

In the Matter of Merchant Mariner's Document No. Z-744444
Issued to: Marcel Clement

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1411

Marcel Clement

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 29 November 1962, an Examiner of the United States Coast Guard at New York, New York revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a Fireman and a Watertender on board the United States SS AFRICAN CRESCENT under authority of the document above described, on 24 November 1961. Appellant assaulted and stabbed a fellow crew member with a knife.

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

The Investigating Officer introduced in evidence the testimonies of the Third Assistant Engineer and the stabbed crew member.

In defense, Appellant offered in evidence his own testimony and several exhibits.

At the end of the hearing, the Examiner rendered a decision in which he concluded that the charge and specification had been proved.

FINDINGS OF FACT

On 24 November 1961, Appellant was serving as a Fireman and Watertender on board the United States SS AFRICAN CRESCENT and acting under authority of his document while the ship was in the port of Matadi, Republic of the Congo.

During the evening of that day, Appellant went ashore and went into a local barroom where he consumed at least four glasses of intoxicating beverages. At about 2350 Appellant returned to the vessel and met his roommate, Tyler, at the entrance to their room.

Tyler and Appellant both had the 2400 to 0400 engine room watch. An argument ensued during which Appellant struck Tyler with his fist and the latter retaliated by striking Appellant in the same manner. No further blows were exchanged and Tyler went to the engine room. Appellant reported there a few minutes later.

Tyler and the Third Assistant Engineer Litchfield were on the platform in the engine room engaged in conversation and drinking coffee and tea. Appellant approached Tyler and told him that he, Tyler, had hit him hard. Tyler answered that Appellant hit him first. Thereupon Appellant, who had been holding a small pocket knife in his hand, stabbed Tyler in the stomach. Litchfield saw the blade being retracted by Appellant and was attracted to this motion by the fact that Tyler's tee shirt, which had been hanging loosely, was pulled about five inches toward Appellant. After Litchfield ordered appellant to put his knife away and get back to the boiler room he noticed an increasing appearance of blood on Tyler's clothes and called the latter's attention to this. Tyler, after realizing that he had been stabbed, armed himself with a 16" Crescent wrench and inflicted severe injuries upon Appellant. Both Appellant and Tyler required hospital treatment ashore. Tyler sustained a puncture wound on the right side of his abdomen.

Appellant has no prior record.

BASES OF APPEAL

Appellant alleges on appeal:

1. That the order is excessive
2. That the findings and the order based thereon are against the evidence and contrary to the evidence.
3. That the weight of the reliable, probative, and substantial evidence does not support the findings and specification.
4. That substantial, prejudicial errors of law were made during the hearing and in the determination of the findings and the order entered thereon.

APPEARANCE: Standard, Weisberg, and Harolds by Sanford Konstadt, Esq. of New York, New York for Appellant.

OPINION

A review of the record does not sustain Appellant's fourth assignment of error and therefore is dismissed without further

discussion.

Litchfield, the only impartial witness present in the engine room at the time of the incident, testified that although he did not see the actual stabbing itself, he saw the knife blade being retracted by Appellant. He was attracted to this motion by the fact that Tyler's tee shirt, which had been hanging loosely over his trousers, was pulled several inches in Appellant's direction. Although neither Litchfield nor Tyler realized immediately that the latter had been stabbed, Litchfield noticed a few seconds later blood on Tyler's shirt and he mentioned this to Tyler, whereupon the latter armed himself with a 16" Crescent wrench and struck Appellant with it.

The Examiner, as trier of fact, accepted the testimonies of Litchfield and Tyler and rejected Appellant's testimony. His determinations in this respect will not be overturned unless they appear to be arbitrary or not supported by the evidence in the record. See Commandant's Appeal Decisions No. 1297, 1290, 1288, 1248 and 1241. The record before me does not justify a reversal of the Examiner's decision.

The order of revocation is not excessive in view of the seriousness of the offense. A merchant vessel of the United States is not a place for a crew member to settle his personal differences with a lethal weapon. It is quite clear from the record that the assault on Tyler was not justified. Therefore, regardless of the fact that Appellant had been a seaman for a considerable length of time and has no prior record, the order of the Examiner revoking his documents will be affirmed.

ORDER

The order of the Examiner dated at New York, New York on 29 November 1962 is AFFIRMED.

D. McG. Morrison

Signed at Washington, D. C., this 15th day of Aug. 1963.