

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-698701 AND ALL  
OTHER SEAMAN'S DOCUMENTS

Issued to: Juan A. G. CRUZ

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1973

Juan A. G. CRUZ

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 28 June 1972, an Administrative Law Judge of the United States Coast Guard at Houston, Texas, suspended Appellant's seaman's documents for six months outright upon finding him guilty of misconduct. The specification found proved alleges that while serving as an Oiler-Maintenance-Utility on board the SS DELTA MEXICO under authority of the documents above described, on or about 15 May 1972, Appellant did wrongfully assault and batter the Third Assistant Engineer.

At the hearing, Appellant elected to act as his own counsel and entered a plea of guilty to the charge and specification.

The Investigating Officer introduced in evidence excerpts from the Shipping Articles and Official Ship's Log and other documentary evidence.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved by plea. The Administrative Law Judge then entered an order suspending all documents issued to Appellant for a period of six months outright.

The entire decision was served on 8 December 1972. Appeal was timely filed on 26 December 1972.

FINDINGS OF FACT

On 15 May 1972, Appellant was serving as an Oiler-Maintenance-Utility on board the SS DELTA MEXICO and acting under authority of his document while the ship was in the port of Rio de Janeiro, Brazil. Due to the disposition of this case no further findings of fact are necessary.

BASES OF APPEAL

The issues raised on appeal will not be specifically dealt with due to the ultimate disposition of the case on other grounds.

APPEARANCE: W. Frederick Denkman, for Appellant.

### OPINION

The record in the instant case indicates that Appellant's guilty plea was improvidently entered. The regulations governing R.S. 4450 hearing impose a duty on the Administrative Law Judge to reject a "guilty" plea, when a person charged makes a statement or presents evidence inconsistent with that plea, and enter a plea of "not guilty". The transcript of the hearing clearly reflects several statements by Appellant indicating that he acted in self defense. Upon presentation of this evidence, the Administrative Law Judge should have changed the plea to "not guilty". His failure to do so is reversible error.

Another point which bears comment is the severity of the order imposed by the Administrative Law Judge. The facts as found by him show that the incident was provoked by the third Assistant Engineer and that the altercation was short in duration and minor as to injurious consequences. There is no evidence in the record of a prior disciplinary record on the part of Appellant. Even though the order of six months outright suspension is in conformity with the Table of Average Orders, 46 CFR 137.20-165, that table is merely for guidance purposes. The facts in the instant case do not warrant the imposition of such a severe order.

In view of the above considerations, the suspect nature of the evidence supporting the charge against Appellant, and the fact that it would now be virtually impossible for the Investigating Officer and the Appellant to assemble witnesses and other evidence necessary for the presentation of their respective cases, there is little point in remanding the case for further proceedings.

### ORDER

The order of the Administrative Law Judge dated at Houston, Texas, on 28 June 1972, is VACATED and the charge DISMISSED.

T. R. SARGENT  
Vice Admiral, United States Coast Guard  
Acting Commandant

Signed at Washington, D. C., this 5th day of July 1973.

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