

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-764434-D3 AND ALL  
OTHER SEAMAN'S DOCUMENTS

Issued to: Raphael Acevedo

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1942

Raphael Acevedo

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 21 December 1971, an Administrative Law Judge of the United States Coast Guard at New York, New York, suspended Appellant's seaman's documents for 5 months outright plus 3 months on 12 months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as an Able Bodied Seaman on board the SS AMERICAN LYNX under authority of the document above captioned Appellant:

(1) on or about 2 January 1970, did wrongfully use disrespectful language toward the Second Mate while the vessel was departing the port of Baltimore;

and that, while so serving, on or about 13 January 1970, while the vessel was maneuvering in the confined water of Tilbury Docks, London, Appellant did

(2) wrongfully damage the ship's property, to wit; the antenna of the after docking station walkie-talkie;

(3) wrongfully fail to obey a direct order of the Third Mate to leave the after docking station and go to his room; and

(4) wrongfully interfere with the safe navigation of the vessel by causing the Chief Mate to leave the bridge and escort him from the after docking station to his room.

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

The Investigating Officer introduced in evidence various

exhibits and the testimony of the Master, Second Mate and Third Mate of the vessel.

In defense, Appellant offered in evidence his own testimony.

After the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and above specifications had been proved. He then entered an order suspending all documents issued to Appellant for a period of 5 months outright plus 3 months on 12 months' probation.

The entire decision was served on 24 December 1971. Appeal was timely filed on 19 January 1972.

#### FINDINGS OF FACT

On 2 & 13 January 1970, Appellant was serving as an Able Bodied Seaman on board the SS AMERICAN LYNX and acting under authority of his document.

On 2 January 1970, the vessel was proceeding seaward leaving the port of Baltimore with Appellant at the helm. The Second Mate caused him to be relieved for failing to steer an accurate course. Upon being directed to leave the bridge, Appellant stated to the Second Mate, "I always knew you were a no good rat fink."

On 13 January 1970, the vessel was maneuvering in the confined waters of Tilbury Docks, London, preparatory to tying up. Appellant was assigned to and was present at the after docking station under the charge of the Third Mate. While interfering with the Third Mate by speaking loudly to him and interrupting communications with the bridge, Appellant grabbed a walkie-talkie radio, which was ship's property, and bent its antenna. The Third Mate ordered him to leave the after docking station and go to his room. Appellant refused, so the Third Mate reported the incident to the Master, who found it necessary to send the Chief Mate from the bridge to escort Appellant to his room. The Chief Mate was absent from the bridge for approximately 20 minutes. During this time there were tugs alongside and the vessel was maneuvering from its berth.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that the findings are contrary to the weight of the evidence.

APPEARANCE: Abraham E. Freedman, New York, New York.

OPINION

Appellant's basis for appeal is singularly without merit. It has been held time and again that the findings of the Administrative Law Judge will be upheld on appeal in the absence of errors of law. Findings of fact are erroneous, as a matter of law, only when determined to be arbitrary and capricious. In this case, the findings of the Administrative Law Judge are manifestly based upon substantial evidence of a reliable and probative nature; and there is absolutely no basis for a determination of error.

ORDER

The order of the Administrative Law Judge dated at New York, New York on 21 December 1971, is AFFIRMED.

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

Signed at Washington, D. C., this 12th day of June 1973.

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