

IN THE MATTER OF MERCHANTS MARINER'S DOCUMENTS NO. Z-83082"R" AND
ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Joseph Aloysius GUTZMER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1951

Joseph Aloysius GUTZMER

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 26 February 1970, an Administrative Law Judge of the United States Coast Guard at San Francisco, California revoked Appellant's Seaman's documents upon finding him guilty of misconduct and incompetence. The specifications found proved allege that while serving as a Galleyman on board the SS PARISMINA under authority of the document above captioned, on or about 13 September 1968, while said vessel was at Cam Rahn Bay, R. V. N., Appellant:

(1) did wrongfully assault a fellow crewman with a dangerous weapon, to wit, he approached the Steward's Utilityman in a passageway aboard said ship with a knife in his hand threatening to use said knife upon him (misconduct);

(2) did wrongfully threaten such fellow crewmember aboard said vessel, to wit, he threatened to cut him with a knife and kill him (misconduct);

(3) did wrongfully refuse to obey the order of the Master to go to his room (misconduct);

(4) did assault a fellow crewmember aboard said vessel with a dangerous weapon, thereby demonstrating a propensity to endanger fellow crewmembers, rendering him incompetent to serve on U.S. merchant vessels (incompetence); and that while serving as a Messman on board the SS AMERICAN RELIANCE under authority of the document above captioned, on or about 22 December 1968, while said vessel was at Saigon, R. V. N., Appellant:

(5) did wrongfully assault and batter a fellow crewmember with a dangerous weapon, to wit, he assaulted and struck Alan R. Foshee with a dogging wrench on board said vessel (misconduct); and

(6) did assault and batter a fellow crewmember with a dangerous weapon aboard said vessel, thereby demonstrating a propensity to endanger fellow crewmembers, rendering him incompetent to serve on U. S. Merchant vessels.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charges and specifications, with the exception of (3) and (5) above to which he pleaded guilty.

The Investigating Officer introduced in evidence extracts from the Shipping Articles and Official Logbook of the SS PARISMINA, a Consular Report, the deposition of one witness and the live testimony of six other witnesses.

In defense, Appellant offered in evidence a medical report, his own testimony, and the testimony of three other witnesses.

After the hearing, the Administrative Law Judge rendered a decision in which he concluded that the charges and the above specifications had been proved. He then entered an order revoking all documents issued to Appellant.

The entire decision was served on 17 March 1970. Appeal was timely filed on 15 April 1970 and perfected on 28 May 1971.

FINDINGS OF FACT

On 13 September 1968, Appellant was serving as a Galleyman on board the SS PARISMINA and acting under authority of his document while the ship was in Cam Rahn Bay, R. V. N.

Late that afternoon an argument commenced between Appellant and the Steward's Utilityman as Appellant was taking some garbage to the fantail. They traded harsh words in the passageway and Appellant threatened to cut the utilityman. He replaced the garbage can in the galley and returned with a knife, repeating his threat. The intervention of other crewmembers prevented any further possible occurrence. Subsequently the Master located Appellant in the galley and ordered him to his room. He refused to obey that order and was then placed in irons and confined to the ship's hospital.

On 22 December 1968, Appellant was serving as a Messman on board the SS AMERICAN RELIANCE and acting under authority of his document while the ship was at Saigon. On that date an argument developed in the galley area between Appellant and one Alan R. Foshee. After an exchange of profanity, Appellant struck the other man with a dogging wrench, cutting him alongside the eye.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

(1) admission of Appellant's prior record constituted a denial of due process;

(2) therefore, there was insufficient evidence to support the order of the Administrative Law Judge; and

(3) therefore, the order was issued to contrary to law.

APPEARANCE: Boccardo, Blum, Lull, Niland, Teerlink & Bell, By
Herman D. Papa, Esq.

OPINION

I

Appellant's contentions may be reduced to a single basis for appeal. He alleges that it was improper for the Administrative Law Judge to consider his prior Coast Guard record.

It is generally true that the prior record of the person charged is not to be disclosed to the Administrative Law Judge "until after he has made the conclusions as to each charge and specification." 46 CFR 137.20-160. There are exceptions to this rule; but it is not necessary to discuss them, because the record in this case affirmatively shows that Appellant's prior record was not presented to the Administrative Law Judge until after he rendered his decision on all charges and specifications. On page 9 of the Decision and Order, he states, "In view of the two clear demonstrations of Gutzmer's propensity to violence, I have found the charge of incompetence proved." He then considered Appellant's prior record for purposes of adjudging an appropriate order. He, thus, followed the procedure set out in the regulations, to the letter. Appellant's prior record was in no way utilized as evidence of guilt of the offense charged.

II

Though not questioned on appeal, it should be noted that the order of revocation is quite appropriate in this case. An underlying purpose of suspension and revocation proceedings is the promotion of the safety of life aboard U.S. merchant vessels. A finding of incompetence due to dangerous propensities leaves an order of revocation as the only practicable means of carrying out

that purpose. Beyond that, it is noted that Appellant was found guilty of assaulting and injuring a fellow crewmember with a deadly weapon, an offense for which the Coast Guard by regulations seeks revocation.46 CFR 137.03-5. The National Transportation Safety Board has regular sustained orders of revocation based upon single offenses of the nature involved in this case. See e.g. NTSB Order No. EM-17 (Velasquez) and No. EM-19 (Bozeman). These factors, particularly in view of Appellant's less than exemplary record of pugnacious conduct, are more than adequate justification for the order of revocation.

ORDER

The order of the Administrative Law Judge dated at San Francisco, California on 26 February 1970, is AFFIRMED.

T. R. Sargent
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington, D.C., this 18th day of June 1973.

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