellant asked messman Jennings for a loan. When Jennings refused, Appellant struck and kicked Jennings, and cut him on the face with a penknife. Jennings was hospitalized ashore for two weeks due to an infection from the knife wound.

Appellant's prior record consists of a twelve months'

suspension in 1944 for absence without leave, a two months' suspension in 1944 for failure to join his ship, and an admonition in 1957 for failure to join.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that:

1. The decision is not supported by the facts.
2. There is no evidence that Jennings was wrongfully struck and kicked or that a knife wound was inflicted.
3. The substantial shifts in Jennings' testimony present a serious question of credibility which is the sole basis for the decision.
4. The proceeding was invalid because the U. S. Code procedure for logging offenses was not followed.

APPEARANCE: Cooper, Ostrin & DeVarco of New York City, By Richard Gyory, Esquire, of Counsel.

OPINION

The appeal does not contain any matter in support of the general exceptions noted above. Consequently, it is sufficient to state that the record contains substantial evidence to uphold the Examiner's decision.

The Examiner gave several reasons for accepting as true the testimony of Jennings, as set forth in my findings of fact, in preference to Appellant's version that he was attacked by Jennings; Appellant did not ask Jennings for a loan; Appellant did not use a knife or kick Jennings. One of these reasons was that two witnesses for Appellant corroborated Jennings' testimony that Appellant had asked Jennings for a loan. Another reason was Jennings' demeanor while he testified. These findings by the Examiner as to the credibility of the witnesses will not be rejected since there is no support in the record for the contention on appeal that there were shifts in Jennings' testimony which cast serious reflection upon his credibility.

The failure to make logbook entries in accordance with the requirements of 46 U. S. Code 702 does not invalidate these proceedings. In this case, the direct, testimonial evidence of events, obtained from Jennings and Appellant, constituted an adequate basis for the Examiner's evaluation as to what occurred.

The detailed findings and reasoning by the Examiner are incorporated herein by reference to his decision.

ORDER

The order of the Examiner dated at New York, New York, on 18 November 1959, is ~~REVERSED~~ ~~CONFIRMED~~.

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

Signed at Washington, D. C., this 10th day of March 1961.