

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-217568732 AND
ALL OTHER SEAMAN'S DOCUMENTS

Issued to: Michael D. LEVAN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1889

Michael D. LEVAN

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 11 February 1971, an Administrative Law Judge of the United State Coast Guard at San Francisco, California suspended Appellant's documents for 12 months outright upon finding him guilty of misconduct. The specifications found proved alleges that while serving as an Oiler on board the United States SS STEEL ARTISAN under authority of the document above described, on or about 29 December 1970, Appellant failed to obey an order of the Third Engineer to pump the engine room bilges, and, on or about 3 January 1971, Appellant assaulted and battered the Third Engineer by striking him with a chair and kicking him in a canteen in Saigon, R.V.N.

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

The Investigating Officer introduced in evidence certain voyage records of STEEL ARTISAN and the testimony of the third Engineer.

In defense, Appellant offered in evidence his own testimony and the testimony of two witnesses.

At the end of the hearing, the Administrative Law Judge rendered a oral decision in which he concluded that the charge and both specifications had been proved. He then served a written order on Appellant suspending all documents issued to Appellant, for a period of 12 months outright.

The entire decision was served on 22 February 1971. Appeal was timely filed on 23 February 1971.

FINDINGS OF FACT

On 29 December 1971, Appellant was serving as an oiler on board the United States SS STEEL ARTISAN and acting under authority of his document while the ship was at sea and was ordered by the Third Engineer, Mr. Amos, to pump bilges. The Appellant refused to obey the order. When logged for the offense, the Appellant admitted it and stated,

"...It was 0130 when the Engineer told me to pump bilges and the oilers do not pump bilges until 0230. I told him that and he said, 'pump the bilges now, secure the pump, then pump them again'..."

At the hearing the Appellant again admitted that he did not obey the order to pump the bilges when told to do so by the Third Engineer, but, instead, pumped the bilges near the end of the watch.

On 3 January 1971, the Appellant was still serving as an oiler on board the United States SS STEEL ARTISAN and acting under authority of his document while the ship was in the port of Saigon, Republic of Vietnam. On that date the Appellant was at a bar known as the Canteen or Cantina. The Third Engineer, Mr. Amos, was at the same bar and became involved in an altercation with a third party. The Appellant then attacked Mr. Amos from the rear and knocked him down with a chair made of metal. The Appellant called out to someone, "Come on brother, help me get this." When Mr. Amos was down, the Appellant kicked him, causing Mr. Amos to be declared unfit for duty for two days.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appeal is based on the following grounds:

1. Exceptions raised by Appellant in the initial hearing.
2. Errors in the record.
3. Lack of jurisdiction.

APPEARANCE: Sullivan and Johnson, San Francisco, by Mr. Alfred G. Johnson

OPINION

The Appellant fails to specify what "Exceptions raised by Appellant in the initial hearing" are urged to support a reversal

of the Administrative Law Judge decision and order. A review of the record, however, reveals that in only one instance was an objection or motion on the part of Appellant's counsel at the hearing ineffective. That one instance occurred at the conclusion of the investigating officer's presentation of his evidence, when counsel for the Appellant moved that the charges be dismissed on the grounds that the "Coast Guard has failed to prove its case." The Administrative Law Judge denied the motion. In view of the evidence which had been entered by the investigating officer, including the testimony of the Third Engineer and supporting log entries, it is obvious that the Administrative Law Judge's action in denying the motion to dismiss the charges was correct. Other objections raised by Appellant's counsel at the hearing were effective in that the investigating officer, as a result of the objections, declined to proceed in the manner objected to. (R-17,42.).

The second ground for appeal is "Errors in the record". A review of the record reveals no prejudicial errors. The grounds for appeal were raised prior to Appellant's receipt of a transcript and nothing in the way of specificity or elaboration has been subsequently received.

As a final ground for appeal the Appellant urges a "Lack of jurisdiction". The fact is that the charges and specification contain proper allegations of jurisdiction and the evidence of record adequately supports them. If there is some latent defect, I have not perceived it, and Appellant has certainly not invited my attention to it. It is noted that Appellant's counsel at the hearing stated, "The Coast Guard, as far as I am concerned, should have better things to do than bring charges for bar room brawls." (R-3). The fact is, however, that jurisdiction over the incident in question exists. The Appellant was acting under authority of his document and was in the service of the ship while ashore. Decision on Appeal No. 1618.

The Appellant was charged with misconduct in that he failed to obey an order and assaulted and battered the Third Engineer. The order given to the Appellant by the Third Engineer was lawful and the Appellant had the duty to obey that order. Decision on Appeal No. 1210. The assault and battery upon the Third Engineer is clearly misconduct. The record contains substantial evidence to support the Administrative Law Judge's findings. Since there has been no specification of fault or error, the appeal here is found to be entirely without merit. Decision on Appeal No. 1687.

CONCLUSION

The grounds on which the appeal is based are without merit and

suffer from lack of specificity.

ORDER

The findings of the Administrative Law Judge entered at San Francisco, California, on 11 February 1971, are AFFIRMED.

C.R. BENDER
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D.C., this 21st day of September 1972.

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