

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT
Issued to: Spencer L. Lyle 450-11-5512

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2508

Spencer L. Lyle

This appeal has been taken in accordance with 46 U.S.C. SS7702 and 46 CFR SS5.701.

By an order dated 30 May 1989, an Administrative Law Judge of the United States Coast Guard at Houston, Texas suspended Appellant's Merchant Mariner's Document outright for eight months upon finding proved the charge of misconduct. The misconduct charge was supported by two specifications, both of which were found proved. The first specification alleged that Appellant on or about 19 December 1988, while serving as an able seaman aboard the S/T OVERSEAS CHICAGO, did, while said vessel was engaged in lightering operations, assault the Chief Mate, Vernon Adkison, in the cargo control room by making The first specification further alleged that, by confronting the Chief Mate during the operations and in the control room, Appellant had created a disturbance aboard the ship at a critical time. The second specification alleged that Appellant, while serving in the same capacity on 20 December 1988, verbally threatened the same Chief Mate in the Captain's office.

The hearing was held at Houston, Texas, on 30 march 1989. Appellant appeared at the hearing pro se and entered a plea of DENIAL to the charge and all specifications.

The Investigating Officer introduced five exhibits into evidence and called four witnesses. Thee Appellant testified in his own behalf and introduced the testimony of four other witnesses. The Administrative Laws Judge found the charge and specifications proved at the conclusion of the hearing on 30 March 1989. The complete Decision and Order was issued on 15 June 1989 and was served on Appellant on 19 June 1989. Appellant filed a notice of appeal on 12 June 1989 and perfected his appeal by filing a brief on 7 November 1989.

FINDINGS OF FACT

1. At all times relevant, Appellant was serving under the authority of his above captioned document as an able bodied seaman aboard the S/T OVERSEAS CHICAGO, a merchant vessel of the United States.
2. On or about 19 December 1988, while the S/T OVERSEAS CHICAGO was engaged in cargo lightering operations at sea near Port Arthur, Texas, Appellant charged into the cargo control room to confront the Chief Mate, Mr. Adkison. At that time, Mr. Adkison was sitting and monitoring the ongoing operations.
3. Appellant approached to within two or three feet of Mr. Adkison's face, drawing back one of his clenched fists as if to strike the Chief Mate and all the while shouting "you don't have the guts to fire me", or words to that effect. The only other witness present in the cargo control room for the entire confrontation was the Pumpman, Mr. Williams, who was monitoring the operations with the Chief Mate. Both Mr. Adkison and Mr. Williams interpreted Appellant's actions to constitute a threat to Mr. Adkison.
4. On 20 December 1989, Appellant was summoned to the Captain's

office for the official "logging" of the events which had occurred previously in the cargo control room. Present in the office at the time of the logging were five people: the Captain, the Chief Mate, the Pumpman, the Boatswain and the Appellant. When the Captain asked the Appellant to comment for the log, Appellant accused the Chief Mate of being a liar. Appellant then said to Mr. Adkison words to the effect, "I will see you in Galveston on your boat". The Captain, Boatswain and Mr. Adkison all testified they understood this statement to be a verbal threat to Mr. Adkison.

5. As a result of Appellant's assault of the Chief Mate in the cargo control room on or about 19 December 1988, Appellant had created a disturbance potentially threatening the safety of both the S/T OVERSEAS CHICAGO and the M/V OVERSEAS ARCTIC since there is an enhanced risk of danger during lightering operations.

6. Finding the two supporting specifications proved by a preponderance of the credible and persuasive evidence, the Administrative Law Judge concluded that the charge of misconduct had been proved.

BASES OF APPEAL

This appeal has been taken from the order of the Administrative Law Judge. Appellant asserts the following bases of appeal:

(1) the testimony of the witnesses to the logging incident on 20 December 1988 should not have been relied upon by the Administrative Law Judge since none of the witnesses were able to accurately perceive the incident, and

(2) the eight month outright suspension was unduly harsh since it would prevent Appellant from achieving full seniority in his union requiring him to work an additional eight years to be eligible again and it would adversely affect his life insurance policy.

Appearance by: Appellant, pro se

OPINION

I

On appeal, Appellant does not question the Administrative Law Judge's finding with regard to the first specification. Appellant challenges only the findings as to the accuracy of the witness accounts with respect to the second specification.

However, resolution of the alleged inconsistency in the testimony of the witnesses is a matter of credibility which is wholly within the purview of the Administrative Law Judge. Appeal Decision 2452 (MORGANDE) and Appeal Decision 2427 (JEFFERIES). The Administrative Law Judge made the ultimate finding that all the witnesses now challenged on appeal were credible. [Decision and Order, p. 12]. The Administrative Law Judge's determination from the conflicting testimony of several witnesses will not be disturbed unless it is inherently incredible. Appeal Decision 2356 (FOSTER); Appeal Decision 2340 (JAFFEE); Appeal Decision 2333 (AYALA); and Appeal Decision 2302 (FRAPPIER). I do not find the Administrative Law Judge's conclusions as to the credibility of the testimony of the witnesses to the 20 December "logging" incident inherently incredible.

II

Finally, Appellant asserts that the eight month outright suspension is excessive. However, the order in a particular case is peculiarly within the discretion of the Administrative Law Judge and, absent some special circumstances, will not be disturbed on appeal. Appeal Decision 2468 (LEWIN); Appeal Decision 2379 (DRUM); Appeal Decision 2366 (MONAGHAN); Appeal Decision 2352 (IAUKEA); Appeal

Decision 2344 (KOHAJDA); and Appeal Decision 1751 (CASTRONUOVO). The circumstances which Appellant referred to in mitigation of the order are not compelling since hardship has never been grounds to modify suspension orders. Appeal Decision 2323 (PHILPOTT); Appeal Decision 1666 (WARD). Thus, I find no special circumstances in this case which would cause me to modify the Administrative Law Judge's order.

Additionally, the order imposed at the conclusion of the hearing is exclusively within the discretion of the Administrative Law Judge and will not be disturbed unless clearly excessive. Appeal Decision 2463 (DAVIS); Appeal Decision 2423 (WESSELS); and Appeal Decision 2414 (HOLLOWELL). Pursuant to 46 C.F.R. +5.569(d), the suggested range of an appropriate order for "violent acts against other persons (without injury)" is two to six months. I cannot say the eight month suspension is clearly excessive particularly in view of 46 C.F.R. +5.569(b)(2) which specifically allows the Administrative Law Judge to consider evidence of a prior offense in aggravation in selecting an appropriate order. There was an affidavit in evidence which noted Appellant's prior six month suspension for stealing from the ship's store and uttering profanities at the Master aboard the M/V ARION on 26 April 1988. (IO Ex. 6).

CONCLUSION

Having reviewed the entire record and considered Appellant's arguments, I find that Appellant has not established sufficient cause to disturb the findings and conclusions of the Administrative Law Judge. The hearing was conducted in accordance with the requirements of applicable regulations.

ORDER

The Decision and Order of the Administrative Law Judge dated 15 June 1989 at Houston is AFFIRMED.

MARTIN H. DANIELL
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington, D.C. this 6 day of July, 1990.

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5 EVIDENCE

5.190 Witnesses

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-credibility determined by ALJ

-ALJ determination of credibility will not be disturbed unless inherently incredible

12 ADMINISTRATIVE LAW JUDGE

12.01 Administrative Law Judge

-evidence, credibility of determined by ALJ

-severity of order as within the

discretion of

-order exclusively within the discretion
of

12.80 Modification of order

-economic hardship of
suspension/revocation not
grounds for

CITATIONS

Appeal Decisions Cited: 2452 (MORGANDE); 2427 (JEFFERIES); 2356
(FOSTER); 2340 (JAFFE); 2333 (AYALA); 2302 (FRAPPIER); 2468 (LEWIN);
2379 (DRUM); 2366 (MONAGHAN); 2352 (IAUKEA); 2344 (KOHAJDA); 1751
(CASTRONUOVO); 2323 (PHILPOTT); 1666 (WARD); 2463 (DAVIS); 2423
(WESSELS); 2414 (HOLLOWELL)

NTSB Cases Cited: none

Federal Cases Cited: none

Statutes and Regulations Cited: 46 C.F. R. +5.569(b)(2)

***** END OF DECISION NO. 2508 *****

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