

In The Matter of License No. 326576 Merchant Mariner's Document  
No.Z-53960 and all other Seaman Documents  
Issued to: THOMAS P. MOREY

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1436

THOMAS P. MOREY

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 1 April 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 two specifications found proved allege that while serving as a Third Assistant Engineer on board the United States SS EAGLE TRANSPORTER under authority of the license above described, on 2 November 1961, Appellant assaulted and battered Chief Cook Ray; Appellant wrongfully failed to obey a lawful order of the Master to stay out of the galley.

At the hearing which began on 8 February 1962, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and both specifications.

The Investigating Officer introduced in evidence the testimony of the ship's Master and an entry in the Official Logbook of the ship as well as the depositions of the Chief Cook and the Chief Steward.

In defense, Appellant offered in evidence his testimony and the deposition of the Third Mate Webb.

Numerous adjournments for the purpose of obtaining depositions delayed the hearing for more than a year.

FINDINGS OF FACT

On 2 November 1961, Appellant was serving as a Third Assistant Engineer on board the United States SS EAGLE TRANSPORTER and acting under authority of his license while the ship was in the port of Yokosuka, Japan.

About 0745 on this date, there was a brief fight or scuffle in the galley between Appellant and Chief Cook Ray. Second Cook Jones was present at the time. There were no weapons used. The Chief Cook was not injured but Appellant received an injury which caused his mouth to bleed. Some of the blood got on the jacket worn by the Chief Cook. Chief Steward Little was called to the galley from his room. Then he went to the bridge and reported to the Master that Appellant and the Chief Cook had been fighting.

Appellant had left the galley and gone to his room by the time the Master and Little reached the galley. The Master went to Appellant's room and ordered him to stay out of the galley. Shortly thereafter, Appellant again went to the galley. This was reported to the Master by the Chief Steward. Appellant left the galley before there was any further difficulty.

The Official Logbook entry, which was prepared by the Master, states that Appellant was "logged one days pay (\$22.32) for fighting aboard ship".

Appellant has no prior record except on admonition by an Investigating Officer in 1954. Appellant has been going to sea since 1934 and obtained his original engineer's license in 1943.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that there are such sharp and irreconcilable conflicts in the testimony with respect to both specifications that the credible evidence does not support findings that Appellant committed the alleged offenses.

Point I. Only Appellant and Chief Cook Ray testified concerning the alleged assault and battery. Ray's testimony is not credible because the Examiner found, based on the testimony of Appellant and Third Mate Webb, that Ray had assaulted Appellant on a prior occasion although this was strenuously denied by Ray. There was no attempt to obtain the testimony of the Second Cook who was an eyewitness to the incident.

Point II. The Master's testimony that he ordered Appellant to "stay out of the galley" is not corroborated and it is contradicted by the Chief Steward's testimony that the Master told Appellant to "get out of the galley". The uncorroborated testimony of the Master should be rejected because he was biased in favor of Ray and against Appellant. The Master admitted that it had been his idea to take up a collection to buy an \$84 wrist watch for Chief Cook Ray and that the Master did not attempt to get Appellant's version of the incident prior to preparing the logbook entry holding Appellant alone responsible for the fight.

Point III. The Examiner denied Appellant the right to due process of law by allowing him only two days to prepare his defense; by denying Appellant the right to object to testimony taken by deposition; and by asking questions about subsequent loggings by the Master against Appellant.

Point IV. The order is excessive under the circumstances since Appellant is respected seaman with no record of violence.

In conclusion, it is requested that the decision and order be set aside and the charge of misconduct dismissed or, in the alternative, that the order be reduced.

APPEARANCE: Pressman and Scribner, of New York City by Ned R. Phillips, Esquire, of Counsel.

#### OPINION

On the basis of the evidence in the record, it is my opinion that there is not substantial evidence to prove that Appellant assaulted and battered Chief Cook Ray but there is substantial evidence to support the conclusion that Appellant wrongfully failed to obey a lawful order of the Master to stay out of the galley. Numerous conflicts in the testimony are manifest from the following summary of what was testified to by the three Government witnesses and the two defense witnesses.

The Master testified, at the hearing, that he went to the galley when informed by Little that Appellant and the Chief Cook were fighting; when the Master got to the galley, the Chief Cook was on the ladder coming up to the galley from the storeroom below and he had blood on his jacket; since Appellant was not in the galley, the Master and the Chief Steward went to Appellant's room and the Master told him to stay out of the galley; the Master did not question either seaman about the incident at this time and he did not see Appellant again until he was given an opportunity to reply to the logbook entry. The Master also stated that he did not go below when the Chief Steward reported that Appellant had returned to the galley. (The logbook entry states that the Master sent the Chief Mate to order Appellant out of the galley but that he was not there when the Chief Mate arrived.)

Chief Cook Ray testified, by deposition, that he did not have an earlier fight with Appellant or strike him on a prior occasion; in the galley, Ray's back was turned when he was struck with a fist behind his right ear by Appellant; Second Cook Jones and Chief Steward Little were definitely in the galley at the time; Ray did

not strike Appellant but he bled from the mouth when grabbed by Ray and some of the blood got on the Chief Cook's jacket; Ray was not injured and continued working without leaving the galley; the Second Cook took Appellant out of the galley but he later returned and asked the Chief Cook not to press charges; the Master did not come to the alley but sent for both seaman and they went together to explain the matter to the Master.

Chief Steward Little testified, by deposition, that he was in his room when informed of the fight; Appellant was bleeding when Little reached the galley; Appellant would not leave the galley until Little returned with the Master and he ordered Appellant to "get out of the galley"; Appellant later returned to the galley.

Appellant testified, at the hearing, that Ray had hit Appellant with his fist previous to this incident in the galley and in the presence of others including the Second Cook. Appellant also stated that, on the morning of 2 November, he was in his room when he twice saw somebody at the door wearing a white apron; since the person left when Appellant asked what he wanted, Appellant went to the galley and demanded an explanation; Chief Cook Ray struck Appellant and then he was held by Ray and the Second Cook until Appellant left the galley; neither the Master nor Chief Steward Little were in the galley before Appellant left there; Appellant went to his room and bathed his mouth; the Master arrived with Little and told Appellant that he would be discharged from the ship but he did not tell Appellant until the next day to stay out of the galley; later on 2 November, Appellant went to the galley to straighten the matter out with the cooks but they would not talk with Appellant.

Third Mate Webb testified, by deposition, that on a prior occasion Ray had hit Appellant in the face and the Second Cook had stepped between them before any more blows were struck.

Although the logbook entry prepared by the Master states that "the Steward advised me that 3rd Asst. Engineer T.P. Morey had struck the Chief Cook," the accuracy of this is not borne out by the testimony of the Master or Chief Steward Little. The Master testified that Little reported a fight between the two seamen. Little had no personal knowledge as to whether Appellant hit the Chief Cook because Little testified that he was in his room when he was told that there was a fight. The Master could not have inadvertently written this statement in the logbook as the result of an incorrect impression gained from a proper investigation of the incident because the Master admitted that Appellant was not given an opportunity to present his version of the fight until after the logbook entry had been prepared. Consequently, there is

no rationale for this incorrect statement which is contained in the logbook entry and it will be given no further consideration.

The testimony of Chief Cook Ray and Appellant are in direct conflict as to which one hit the other in the galley. The testimony of neither is corroborated by other testimony as to this. The Examiner found that Appellant struck Ray from behind simply because, so far as is expressed in the Examiner's decision, the "testimony of Ray is definite on this point." No supporting reason is given and this cannot be construed as a determination of credibility based on the observation of the witness since Ray's testimony was taken by deposition. Ordinarily, the Examiner's findings will be sustained on appeal when they are reached by concluding that the testimony of a witness is truthful, even though the word of the same witness is rejected on another point. Commandant's Appeal Decisions Nos. 1391 and 1405. But considering the lack of corroboration and that Ray's testimony was by deposition, it is my opinion that his testimony is not credible on this point, and therefore not substantial evidence, since it not only conflicts with the physical facts but also because other portions of Ray's testimony are contradicted by different parts of the testimony given by all the other witnesses.

The physical facts, as generally agreed upon by the witnesses, are that Appellant was injured to such an extent that a noticeable amount of his blood got on the jacket worn by Ray; and that Ray was not injured at all. The latter seems to be a somewhat improbable result if Appellant struck Ray from behind, without warning, as he claims. It is at least equally improbable that Appellant would have been so injured if he had not been the recipient of the only blow struck. (Ray and Appellant agree that there was only one blow.) Ray's weak explanation is that Appellant might have been injured when Ray grabbed Appellant and hugged him.

In addition to the direct conflict with Appellant's testimony as to the alleged assault, Ray's testimony is contradicted in other respects. In the face of Ray's repeated denial, the Examiner accepted Appellant's and Webb's testimony that Ray struck Appellant on an earlier occasion. The Examiner also believed, contrary to Ray's testimony, the Master's testimony that he was in the galley soon after he was informed by Little of the fight. The Examiner did not mention the conflicting testimony by the Master and Ray wherein the Master testified that Ray was on a ladder leading to the galley when the Master arrived there and Ray said that he did not leave the galley after the fight. Also, Ray testified that he and Appellant went to explain the matter to the Master but the latter said that he did not see Appellant between the time the Master went to Appellant's room and when he was given an opportunity to reply to the logbook entry. Concerning the Chief

Steward's testimony, he flatly denied that he was in the galley when the fight occurred although Ray testified as to the Chief Steward's presence even more definitely than that he was struck from behind by Appellant. Ray submitted a diagram of the galley showing location of the Chief Steward, Second Cook and himself when he allegedly was hit by Appellant. The Examiner did not mention this conflict in the evidence.

It is noted from the testimony that the Second Cook was present at the time of the alleged assault by Appellant and also on the earlier occasion when it is claimed by Appellant and Third Mate Webb that Appellant was struck by Ray. It is unfortunate that no attempt was made by either the Government or the defense to obtain the testimony of the Second Cook. Presumably, his testimony would have corroborated that of either the Appellant or Chief Cook Ray as to both the incident on 2 November and the earlier one.

For the reasons indicated in the above discussion, the finding that Appellant assaulted and battered the Chief Cook is set aside and specification is dismissed. See Commandant's Appeal Decision No. 956.

The Examiner's finding, that on 2 November Appellant wrongfully failed to obey a lawful order of the Master to stay out of the galley, is affirmed. Appellant denies having been given such an order until the following day. But in addition to the fact that the Examiner had the advantage of observing the Master testify that the above order was given to Appellant on 2 November in his room, the Master's testimony is substantially corroborated by that of the Chief Steward although the latter stated that Appellant was still in the galley when the order was given and that it was to "get out of the galley" rather than "to stay out". I do not think that the discrepancy as to the location where the order was given should be considered to nullify the Chief Steward's testimony on this point. The difference in wording is not material since, under the circumstances, the only reasonable interpretation of the Chief Steward's version is that the Master ordered Appellant to get out of the galley and not to return there. In any event, the Examiner determined, on the basis of his observation of the Master while testifying, that the order was to "stay out of the galley" and that it was directed to Appellant in his room; and the logbook entry is consistent with the Master's testimony in this respect.

As pointed out on appeal, there is some evidence that the Master favored the Chief Cook and was prejudiced against Appellant. Nevertheless, it is my opinion that there is not a showing of strong enough bias against Appellant on which to decide that the otherwise credible and substantial evidence in support of the

alleged disobedience is not sufficient. In the absence of very strong evidence to the contrary, the Master of a ship must be presumed to be at least reasonably accurate in such matters as this which pertain to the management of the ship regardless of his personal feelings toward members of the crew. The propriety of such a presumption is borne out in this case relative to the other specification since the logbook entry does not state that Appellant was fined for assault and battery but for "fighting aboard ship".

Appellant's contentions that he was denied the right to due process of law are considered to be without merit. The record does not indicate that Appellant had insufficient time to prepare his defense in two days. The other two contentions of this nature are moot because they pertain to the specification which has been dismissed.

The order of suspension will be modified due to the dismissal of one specification and the good record Appellant has maintained during many years service on merchant vessels of the United States.

ORDER

The order of the Examiner dated at New York, New York, on 1 April 1963, is modified to provide for a suspension of one (1) month outright plus two (2) months on twelve months probation.

As so MODIFIED, the order is AFFIRMED.

E. J. Roland  
Admiral, UNITED STATES COAST GUARD  
Commandant

Signed at Washington, D. C., this 13th day of December 1963.