

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINES'S LICENSE NO. Z-331-42-9306  
Issued to: William B. Wood

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

2064

William B. Wood

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 19 September 1975, an Administrative Law Judge of the United States Coast Guard at San Francisco, California, revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a messman on board the United States SS PRESIDENT CLEVELAND under authority of the document above captioned, on or about 17 December 1972, Appellant did "wrongfully assault and batter a fellow crewmember, Ronald B. K. Lyman, to wit with a 'buck' knife and that it resulted in his death."

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

The Investigating Officer introduced in evidence portions of the ship's logbook, statements made before the U.S. Vice-Consul in Hong Kong by witnesses to the incident, and other documentary evidence, and also called two witnesses to testify.

In defense, Appellant offered in evidence portions of the ship's log. He also testified on his own behalf and made several offers of proof.

At the end of the hearing, the Judge reserved decision. On 19 September 1975, he rendered a written decision in which he concluded that the charge and specification had been proved, and entered an order revoking all documents issued to Appellant.

The entire decision and order was served on 24 September 1975. Appeal was timely filed on 17 October 1975.

FINDINGS OF FACT

On 17 December 1972, Appellant was serving as a messman on board the United States SS PRESIDENT CLEVELAND and acting under authority of his document while the ship was at sea. While

Appellant was in the pantry performing his duties as messman, the deceased advised him that he did not like the way Appellant spoke to a fellow crewmember, Thomas Sweeney. At that time the deceased was under the influence of alcohol and possibly under the influence of barbituates, having been seen earlier in the day by crewmember James Shaffer swallowing a capsule of what appeared to be Nembutal. The deceased then grabbed Appellant by the throat or neck and pulled him across a hot plate in the pantry. Appellant, who was not injured, broke loose and pulled a 'buck' knife from his pocket. Pantryman Sweeney pushed the deceased out of the pantry and Appellant returned to his duties. The deceased, who had no duties in the pantry area, returned to the pantry about 15 minutes later and again created a disturbance. This time Pantryman Sweeney told Appellant it would be better if he left in order to avoid trouble. As Appellant was making his exit, the deceased again grabbed him by the throat, pushed him up against a wall and threatened him. Pantryman Sweeney again intervened, pulled the deceased off Appellant, and suggested that Appellant leave his station. Appellant went to his room, sat down for a few moments, then went to look for his supervisor, the Third Steward, to seek help. After being unable to locate his supervisor at the supervisor's duty station, Appellant returned to his room appearing, according to his roommate Gerald Sallee, agitated, nervous and upset. A minute or two later, the deceased entered Appellant's room and indicated that he wanted to fight Appellant. When Appellant refused, the deceased, who was unarmed, grabbed Appellant by the throat and threw him across the room, through the door and up against the wall of the passageway. As the deceased came towards Appellant in the passageway, Appellant drew his knife, shouted "Stay away," and started backing down the narrow, dead-end passageway. The deceased pounced upon Appellant, and as the deceased continued to attack, Appellant held the knife in front of him, moving it in a "parry type of motion." The deceased, even after being cut by the knife seven times, continued to attack and had to be pulled away from Appellant by Mr. Sallee and other crewmembers who appeared on the scene. The deceased was removed to the ship's hospital where the ship's surgeon attempted to treat him with an intravenous solution of Dextran and Saline. The surgeon reported that the stab wounds were all superficial with very little bleeding, and that the deceased was still irrational and thrashing around violently so that he had to be forcibly restrained. The surgeon reported, further, that it was impossible to start an IV ("... apparently this man had some disease requiring IV medication or he was using some form of drug and injected it into himself. Fine fresh needle marks were noted on both anterior and cubital areas, plus many more old needle marks." Surgeon's Report). Suddenly, the patient suffered a total cardiovascular collapse and expired. The causes of death were listed as follows:

"(1) Possible drug intoxication (type of drug unknown)

- (2) Total cardiovascular collapse
- (3) Shock
- (4) Multiple stab wounds on chest and abdomen 7 in all."

On 18 December 1972, the following day, an extensive investigation was conducted on board the vessel, and statements were given before the American Vice Consul in Hong Dong. Other statements were taken at the Vice Consul's Office. Later, the Federal Bureau of Investigation prepared a report, in which it was recommended that no action be taken against Appellant. Appellant was not charged with any offense by the Coast Guard until 6 March 1975, some 27 months after the incident. No explanation was given for this delay except that an investigation begun in 1973 was sidelined for more important matters. Appellant continued to serve under the authority of his document until 24 September 1975 when the Administrative Law Judge ordered that Appellant's documents be revoked.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that the decision and order of the Administrative Law Judge contains errors of both law and fact and should be reversed. It is contended further that the Administrative Law Judge's denial of Appellant's motion to dismiss the charge and his failure to provide Appellant access to the investigative reports possessed by the Coast Guard were error and constitute violations of due process of law under the Fifth Amendment of the U.S. Constitution.

APPEARANCE: At the hearing: Michael Berger, Esq. of Weinstein, Welsh & Berger; On Appeal: Alexander Anolik, Esq. and Dennis S. Weaver, Esq. of Alexander Anolik, a Professional Law Corporation.

#### OPINION

I find that the unexplained delay of 27 months between the time of the incident and the filing of charges by the Coast Guard constitutes a denial of due process, and that the charge against Appellant must therefore be dismissed.

Although thorough investigations of the incident were made immediately following its occurrence on 17 December 1972, no charges were filed until 6 March 1975. No explanation for this delay can be found in the record. In Decision on Appeal 1350(WRIGHT) the Commandant held that an excessive and unjustified

delay in the filing of charges will not result in dismissal if no resultant prejudice has been shown. However, in this case the record is replete with indications of prejudice and the difficulties encountered by Appellant in the preparation of an adequate defense.

In U.S. v. Jackson, 504 F. 2d 337 (1974) the U.S. Court of Appeals for the Eighth Circuit held that the due process clause of the Fifth Amendment to the U.S. Constitution requires a balancing of the reasonableness of a delay against any resultant prejudice. The fact that a charge has been filed within the statute of limitations alone is not controlling if these additional factors are not considered. In the instant case, the Administrative Law Judge denied Appellant's motion to dismiss because of the delay based solely on the fact that the charge had been filed within the regulatory period and did not consider whether due process required dismissal of the charge. This constituted error. As the U.S. Supreme Court held in United States v. Marion, 404 U.S. 307 (1971), the statute of limitations does not fully define an individual's rights. Although Marion is a criminal case, it is undoubtedly applicable to this case as well. To hold otherwise would mean that the due process clause of the Fifth Amendment does not apply to administrative hearings which are "remedial" rather than "punitive" in nature. However, cases decided prior to Marion have held that the due process clause applies to both criminal and administrative proceedings, particularly where an individual's livelihood is threatened by the administrative action. Brinkenfield v. United States, 369 F. 2d 491 (1966). See also Homer v. Richmond, 292 F. 2d 719 (1961).

Therefore, due process requires that we look not only to see if the charge against Appellant was brought within the statutory period, but also to see if the delay prejudiced him in any way. Evidence of actual prejudice suffered by Appellant is demonstrated by the fact that several key witnesses to the incident had disappeared and were not traceable either by Appellant or the Coast Guard; one of the witnesses had died; and every witness who testified expressed difficulty recalling the events in question. There is no evidence that this case was so complex as to require a 27 month investigation. On the contrary, thorough investigations of the incident were completed both by the American Consulate in Hong Kong and by the FBI within a short period of time. Copies of both investigations were sent to the Coast Guard, but no action was taken. Instead, Appellant was required to answer charges against him and recall in second by second detail events which had transpired more than two years previously. I find that to require Appellant to defend himself under these circumstances is violative of due process.

CONCLUSION

The record shows that Appellant suffered actual substantial prejudice by being required to answer a charge involving events occurring 27 months in the past, when witnesses became unavailable and each and every witness who did testify expressed difficulty recalling details of the event in question. I, therefore, conclude that the charge against Appellant must be dismissed.

ORDER

The findings of the Administrative Law Judge are SET ASIDE, the order dated at San Francisco, California, on 19 September 1975 is VACATED, and the charge and specification are DISMISSED.

O. W. SILER  
ADMIRAL, U. S. Coast Guard  
Commandant

Signed at Washington, D.C., this 14th day of July 1976.

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