

In the Matter of Merchant Mariner's Document Z-1072173  
and All Other Seaman Documents  
Issued to: HOWARD LOVELETTE, Jr.

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1275

HOWARD LOVELETTE, Jr.

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 16 March 1961, an Examiner of the United States Coast Guard at New Orleans, Louisiana revoked Appellant's seaman documents upon finding him guilty of misconduct. The two specifications found proved allege that while serving as a messman on board the United States SS STEEL VENDOR under authority of the document above described, on 19 February 1960, Appellant wrongfully entered two staterooms of passengers and molested a female passenger.

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

The Investigating Officer introduced in evidence the testimony of the ship's Master as well as the depositions of Dr. and Mrs. Charles S. Paine which were taken in India.

In defense, Appellant testified that, for several hours prior to the time of alleged offenses, he was drinking gin and orange juice until he had no recollection of what he was doing.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and two specifications had been proved. The Examiner then entered an order revoking all documents issued to Appellant.

FINDINGS OF FACT

On 19 February 1960, Appellant was serving as a messman on board the United States SS STEEL VENDOR and acting under authority of his document while the ship was in the port of Karachi, Pakistan.

About 0400 on this date, Appellant was intoxicated when, without authority to do so, he entered the passenger stateroom of Dr. and Mrs. Charles S. Paine. Dr. Paine was asleep in the lower bunk and his wife was asleep in the upper bunk. Mrs. Paine awoke

and saw Appellant standing by the bunks with his hand on her bunk. When she stirred, Appellant left the room and Mrs. Paine called, her husband. Since they could see Appellant standing outside the porthole apparently listening, they remained quiet until after Appellant moved out of sight. Dr. Paine then went into the adjoining stateroom where his three young daughters were sleeping. Appellant was standing between the girls' bunks and left the room when he saw Dr. Paine. The latter reported this to the Master later in the morning.

Appellant has no prior record.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the specification alleging molestation should be dismissed because Appellant did not touch Mrs. Paine or intend to do any harm.

Appellant's only offense was to wander into the two staterooms while so intoxicated that he could not remember anything. Under these circumstances and since this is Appellant's only livelihood, it is respectfully requested that the unduly harsh order of revocation be modified to probation for a few years.

#### OPINION

I do not agree that the specification alleging molestation should be dismissed despite the fact that Mrs. Paine, in her deposition, did not state that Appellant touched her or had his hand under the covers. Mrs. Paine testified that Appellant was "standing by our bunks with his hand on my bed." If Appellant was as drunk as he claims, the placing of his hand on the bunk should not be construed as substantial evidence of an intent to physically molest or to make improper advances toward Mrs. Paine, particularly when her husband was in the lower bunk. Since the Examiner did not find, as a matter of credibility, that Appellant was not as intoxicated as he claims, his testimony on this point will not be rejected at this stage. Nevertheless, intoxication is no excuse for a crew member's invasion of a passenger's right to personal privacy. For support of this proposition that passengers on vessels are entitled to protection, against the invasion of their privacy as well as protection against all personal rudeness, see Chamberlain V. Chandler (1823), Fed. Cas. No. 2575; Nieto V. Clark (1858), Fed. Cas. No. 10,262.

The depositions of the husband and wife indicate that Appellant left one stateroom, went out on the boat deck, and listened by the porthole of the same stateroom before entering the other stateroom. This is sufficient circumstantial evidence of a substantial nature to establish some element of deliberateness in Appellant's conduct regardless of how drunk he was. Consequently, when Mrs. Paine awoke and saw Appellant in the room, she was molested at least to the extent that she was annoyed, disturbed or bothered by this unjustifiable interference with her personal privacy. It is not material that Appellant might have intended only to enter the children's room and made a mistake as a result of confusion caused by intoxication. Therefore, the specification alleging molestation is

supported by substantial evidence and constitutes an offense in addition to merely entering a passenger's stateroom. See Commandant's Appeal Decision, No. 709 for a case with similar circumstances and specifications.

Although the conclusion that both specifications were proved is upheld, it is my opinion that, under the particular facts of this case, the order should be modified to an outright suspension and a probationary suspension.

### ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 16 March 1961, is modified to provide that Merchant Mariner's Document No. Z-1072173, and all other documents issued to Appellant by the United States Coast Guard or its predecessor authority, are suspended outright for a period of six (6) months. Appellant's documents are further suspended for an additional six (6) months which shall not become effective provided no charge under R. S. 4450, as amended (46 U.S.C. 239), is proved against Appellant for acts committed during the period of outright suspension or within twelve (12) months of the termination of the outright suspension.

If this probation is violated, the six months's suspension for which probation is granted will become effective with respect to all documents here involved, and also any documents subsequently issued to Appellant, at such time as directed by the Coast Guard Hearing Examiner who finds Appellant guilty of a later offense. This suspension may be a part of the order which is entered by such Hearing Examiner.

As so MODIFIED, said order is AFFIRMED.

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

Signed at Washington, D. C., this 1st day of December 1961.