

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-236581 AND ALL
OTHER SEAMAN DOCUMENTS

Issued to: JOSE ANTONIO FUENTES

DECISION OF THE COMMANDANT

1507

JOSE ANTONIO FUENTES

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 12 November 1964, an Examiner of the United States Coast Guard at Baltimore, Maryland suspended Appellant's seaman documents for two months on nine months' probation upon finding him guilty of misconduct. The two specifications found proved allege that while serving as Chief Steward on board the SS JOHN F. SHEA under authority of the document above described, on or about 28 August 1964, Appellant wrongfully engaged in mutual combat with the Second Electrician, George Stamoulis; and Appellant wrongfully created a disturbance.

The hearing on 15 October 1964 was held in joinder with that of Electrician Stamoulis who was also found guilty of misconduct as a result of the same sequence of events. A full explanation of the nature of the proceedings, the rights of the persons charged and the possible results of the hearing was given by the Examiner. The Appellant elected not to be represented by counsel. A plea of not guilty was entered to the charge and each specification.

The Investigating Officer introduced in evidence the testimony of the First Assistant Engineer, the Third Cook, and Second Electrician Stamoulis. Appellant gave testimony in which he denied the allegations. No other testimony or argument was presented in his behalf. At the conclusion of the hearing, all parties waived the opportunity to submit proposed findings and conclusions.

FINDINGS OF FACT

On 28 August 1964, Appellant was serving as Chief Steward on board the United States SS JOHN F. SHEA and acting under authority of his Merchant Mariner's Document No. Z-236581 while the ship was in the port of Massawa, Eritrea, Ethiopia.

At about 0930, the Appellant was dressing to go ashore and refused to issue supplies to a wiper performing sanitary duties. Second Electrician Stamoulis, who was the engine room delegate, protested to Appellant and there ensued an argument during which both parties resorted to obscene name calling which continued to the gangway. Challenges were exchanged and some pushing occurred

but the Master intervened and ordered the Second Electrician back to work.

A short time later, Appellant and the Second Electrician met below decks. The argument resumed and, by mutual agreement, they started to fight. When the First Assistant Engineer came upon the scene, he found Appellant on the deck, being struck by the Second Electrician. The first Assistant Engineer stopped the fight.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the decision should "be reversed and the Charge and Specifications dismissed on the basis of clear error in findings of fact and conclusions on this record."

APPEARANCE: William E. Fuller, Esquire, of New York, New York, Counsel

OPINION

On the bases of the Appellant's and Stamoulis' testimony as to their own conduct which led to the incident in the vicinity of the gangway, both persons substantially admitted their part in creating a disturbance.

As to the other specification, there was no testimony by an independent eyewitness to the start of the fight. Therefore, this issue had to be decided on the basis of the testimony of the Appellant and Stamoulis. The Appellant contends that he was attacked by Stamoulis who butted him from behind (R. 20). Stamoulis testified that the fight started when Appellant swung at him (R. 14). In evaluating the testimony, the Examiner determined that Stamoulis' version was the more credible. Having had the advantage of observing the witnesses on the stand, their demeanor and attitude, unless his findings were clearly in error, this determination may not be rejected.

In reference to his predisposition concerning the fight, the Appellant admitted that he was willing to engage in mutual combat with Stamoulis (R. 19). By stating that he was "aware of the fact that I could take him on," Appellant contradicts his other testimony that he was physically debilitated and afraid of combat. It, in fact, is an admission of a frame of mind which lends support to the finding that the specification was proved.

On appeal, there is no reference to other evidence which, if it had been presented at the hearing, would establish that Appellant was not guilty of the offense of mutual combat. Most of the matter submitted in the brief on appeal indicates that the Appellant was badly beaten in the fight. However true this may be, it does not preclude the conclusion, based on the evidence in the record, that the Appellant was guilty of engaging in mutual combat by willingly starting to fight.

An additional issue, raised in the brief on appeal, concerns whether there was prejudicial error in disclosing the Appellant's prior record of assault before the Examiner made his conclusions as to

the charge and specifications, in violation of 46 C.F.R. 137.20-160(a). Examination of the record discloses this testimony was elicited in rebuttal to the Appellant's contention that he had always obeyed the law (R. 24). As provided by 46 C.F.R. 137.20-118(c)(1), a prior disciplinary record may be used to impeach credibility. Once this had been accomplished, the continued questioning concerning this prior offense should not have been allowed, but does not constitute sufficient prejudice to change the outcome of this appeal.

CONCLUSION

Although Stamoulis was the aggressor at the conclusion of the fight, it appears from the evidence that the Appellant was at least equally aggressive at its inception and, therefore, was guilty of mutual combat.

ORDER

The order of the Examiner dated at Baltimore, Maryland, on 12 November 1964 Is **AFFIRMED**.

W. D. Shields
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 8th day of June 1965.

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