UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT No. Z-165528
Issued to: RUDOLF KOBERGER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2023

RUDOLF KOBERGER

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 (now 5.30-1).

By order dated 11 January 1974, and Administrative Law Judge of the United States Coast Guard at San Francisco, California, suspended Appellant's seaman document for four months on twelve months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as Chief Steward on board the United States SS AMERICAN CHIEFTAIN under authority of the document above captioned, on or about 15 September 1973, Appellant did assault first Assistant Engineer Joseph Urei, Z-518662-D1, in the Officer' Pantry.

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

The Investigating Officer introduced in evidence the vessel's log entry concerning the incident and the testimony of four witnesses.

Appellant elected not to testify.

At the end of the hearing, the Judge rendered a written decision in which he concluded that the charge and specification, as amended, had been proved. He then served a written order on Appellant suspending all documents, issued to Appellant, for a period of four months on twelve months' probation.

The entire decision and order was served on 15 January 1974. Appeal was timely filed on 24 January 1974, and appellate brief was filed 30 January 1975.

FINDINGS OF FACT

On 15 September 1973, Appellant was serving as Chief Steward on board the SS AMERICAN CHIEFTAIN and acting under authority of

his document while the ship was in the port of Tengan, Okinawa. At approximately 1745 that evening Appellant and the First Assistant Engineer, Mr. Joseph Urei, had an angry discussion in the Officers' Mess concerning the manner in which food was being cooked and served under the direction of appellant. Shortly thereafter, while Mr. Urei was obtaining ice cubes in the Officer' Pantry, Appellant assaulted him by striking at his head with a blackjack. Mr. Urei simultaneously kicked at Appellant to protect himself. Neither blow landed. appellant left the pantry and, followed by Mr. Urei, entered the Officers' Saloon. There Mr. Urei shouted to the officers present who were watching television saying "frisk him, frisk him - he has got a blackjack on him." No action was taken to search Appellant and he left the saloon. Several minutes later Appellant and Mr. Urei met on the second deck and an altercation occurred. Mr. Urei, by plea, admitted to engaging in mutual combat with Appellant in this latter incident.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that the evidence relied upon to find Appellant guilty of an assault is unreliable and insufficient. Appellant states that the only direct evidence of an assault is the self-serving testimony of Mr. Urei and that testimony is demonstrably unreliable and untrustworthy.

APPEARANCE: Gordon, Weltin, Holstein & Ropers; William J. Belli, Esq., of counsel

OPINION

Essentially Appellant's argument on appeal is limited to an attack on the credibility of Mr. Urei's testimony concerning the attack in the Officers' Pantry. It is stated that this testimony is self-serving and, pointing to several inconsistencies, that it is inherently unreliable. From this it is contended that there is insufficient evidence upon which a finding of guilty can be entered.

As Appellant admits, and the Administrative Law Judge carefully points out, the direct testimony of Mr. Urei concerning the assault is supported in part by the testimony of Mr. Thompson, the vessel's Second Mate, who heard "loud voices" in the pantry and the statement of Mr. Urei to frisk Appellant. Furthermore, as I have stated many times, the evaluation of the credibility of witnesses and the evidence presented at the hearing are matters which are committed to the discretion of the trier of fact and, absent a clear showing that it is arbitrary and capricious, his evaluation will not be upset on appeal. In this case the record

concerning the assault, consisting mainly of the unrebutted testimony of Mr. Urei, does not disclose any basis for finding the Administrative Law Judge's evaluations to be arbitrary or capricious. Thus, I find the decision of the Judge to be supported by substantial evidence and sufficient in fact and law.

ORDER

The order of the Administrative Law Judge dated at San Francisco, California, on 11 January 1974, is AFFIRMED.

E.L. PERRY
Vice Admiral U. S. Coast Guard
Vice Commandant

Signed at Washington, D.C., this 3rd day of June 1975.

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