

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1181949-D1 AND
ALL OTHER SEAMAN DOCUMENTS

Issued to: Manual Jimenez Lopez

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1636

Manual Jimenez Lopez

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 2 June 1965, and Examiner of the United States Coast Guard at Port Arthur, Texas, suspended Appellant's seaman documents for six months outright. The specifications found proved allege that while serving as a crew messman on board the United States SS COWANESQUE under authority of the document above described, on or about 8 May 1965, Appellant did wrongfully assault a member of the crew, one George Howard, with a dangerous weapon, to wit: a pocket knife, and did wrongfully assault one George Howard with a dangerous weapon, to wit: a spatula. A third specification alleging assault with a dangerous weapon, to wit: a galley knife, was found not proved.

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

The Investigating Officer introduced in evidence a certified extract from the Shipping Articles for the SS COWANESQUE for the voyage commencing 16 April 1965 and terminating 28 May 1965 on which Appellant was a crew member. He also introduced the Official Log Book of the vessel containing allegations of the specifications and statements of the person charged, the victim, and three witnesses. Government witnesses who testified at the hearing included George Howard and five crew members who were eyewitnesses.

Appellant did not offer any evidence or call any witnesses in defense, and did not testify in his own behalf.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and two specifications had been proved. The Examiner then served a written order on Appellant suspending all documents, issued to Appellant, for a period of six months outright.

The entire decision was served on 7 June 1965. Appeal was timely filed on 24 June 1965.

FINDINGS OF FACT

On or about 8 May 1965, Appellant was serving as a crew messman on board the United States SS COWANESQUE and acting under authority of his document while the ship was in the port of Aruba, N.A. At the breakfast table on the morning of 8 May 1965, crew member George Howard made some remarks about Appellant's actions in taking off his white coat, exposing his T-shirt, and patting himself under the arms while serving breakfast. Appellant took offense at Howard's remarks. At supper time, Appellant entered the mess hall and began to rave and curse Howard. He then left the hall, went into the pantry and returned, holding a large spatula at his side and threatening to pull Howard's head off. The saloon messman led him from the mess hall, and in the meantime, Howard moved around the table and sat down to eat. Appellant then returned carrying an open pocket knife which he pointed toward Howard and threatened to cut him up. A crew member seated at the table intervened, and the incident was terminated. Howard did not at any time during this incident attempt to physically attack Appellant.

Appellant has no prior record of misconduct.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that a conspiracy existed against Appellant instigated by George Howard and as a result of this conspiracy, perjured testimony was given by Howard and other witnesses at the hearing. In support of this allegation, four sworn statements were submitted. One of the statements, signed by Paul Rhinehart, a crew member who testified at the hearing, is to the effect that after the hearing, he was apprised of a plot to get Appellant in trouble at the hearing, that Appellant did not attack anyone or attempt to do so, and that he believes Appellant to be innocent of the charges brought against him. The remaining statements, executed by persons who were not members of the crew on the voyage in question, allege only that the crew member stated in their presence that a conspiracy or plot existed to get Appellant in trouble and in reality he was innocent of the charges.

APPEARANCE: Mr. Charlie Walker, NMU Patrolman, at the hearing, and Appellant pro se on appeal

OPINION

The witnesses who testified at the hearing agreed that Appellant on two occasions threatened to cut Howard with a dangerous weapon; first, a spatula, described as long and flat edged on both sides, and second, an open pocket knife. Appellant's defense, as entered in the Official Log Book and in his signed statement attached, was that Howard called him dirty names and struck him three times in his hands, so he picked up a spatula in anger to defend himself. Appellant did not testify in his own behalf, but cross examination of the witnesses by Appellant and the NMU Patrolman did not result in discrediting any of the testimony on which the Examiner relied. The contents of Rhinehart's statement with respect to the alleged conspiracy are hearsay only, and the statements purporting to

support Rhinehart's allegations have no value as evidence of the alleged conspiracy.

CONCLUSION

It is concluded that the findings of fact are supported by substantial evidence, and in view of the seriousness of the offenses, the order of the Examiner is considered to be justified.

ORDER

The order of the Examiner dated at Port Arthur, Texas, on 2 June 1965 is AFFIRMED.

W. J. Smith
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D.C., this 8th day of June 1967.

INDEX

ASSAULT (no battery)
dangerous weapon

HEARSAY EVIDENCE
disregard of

WEAPON, DANGEROUS
spatula