

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 481526 and
MERCHANT MARINER'S DOCUMENT NO. Z-266745403
Issued to: Michael G. EDWARDS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2156

Michael G. EDWARDS

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 25 July 1978, an Administrative Law Judge of the United States Coast Guard at Boston, Massachusetts, after a hearing at Savannah, Georgia, on 3 May, 4 May, and 14 June 1978, revoked Appellant's license upon finding him guilty of misconduct. The two specifications of the charge of misconduct found proved allege (1) that Appellant, while serving as third assistant engineer aboard the dredge M/V MANHATTAN ISLAND, under authority of the captioned documents, did at or about 1000, 18 April 1978, while the vessel was anchored in the Savannah River, Savannah, Georgia, use abusive and foul language toward the Master of the vessel, Captain Leroy A. PLATT; and(2) that Appellant, while serving as third assistant engineer aboard the dredge M/V MANHATTAN ISLAND, under authority of the captioned documents, did at or about 1210, 18 April 1978, while said vessel was moored in the Savannah River, Savannah, Georgia, wrongfully assault and batter by choking with his hands the Master of the vessel, Captain Leroy A. PLATT.

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

The Investigating Officer introduced into evidence the testimony of six witnesses, three documents, and one photograph.

In defense, Appellant introduced into evidence the testimony of five witnesses, his own included, and five documents.

Subsequent to the hearing, the Administrative Law Judge entered a written decision in which he concluded that the charge and specifications as alleged had been proved. He then entered an order revoking Appellant's license and all Coast Guard issued merchant mariner's documents.

The decision was served on 28 July 1978. Appeal was timely

filed on 4 August 1978.

FINDINGS OF FACT

On 18 April 1978 Appellant was serving under the authority of his license and merchant mariner's documents aboard M/V MANHATTAN ISLAND. MANHATTAN ISLAND is an inspected hopper dredge and then was anchored in the Savannah River at Savannah, Georgia. (Certain incidents had occurred on 17 April 1978 which led to Appellant's discharge from his position as third assistant engineer late that same evening. Appellant planned to depart from MANHATTAN ISLAND the following day, 18 April 1978. Despite this termination of employment on 17 April, it is not disputed that jurisdiction under RS 4450, as amended (46 U.S.C. 239), does exist. See, Decisions on Appeal Nos. 389, 545.)

At approximately 1000 on 18 April, while on the bridge of MANHATTAN ISLAND, Appellant sought permission from the Master to go ashore on the vessel's crew boat. The Master advised Appellant that he could do this only if he packed all his gear and took it with him. Appellant then sought permission from the Master to use the radio-telephone. In accordance with company policy, permission was refused. Appellant then directed an obscene epithet toward the Master. After this incident, the Master ultimately returned to his cabin. At approximately 1210, while sitting at his desk working on the vessel's payroll, the Master felt a pair of hands placed firmly around his neck, attempting to choke him. In struggling to free himself, the Master turned sufficiently to be able to determine that Appellant was his assailant. The Master succeeded in grasping a large wooden fid near his desk and forced himself up sufficiently to enable him to strike Appellant sharply on the top of the head. This caused Appellant to release his grasp around the Master's throat and then to flee. Appellant subsequently was hospitalized because of this head injury. The Master did not seek medical treatment, although he did suffer red welt-like abrasions on his neck.

BASES OF APPEAL

This appeal has been taken from the decision and order of the Administrative Law Judge. It is contended that the decision of the Administrative Law Judge is against the weight of the evidence, that revocation was too severe an order under the circumstances, in that Appellant had no prior record "on board any vessels," and that revocation would present an extreme hardship because Appellant is the sole support of a minor daughter and "has been doing merchant marine work for approximately eight years."

APPEARANCE: Ashman & Zipperer, Savannah, Georgia, by Ralph R. Lorberbaum, Esq.

OPINION

I

I previously have construed the contention that an Administrative Law Judge's decision was against the weight of the evidence to be an argument that his decision is one not supported by substantial evidence. Decisions on Appeal Nos. 1767, 1796, 1893. "Findings must be supported by substantial evidence of a reliable and probative character." 46 CFR 5.20-95(b). If the testimony of the Master and the others who testified in the Government's case-in-chief is believed, then there is more than ample evidence to support the Administrative Law Judge's findings. The function of determining credibility properly is vested in the Administrative Law Judge. Simply put, in this case the Administrative Law Judge believed the Master but not Appellant. Based upon my review of the entire record, I find no reason to disagree with this determination of the Administrative Law Judge or to disturb any of his Findings of Fact. Hence, the charge and specifications are supported by substantial evidence.

II

The Administrative Law Judge gave due consideration to the same arguments against revocation as Appellant now advances. He has ordered revocation nonetheless.

Appellant's argument that he had no prior record "on board any vessels" is a quibble. He does not dispute that in accordance with 46 CFR 5.10-10, he voluntarily surrendered his first license and merchant mariner's document (issued originally in 1970) in August of 1974 in preference to appearing at a revocation and suspension hearing following a conviction for a "Drug Law Violation (possession 30 lbs marijuana)." Under 46 U.S.C. 239b, whether this violation occurred "onboard any vessel" or ashore, Appellant's first license properly could have been revoked upon a finding of guilty at a suspension and revocation proceeding. In these circumstances, it was not inappropriate for the Administrative Law Judge to consider Appellant's "prior record." See, 46 CFR 5.20-160.

Even without consideration of Appellant's previously recorded misdeed, the extremely serious nature of the acts which Appellant was found to have committed alone justifies revocation. The unwarranted insubordination and disrespect displayed toward the Master by Appellant's obscene epithet, and, more importantly, his stealthy and unprovoked attack upon the Master demonstrated amply Appellant's unfitness for further service as a licensed engineer. That revocation might work a hardship upon him and his minor daughter is not sufficient reason to reverse or modify the Administrative Law Judge's order. I must concur in the Administrative Law Judge's statement that "[w]hile Appellant's license and document could be suspended for a specific period of time, even for a term of years, there is no assurance that [Appellant's] conduct after such a suspension would be any more reliable or that he would be qualified to be entrusted with the responsibilities of an engineering officer aboard a United States vessel."

ORDER

The order of the Administrative Law Judge, dated at Boston, Massachusetts, on 25 July 1978, is AFFIRMED.

J. B. Hayes
Admiral, U.S. Coast Guard
Commandant

Signed in Washington, D.C., this 25th day of July 1979.

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