

In the Matter of Merchant Mariner's Document No. Z-895946-D3 and all other Seaman Documents

Issued to: Irino Abellira

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1249

Irino Abellira

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 25 July 1960, an Examiner of the United States Coast Guard at Long Beach, California suspended Appellant's seaman documents upon finding him guilty of misconduct. The two specifications found proved allege that while serving as an ordinary seaman on board the United States SSs PRESIDENT WILSON and MORMACSURF, respectively, under authority of the document above described, on 15 September 1956, Appellant wrongfully conspired to smuggle an alien into the United States; on 13 February 1960, Appellant assaulted and battered able seaman Charles Balian with his fists.

At the hearing, Appellant acted as his own counsel. Appellant entered a plea of guilty to the conspiracy specification and not guilty to the other one.

After considering the evidence, the Examiner rendered the decision in which he concluded that the charge and two specifications had been proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of four months plus twelve months on twenty-four months' probation.

Appellant has no prior record.

On appeal, it is urged that the findings are without legal basis and contrary to the evidence; the order is excessive.

OPINION

The Examiner accepted Appellant's testimony that Balian spit on Appellant and brandished a paint roller before Appellant struck Balian. But since the evidence shows that Appellant battered Balian to such an extent that he was taken to a hospital for treatment and placed on light duties until he left the ship about 3 weeks later, I agree with the Examiner that Appellant used force far in excess of that which was required to repel the attack by Balian. This is emphasized by the fact that Appellant was a professional boxer.

In addition to Appellant's plea of guilty, there is evidence in the record to support the allegation of conspiring to smuggle.

Considering the nature of these two offenses, the order imposed was lenient rather than excessive.

The record does not support the contentions on appeal in any respect.

ORDER

The order of the Examiner dated at Long Beach, California, on 25 July 1960, is AFFIRMED.

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

Signed at Washington, D.C., this 22nd day of June 1961.