

In the Matter of Merchant Mariner's Document No. Z-755546 and all other Seaman Documents
Issued to: PEDRO RODRIGUEZ

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1235

PEDRO RODRIGUEZ

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 19 May 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 charged alleges that while serving as a galley utilityman on board the United States SS ARGENTINA under authority of the document above described, on or about 1 April 1960, Appellant wrongfully cut crew member Pedro Martinez with a knife. The Examiner found, as an offense included within the specification charged, that Appellant wrongfully assaulted and battered Martinez by inflicting a wound with an undetermined kind of instrument.

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 the testimony of Martinez and documentary records of the ship including an entry in the Official Logbook with an attached statement by Martinez which was not objected to when offered in evidence.

No evidence was submitted in defense.

At the end of the hearing, the Examiner rendered the decision in which he stated that the charge and specification had been proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of two months outright plus four months on twelve months' probation.

FINDINGS OF FACT

On 1 April 1960, Appellant was serving as a galley utilityman on board the United States SS ARGENTINA and acting under authority of his document while the ship was in the port of Rio de Janeiro, Brazil.

Shortly before 2130 on this date, messman Pedro Martinez was walking along a passageway when he saw Appellant running toward

him. Appellant was intoxicated and wild in appearance. Martinez saw an instrument, "something like silver" (R. 13), in Appellant's right hand. As Appellant ran past, Martinez tried to move out of the way but he was struck in the right side by the instrument in Appellant's hand. Appellant continued running along the passageway. Martinez felt pain where he had been hit. There was a superficial cut about one inch long. The wound bled briefly and routine medical treatment was administered.

As a result of Appellant's uncontrolled behavior, he was apprehended and placed in custody until the morning of 3 April.

Appellant has no prior record.

BASES OF APPEAL

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

1. The Examiner erred in finding that Martinez was assaulted and battered on the basis of his written statement, attached to the logbook entry, that "he tried to stick me with a knife." This statement was overcome by Martinez's testimony that he was accidentally injured by Appellant.
2. The Examiner found that Appellant was guilty of an offense other than the one alleged. There is no evidence of the material elements of the offense charged.

In conclusion, it is submitted that the decision should be reversed and the charge dismissed.

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

OPINION

The specification charged alleges that Appellant wrongfully cut Martinez with a knife. The Examiner concluded that the specification was proved on the basis of his finding that Appellant assaulted and battered Martinez by wounding him with an instrument. The Examiner did not accept Martinez's written statement, that Appellant had a knife, because Martinez testified that he was not certain that the instrument was a knife. The Examiner did not specifically state in his decision that he accepted either Martinez's testimony that it was an "accident" or his written statement that Appellant "tried to stick me." This issue is not material to proof of the offense that Appellant wrongfully cut Martinez.

The evidence clearly establishes that Appellant was running wildly around the ship holding an instrument which could injure others as it did Martinez. The Official Logbook entry states that Appellant was berserk and threatening crew members with a knife. Appellant's reply to the logbook entry was that he did not remember what happened. The fact that Martinez was cut by the instrument

in Appellant's hand is established regardless of the minor nature of the wound and the kind of instrument used.

Accepting Appellant's contention that the injury to Martinez was an "accident" in the sense that Appellant did not inflict it intentionally, the cutting was still wrongful, and a battery, since it resulted from Appellant's reckless conduct in running down the passageway, carrying in his hand an instrument capable of injuring a passerby, in total disregard of the probable consequences of his conduct. The fact that Appellant may have been unaware of his acts, because of intoxication, will not excuse him.

There is proof of the elements of the offense alleged that Appellant cut Martinez and that this was the result of Appellant's wrongful conduct. Therefore, it is my opinion that the specification was proved in part. This offense justifies the order imposed by the Examiner.

ORDER

The order of the Examiner dated at New York, New York, on 19 May 1960, is AFFIRMED.

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

Signed at Washington, D. C., this 8th day of May 1961.