IN THE MATTER OF LICENSE NO. 389821
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Robert STRULL, Z-416816-D2

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1988

Robert STRULL

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 16 November 1972, an Administrative Law Judge of the United States Coast Guard at New York, New York suspended Appellant's license and seaman's documents for three months on nine months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as Second Assistant Engineer on board the SS AMERICAN LEADER under authority of the license above captioned, on or about 14 September 1972, Appellant did wrongfully assault and batter by gripping and shoving with his hands a member of the crew, George C. Sawalich, First Assistant Engineer.

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

The Investigating Office introduced in evidence excerpts from the shipping articles and official logbook and testimony of the First Assistant Engineer.

In defense, Appellant offered in evidence the testimony of A. Hendy, a deck mechanic, and his own testimony.

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. He then served a written order on Appellant suspending all documents issued to him for a period of three months on nine months' probation.

The entire decision was served on 24 November 1972. Appeal was timely filed.

## FINDINGS OF FACT

On 14 September 1972, Appellant was serving as Second Assistant Engineer on board the SS AMERICAN LEADER and acting under authority of his license while the ship was in the port of Bremerhaven, Germany. On that date Appellant was on watch in the engineroom while the First Assistant Engineer was preparing to get the vessel underway. There had been bad feelings between Appellant and the First Assistant Engineer for some time. On this occasion words were exchanged and Appellant called the First Assistant Engineer a profane name and repeated it several times. The First Assistant Engineer called the Chief Engineer to the engineroom. When the Chief Engineer arrived, the First Assistant Engineer told him what Appellant had said, and Appellant denied it. The First Assistant Engineer called Appellant a liar several times whereupon Appellant grabbed the First Assistant Engineer and shoved him back against the handrail. The altercation then ended. There were no injuries.

## BASES OF APPEAL

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

(1) the Decision is not supported by the evidence;

(2) the Findings of Fact do not conform to the evidence;

(3) the Findings of Fact, Decision and Order are contrary to law;

(4) the Order of Punishment is excessive.

APPEARANCE: For Appellant, Francis J. Dooley, Esq.

## OPINION

### I.

The notice of intent to appeal, dated 15 December 1972, on behalf of Appellant from the order of the Administrative Law Judge was timely filed and a transcript of the proceedings was provided on or about 6 April 1973. A brief or memorandum stating specific grounds for appeal and exceptions to the Administrative Law Judge's decision was due on 6 June 1973 in accordance with 46 CFR 137.30-3(a). To date no brief or memorandum has been submitted.

46 CFR 137.30-1(g) states:

> (f) The only matters which will be considered by the Commandant on Appeal are:
>
> (1) Exceptions properly raised by the Appellant as indicated in paragraph (e) of this section;
>
> (2) Clear errors in the record; and
>
> (3) Jurisdictional questions.

Section 137.30-1(e) states:

> (e) After the Appellant or his counsel has received a transcript of the record, any exceptions submitted shall be identified by <u>specific</u> <u>citations</u> to pages in the transcript and <u>Shall</u> <u>contain</u> <u>legal</u> <u>and</u> <u>other</u> <u>authorities</u> <u>relied</u> <u>upon</u> to support such exceptions. (Emphasis added).

The mere broad statements included in the first three points raised in the notice of appeal pertaining to the weight of the evidence and the legal conclusions are not deemed to comply with the requirement of specificity set forth in the above noted regulations governing appeals.

No clear errors appear in the record; therefore, the findings of the Administrative Law Judge are adopted.

II

The final point raised in the notice of intent to appeal is that the penalty is excessive. Again Appellant has submitted nothing to support this contention. In view of the fact that the charge is assault and battery, that Appellant is a licensed engineer, and that the entire suspension was remitted on probation, the order entered by the Administrative Law Judge is not considered unreasonable.

<u>ORDER</u>

The order of the Administrative Law Judge dated at New York, New York on 16 November 1972, is AFFIRMED.

T. R. SARGENT
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C., this 29th day of August 1973.

INDEX

Appeals

Specificity, lack of

Form to be followed

Findings affirmed absent clear errors

Revocation and Suspension

Assault and battery, not excessive

Assault (including battery)

Penalty for, appropriateness of