

In the Matter of Merchant Mariner's Document No. Z-376190-D2 and all other Seaman Documents

Issued to: JOSEPH PFEIFFER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1287

JOSEPH PFEIFFER

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 20 March 1961, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for two months on twelve months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as chief electrician on board the United States SS PRESIDENT GRANT under authority of the document above described, on 5 March 1961, Appellant wrongfully created a disturbance.

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 the Chief Mate and Chief Engineer as well as a certified copy of an entry in the Official Logbook referring to the alleged offense.

Appellant's testimony that he was attacked twice by fireman-watertender Smith is corroborated by the stipulated testimony of two other members of the crew. Appellant also testified that after the second attack in his room he was upset and thought Smith would come after Appellant again if he did not get Smith. Appellant stated that he then calmed down and did not use any violence against the Chief Engineer.

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 two months on twelve months' probation.

FINDINGS OF FACT

On 5 March 1961, Appellant was serving as a chief electrician on board the United States SS PRESIDENT GRANT and acting under authority of his document while the ship was in port of Baltimore, Maryland.

When Appellant was returning to the ship on this date, fireman-watertender Smith started a fight and both seamen fell into the water from the dock near their ship. They were pulled out and ordered by the Chief Mate to go to their rooms on the ship. Appellant was in his room preparing to take a shower when he was attacked from behind by Smith whose room was on the deck below. The Chief Engineer and Chief Mate were attracted by the noise, went to Appellant's room, and separated the two seamen. The Chief Mate took Smith to his room and shackled him to a bunk with handcuffs. The Chief Engineer remained with Appellant in his room.

While the Chief was absent for several minute, Appellant was very angry. He used loud and threatening language directed against Smith. Appellant shouted that he was going below to finish the fight and that he would not obey the Chief Engineer's order to stay in his room; but Appellant did not leave his room although he pushed against the Chief Engineer who was blocking the doorway. Appellant could easily have forced his way past Chief Engineer. Appellant is a husky young man while the Chief Engineer is an older man with a slight build. Appellant was still in an angry mood when the Chief Mate returned, so he obtained another pair of handcuffs and secured Appellant to his bunk. Appellant did not resist while being handcuffed. The Chief Mate stated that his intention was to prevent Appellant from going below to attack Smith. Appellant was released in about thirty minutes and kept his word not to renew the fight.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that Appellant's conduct was justified by the two unprovoked attacks by Smith; the testimony of the two Government witness is contradictory; the decision sets up an impossible standard of saintliness for ship's personnel; this matter should be dismissed.

APPEARANCE: Julius J. Rosen, Esquire, of New York City, Counsel.

OPINION

The conclusion that, after Smith left, Appellant wrongfully created a disturbance is built around false premise that Appellant attempted to carry out his threat to go below to get Smith but was physically prevented by the Chief Engineer from doing so. On the contrary, the evidence shows that despite Appellant's loud and unruly language, he did obey the Chief Engineer's order not to leave the room. The Chief Engineer admitted that he could not have attacked Appellant if he had really tried to force his way out of the room R. 33). Appellant's submission to the authority of the Chief Engineer negates the latter's testimony that Appellant acted like a maniac (R. 32).

Contrary to the Chief Mate's testimony (R. 11), the Examiner found that Appellant was still in his room when the Chief Mate returned from Smith's room. It is clear from the testimony of the Chief Engineer and Appellant that he never left his room (R. 28, 50). The excuse given by the Chief Mate for handcuffing Appellant (R. 22) was obviously weak since, according to the Chief Mate's testimony, Appellant had quieted down to the extent that he did not resist when this was done (R.

21).

It is my opinion that Appellant's conduct was a reasonable sequel to the disturbance caused by Smith when he attacked Appellant in his own room. Appellant vented his anger with strong language but remained within the confines of his room while doing so and did not resort to violence (R. 33). It would be requiring too high a standard of conduct to place this type of behavior by an unlicensed crew member in the category of wrongfully creating a disturbance. By analogy, a common definition of a breach of peace is a disturbance of the public order by an act of violence or by any act and words likely to produce violence. 5 Words and Phrases, Cum. Supp. p. 158. Since no such elements are attributable to Appellant, I do not think the allegations are supported by substantial evidence.

The finding and conclusion that the specification was proved are reversed; the charge and specification are dismissed.

ORDER

The order of the Examiner dated at New York, New York, on 20 March 1961, is VACATED.

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

Signed at Washington, D.C., this 12th day of February 1962.