

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-1167068
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Lawrence A. MURRAINE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1780

Lawrence A. MURRAINE

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 23 July 1968, an Examiner of the United States Coast Guard at New York, N. Y., suspended Appellant's seaman's documents for six months upon finding him guilty of misconduct. The specifications found proved allege that while serving as AB seaman on board SS AFRICAN LIGHTNING under authority of the document above captioned, Appellant:

- (1) on 19 January 1968, failed to perform duties because of intoxication, at Freemantle, Australia;
- (2) on 29 January 1968, failed to perform duties at Melbourne, Australia;
- (3) on 31 January 1968, absented himself from the vessel, and his duty, without authority, at Melbourne;
- (4) on 31 January 1968, failed to join the vessel at Melbourne;
- (5) on 12 March 1968, at Boston, Mass., assaulted a crewmember, one Emery Hoskey, with a knife;
- (6) on 12 March 1968, at Boston, assaulted Emery Hoskey with a fire axe; and
- (7) on 12 March 1968, at Boston, wrongfully had in his possession a switchblade knife.

In addition, a specification found proved alleged that Appellant, serving as Ab seaman aboard SS FAIRISLE, failed to join the vessel at Saigon, RVN, on 24 December 1966.

At the hearing, Appellant elected to act as his own counsel.

Appellant entered a plea of not guilty to the charge and specifications, except that he entered pleas of guilty to the specifications identified as second, third, and fourth above, and to the specification alleging the failure to join FAIRISLE.

The Investigating Officer introduced in evidence the testimony of seven witnesses, voyage records of AFRICAN LIGHTING, and some exhibits of real evidence.

In defense, Appellant offered in evidence his own testimony and one exhibit of real evidence.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and four specifications had been proved by plea, the other specifications being proved by the evidence. The Examiner then entered an order suspending all documents issued to Appellant for a period of six months.

The entire decision was served on 17 February 1969. Appeal was timely filed on 24 February 1969. Although Appellant had until 22 May 1969 to add to his original notice of appeal, he has not done so.

FINDINGS OF FACT

On all dates in question Appellant was serving as alleged and found proved and performed or failed to perform the acts alleged and found proved in the specification set forth above.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the order is too severe.

APPEARANCE: Appellant, pro se.

OPINION

To ascertain the propriety of the Examiner's order it is not necessary to look at the number of acts of misconduct involved here but only at the two most serious, the two assaults with dangerous weapons,

It is clear from the record that only the intervention of third persons prevented serious, possibly even fatal, injury to the victim of the two assaults,

It is evident that the Examiner consulted the Table of Average

Orders at 46 CFR 137.20-165, because he refers to "Assault with a dangerous weapon (no injury)" as carrying a "scale" suspension of six months. It may be noted here that this offense appears in "Group E" with the qualification, "(time between offenses not to have any bearing when considering whether man is a repeater)." On a repeated offense of this type, the Table suggests revocation.

The language of this section of the regulations does not mean that separate hearings must be involved before the man can be considered a repeater. It allows that even if both offenses are heard at the same time and found proved at the same time, the second offense makes the man a "repeater."

A construction of the section that would require separate hearing to constitute repetition would allow a person to make sixty assaults with dangerous weapons on one two month voyage with relative impunity, while, if there were time for a hearing on the first such assault, revocation would be appropriate if the next offense occurred five years later. This was not intended and cannot be read into the section.

An order of revocation would have been sustainable in this case. It is obvious, therefore, that the six month suspension ordered by the Examiner can be considered lenient.

ORDER

The order of the Examiner dated at New York, N. Y., on 23 July 1968, is AFFIRMED.

P. E. TRIMBLE
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C., this 18 day of JUL 1969.

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