In the Matter of Merchant Mariner's Document No. Z-374352 and all other Seaman Documents
Issued to: FRANK E. WILLIAMS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1431

FRANK E. WILLIAMS

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 20 June 1963, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for two months outright plus four months on twelve months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as an ordinary seaman on board the United States SS AMERICAN TRAPPER under authority of the document above described, on 22 April 1963, Appellant assaulted and battered Chief Cook Curry with a piece of wood.

At the hearing, Appellant voluntarily elected to act as his own counsel. Appellant entered a plea of guilty to the charge and specification with the explanation that he had acted in self-defense. The Examiner then changed the plea to not guilty.

The Investigating Officer introduced in evidence the testimony of the Chief Cook as well as depositions by tow other eyewitnesses to the incident in question.

In defense, Appellant testified under oath that he hit the Chief Cook with the piece of wood only after the cook reached for the knife which Appellant knew the cook was carrying.

FINDINGS OF FACT

On 22 April 1963, Appellant was serving as an ordinary seaman on the United States SS AMERICAN TRAPPER and acting under authority of his document while the ship was berthed in the port of London, England.

About 0745 on this date, Appellant was in the pantry washing a cup when Chief Cook Curry opened the refrigerator door and it struck Appellant in the back. An argument followed and the two

seamen agreed to settle the matter on the dock. The Chief Cook had a knife under his apron as he preceded Appellant toward the gangway and off the ship. Before leaving the ship, Appellant picked up a piece of wood approximately four feet by three inches by one inch.

On the dock, Curry threw a cup at Appellant which missed him as he ducked. Appellant then swung the piece of wood at Curry and it struck him on the left arm. After this, Curry drew out the knife which was under his apron and attempted to cut Appellant. Each managed to ward off the blows of the other until the Chief Cook put his knife away and returned to the ship ahead of Appellant.

At the top of the accommodation ladder there was another fight between the two seamen. Appellant was injured sufficiently to require hospitalization ashore until after the ship departed. The Chief Cook was slightly injured and remained on the ship.

Appellant has had no prior disciplinary record during twenty years of sea service.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the decision of the Examiner is against the weight of the credible evidence, in the form of Appellant's testimony, which shows that the Chief Cook was the aggressor with a lethal weapon and Appellant acted in self-defense. Appellant testified that Curry came to Appellant's room holding a knife, threatened to kill Appellant, and said, "Let's both go out to the dock"; Appellant picked up the piece of wood, while following Curry toward the gangway, in order to protect himself; and after Curry threw the cup at Appellant, he hit the cook with the piece of wood because appellant knew Curry had a knife with him even though he did not take it out until he was hit with the piece of wood. Appellant returned to the vessel with the piece of wood because he was in fear of further attack by the Chief Cook.

These factors were not pointed out to the Examiner since Appellant was not represented by counsel at the hearing.

In conclusion, it is requested that the decision of the Examiner be set aside or, in the alternative, that a new hearing be held.

APPEARANCE on appeal: Marvin Sherry, Esquire, of Brooklyn, New York, of Counsel.

OPINION

Appellant testified that each invited the other to go on the dock. Mutual agreement to do so is evident from this and the fact that Appellant willingly followed Chief Cook Curry off the ship.

This basic issue in this case is what happened on the dock. Later events at the top of the ladder are not material to this decision. The above findings of fact concerning the fight on the dock are based on the testimony contained in the depositions of the crane supervisor on the dock and the gangway security guard at the top of the accommodation ladder. Both of them testified very definitely that Curry was not holding the knife when he was hit with the piece of wood by Appellant. This is sufficient proof that Appellant was guilty of the alleged assault and battery. Even accepting Appellant's testimony that he did not hit Curry until he reached for the knife does not lead to a different result since Appellant knew Curry had the knife and yet voluntarily went on the dock to face whatever danger was to be encountered under the circumstances.

It would be highly unrealistic to conclude that Appellant was acting in self-defense when he left the comparative safety of the ship. There is no reason why Appellant could not have stopped following the Chief Cook, at least when they reached the top of the ladder to leave the ship, and located one of the ship's officers as Curry continued down the ladder to the dock. This is what the gangway security guard did after he saw Appellant hit Curry with the piece of wood. The guard contacted the Third Mate who was eating breakfast. Hence, it seems clear that Appellant was intent on settling the matter on the dock and picked up the piece of wood to use in fighting the cook rather than for the purpose of protecting himself.

The Chief Cook testified briefly at the hearing but his version of the events on the dock was withheld at the insistence of Counsel due to the fact that a companion case was pending against Curry when he testified at the hearing. This is not important in view of the testimony given by the two disinterested witnesses.

Appellant was not prejudiced by his lack of counsel at the hearing. The Examiner fully informed Appellant of his rights and protected his interests throughout the hearing as evidenced by the change of plea required by the Examiner and his repeated intervention on behalf of Appellant with respect to the preparation of the interrogatories for the taking of the two depositions.

There is no reason why the Examiner's decision should be set aside or a new hearing granted. The order which was imposed by the Examiner after consideration of the fact that Appellant has no

prior record, is fair and it will be sustained.

ORDER

The order of the Examiner dated at New York, New York, on 20 June 1963, is AFFIRMED.

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

Signed at Washington, D. C., this 2nd day of December 1963.