

In the Matter of Merchant Mariner's Document No. Z-445792-D1
and all other Seaman Documents
Issued to: Sabato S. Mancino

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1379

Sabato S. Mancino

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 September 1962, an Examiner of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved allege that while serving as an able seaman on board the United States SS NEVA WEST under authority of the document above described, on 24 July 1962, Appellant assaulted and battered able seaman Blair.

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 witnesses including able seaman Blair, and several documentary exhibits. The only evidence in defense was Appellant's testimony.

At the end of the hearing, the Examiner concluded that the charge and specification had been proved. He then entered an order suspending all documents, issued to Appellant, for a period of nine months outright plus six months on eighteen months' probation.

FINDINGS OF FACT

On 24 July 1962, Appellant was serving as an able seaman on board the United States SS NEVA WEST and acting under authority of his document while the ship was in the port of Southampton, England.

On this date, able seaman Blair had the 2000 to 2400 gangway watch. Appellant came on board about 2330 and asked Blair if he were the person who had changed the letters M-A-N in Appellant's name to the letters H-O-G on the bulletin board. Blair at first denied having done this and then admitted it. Appellant was

extremely angry and intended to fight Blair. Both seaman took off their coats. Appellant struck the first blow, with his fist, which knocked Blair to the deck unconscious and then kicked Appellant while he was completely helpless. Blair could only remember the first blow which cut him on the bridge of the nose and required eight stitches when he was hospitalized for three days following the fight. A pantryman was the only other person present at the gangway when the incident occurred.

Appellant's prior record consists of a suspension in 1947 for assault.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that this was a case of mutual combat since both seamen voluntarily started to fight. The fact that Blair provoked Appellant by writing the letters H-O-G over Appellant's name should be considered in mitigation and the nine months outright suspension modified to a probationary suspension.

APPEARANCE: Dodd, Hirsch, Barker and Meunier of New Orleans,
 Louisiana, by Harold J. Lamy, Esquire, of Counsel.

OPINION

Although both seamen took off their coats, the evidence clearly indicates that Appellant was the aggressor and that he knocked Blair unconscious before he made any attempt to hit Appellant. Since Blair had no choice in the matter; he did not voluntarily engage in the fight in the sense that he fully consented to it. Hence, Appellant was properly found guilty of assault and battery rather than mutual combat.

Appellant did not deny kicking Blair and implied that he was so angry and wary of the fact that Blair might be faking that he might have kicked him. The pantryman who was present testified very definitely that he was Appellant kick Blair while he was unconscious on the deck. The pantryman's testimony was accepted by the Examiner. This fact alone constituted an assault and battery by Appellant regardless of the voluntariness of the parties at the beginning.

The kicking of Blair while he was completely helpless was an aggravating circumstance which justifies the order imposed. This is true despite the provocation Blair caused with respect to Appellant's name. The latter factor was taken into consideration by the Examiner.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 12 September 1962, is AFFIRMED.

D. McG. Morrison
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D.C., this 11th date of March 1963.