

In the Matter of License No. 173022 and all other Seaman Documents
Issued to: JOHN D. VAN TESLAAR

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1258

JOHN D. VAN TESLAAR

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 12 March 1959, an Examiner of the United States Coast Guard at New York, New York admonished Appellant upon finding him guilty of misconduct. The specification found proved alleges that while serving as Second Assistant Engineer on board the United States SS STONY POINT under authority of the license above described, on 20 June 1953, Appellant wrongfully addresses the ship's Chief Mate with insulting language. The part of the original specification alleging the use of threatening language and two other specifications alleging offenses on the same voyage were found not proved by the Examiner.

At the hearing which began on 17 November 1955, Appellant was represented by counsel. On behalf of Appellant, counsel entered a plea of not guilty to the charge and each specification.

With respect to the partial specification found proved, the Investigating Officer introduced in evidence the testimony of the Chief Mate taken by oral deposition on 18 September 1958 and an entry in the ship's Official Logbook.

The Chief Mate stated that, for "no reason at all", he was addressed by Appellant with very insulting language. (The words which the Chief Mate said were used may undoubtedly be classified as "insulting".) This incident occurred in the officer's saloon while the ship was at sea.

The logbook entry states that these insults were for "no apparent reason". This entry contains no reply by Appellant who claims that he did not know about it until three years later.

In defense, Appellant testified that when he criticized the Chief Mate for using vulgar language during a meal, the Mate became very angry, screamed at Appellant incoherently, and threatened to knock him down.

At the end of the hearing, the Examiner stated that after considering this testimony, he was satisfied that Appellant had directed insulting language to the Chief Mate. This is denied on appeal from the order admonishing Appellant.

Appellant has no prior record.

OPINION

Apparently, there were other officers and a messman in the saloon at the time of this incident but no testimony by other eyewitnesses was presented at the hearing.

There is evidence in the record that there was considerable dissension and friction on the ship during this voyage while she was operating between the Persian Gulf and Japan.

Without questioning the integrity of the Chief Mate, there is the possibility that his recollection as to the words used by Appellant was not accurate when the Chief Mate testified more than five years later. Also, in view of the strained conditions on the ship, it is conceivable that Appellant used language which had become common parlance on the ship or that he retorted in kind to the Chief Mate. In either of the latter two cases, it would be harsh to decide that only Appellant's conduct was "wrongful." Alternatively, it is difficult to understand why Appellant would have insulted the Chief Mate for "no reason at all " as stated by the Chief Mate.

The record fails to explain satisfactorily the excessive lapse of time between this alleged offense of a minor nature and the completion of the hearing. This delay casts a reflection upon the reliability of the Chief Mate's testimony which is uncorroborated except for a log entry based on what the Mate told the Master. There is no indication that Appellant was given an opportunity to reply to this entry when it was made. For these reasons, particularly the first two, the charge and specification are dismissed.

ORDER

The order of the Examiner dated at New York, New York, on 12 March 1959, is ~~VIACATED~~ **VACATED**.

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

Signed at Washington, D. C., this 15th day of August, 1961.