

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-930650 AND ALL
OTHER SEAMAN'S DOCUMENTS

Issued to: Richard J. Mackensworth

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1652

Richard J. Mackensworth

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 19 July 1966, an Examiner of the United States Coast Guard at Chicago, Illinois suspended Appellant's seaman's documents for 6 months on 18 months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as a boatswain on board the United States SS EXTAVIA under authority of the document above described, on or about 26 June 1966, Appellant failed to perform his duty, battered the second mate, and destroyed ship's property.

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

The Investigating Officer introduced in evidence the testimony of the second mate and the master, and the official log book of the vessel.

In defense, Appellant offered in evidence the testimony of an Ordinary Seaman, and his own account of the events that evening.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specifications had been proved. The Examiner then served a written order on Appellant suspending all documents issued to him for a period of 6 months on 18 months' probation.

The entire decision and order was served on 28 July 1966. Appeal was timely filed on 19 August 1966.

FINDINGS OF FACT

On 26 June 1966, among other dates, Appellant was serving as a boatswain on board the United States SS EXTAVIA and acting under authority of his document while the ship was in the port of Milwaukee, Wisconsin.

Appellant and Second Officer Warren had a disagreement the evening of the 25th over the effect of Mr. Warren's order to secure the hatches for sea. Appellant claimed he took orders only from the master and chief officer. After Mr. Warren informed the master of this difficulty, Appellant was called to the cabin and ordered to obey Mr. Warren's commands and get the vessel ready for sea.

After completing this job at about 2355 hours, Appellant passed Mr. Warren on deck, cursed and offered to fight him.

About twenty minutes later, when the lines were being singled up prior to undocking, Appellant came to the stern where Mr. Warren was working and struck him in the face with his fist. Before Appellant could hit him again, Mr. Warren pulled a flashlight out of his pocket and struck his assailant on the forehead. Seaman Peterson, who saw only last blow, rushed over and broke up the altercation.

Mr. Warren had been using a walkie-talkie to communicate with the bridge during undocking. Sometime during the scuffle the walkie-talkie had fallen to the dock. While the second officer was on the phone reporting the incident to the bridge, Appellant picked up the walkie-talkie, snapped off its antenna, and threw it over the side. Appellant's duty station while singling up lines and undocking is on the bow. The walkie-talkie was ship's property.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that Appellant was not given adequate time to prepare his case, and that the assault and battery specification was not proved.

APPEARANCE: Dorfman, Pechner, Sacks & Dorfman of Philadelphia; by Harry Lore Esquire, of counsel

OPINION

I

Appellant was served with charges the afternoon of 28 June 1966. The hearing began the next morning, at which time Appellant requested a continuance to obtain the services of his selected counsel. After learning from the Investigating Officer that two witnesses were leaving town that day, one to his home in Boston, then to New York to sail again, and the other for a long foreign voyage, the Examiner told Appellant to get another counsel as testimony would have to be taken that day. Appellant left and returned shortly with professional counsel who immediately asked for a postponement to prepare his case. The Examiner informed him of the witness-availability problem, and counsel withdrew his objection to one witness, the master, but still preferred postponement of the taking of testimony of the other witness, the second officer. The Examiner replied that this officer would not be available at a later time, and the hearing proceeded.

On this appeal it is contended that the Examiner erred in refusing to postpone the proceedings. Whether an individual has adequate time to prepare his defense must of necessity depend on the circumstances of each case. Here there was an urgent need to obtain the testimony of two witnesses who were departing the area that day. The issues were not complex. The case turns on whether the Examiner would accept Appellant's or the Second Officer's version of the facts. Further, Appellant's counsel did a very able job of defending his client, cross-examining the government's witnesses at length, and later presenting his own witnesses. It must be concluded that the Examiner acted reasonably in going forward with the case, and Appellant was not deprived of his due process rights. See Appeal Nos. 702, 713.

II

Appellant claimed that he was struck the first, and only, blow. While he was making a check of the vessel's readiness for sea, he stated, Mr. Warren approached him and after making derogatory remarks about Appellant's mother, hit him with the flashlight. It is Appellant's theory that some of the officers resented him because he had recently protested the practice of bringing their wives aboard in port.

Second Officer Warren stated Appellant hit him first, and he then defended himself with the flashlight. Although he was one of the persons affected by Appellant's complaint to the company, Mr. Warren denied he felt any animosity towards the boatswain because of this.

The Examiner chose to credit Mr. Warren's testimony. He concluded that Appellant had a good motive for assaulting the second mate, both because this officer had just reported to the master Appellant's refusal to obey orders, and because Appellant had recently learned he was soon to be replaced by another boatswain. This is certainly a reasonable conclusion, and since the Examiner had the opportunity to see and hear the witnesses, his decision on their credibility will not here be disturbed.

There is also substantial evidence in the record proving the other specifications alleged. Appellant's duty station after the order to single up fore and aft was given, is at the bow. Appellant was on the fantail at this time engaging in a fray.

Appellant first denied he threw the walkie-talkie overboard, then said that he may have done it, but was too dazed to remember. The Examiner again credited the second mate's testimony and his finding will also be accepted at this level.

The order of six months' suspension on probation is considered reasonable and is approved.

ORDER

The order of the Examiner dated at Chicago, Illinois on 19 July 1966, is AFFIRMED.

W. J. SMITH
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 3rd day of August 1967.

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