In the Matter of Merchant Mariner's Document No. Z-197417-D2 and all other Seaman Documents
Issued to: ROBERT A. SANCHEZ

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1137

ROBERT A. SANCHEZ

This appeal has been taken in accordance with the Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 19 June 1958, an Examiner of the United States Coast Guard at San Francisco, California revoked Appellant's seaman documents upon finding him guilty of misconduct. Two specifications allege that while serving as Steward on board the United States SS LA SALLE under authority of the document above described, on or about 18 February 1958, Appellant did wrongfully assault and strike the Third Cook, on Ladislaus Ziembka, in the face with his fists. While serving as above, on or about 18 February 1958, did wrongfully engage in a fight with the Third Cook.

At the beginning of the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own choice, Appellant elected to waive that right and act as his own counsel. He entered a plea of not guilty to the charge and each

specification.

The Investigating Officer made his opening statement and introduced in evidence the testimony of four witnesses, a U. S. Public Health Service Certificate of Medical Care dated 3 March 1958, and a sport shirt allegedly worn by Ladislaus Ziembka on 18 February 1958.

In defense, Appellant offered in evidence the testimony of one witness. The sworn testimony of Appellant taken at a preliminary investigation held on 7 March 1958 was stipulated as evidence.

At the conclusion of the hearing, the oral argument of the Investigating Officer was heard and both parties were given an opportunity to submit proposed findings and conclusions. Appellant did not desire to make an argument. The Examiner announced the decision on 19 June 1958 in which he concluded that the charge and two specifications had been proved. An order was entered revoking all documents issued to Appellant.

The decision was served on 25 June 1958. Appeal was timely filed on 15 July 1958 and further matter was submitted by counsel in September 1959.

FINDINGS OF FACT

On 18 February 1958, Appellant was serving as Steward on board the United States SS LA SALLE and acting under authority of his Merchant Mariner's Document No. Z-197417-D2 while the ship was in the port of Nogata, Japan. At approximately 1730, 18 February 1958 while the vessel was getting underway from Nogata, Japan, Ladislaus Ziembka, the Third Cook, reported to the Master on the bridge, stating that he had been injured and wanted to go to the hospital. The Master, who was occupied with maneuvering the vessel, observed that Ziembka's jaw was swollen and sent the Chief Mate to investigate. The Chief Mate went to Ziembka's room where he examined Ziembka and was told by Ziembka that the Steward had beaten him and had hit him in the jaw causing injuries. The Chief Mate reported to the Master who ordered a launch and sent the Third Cook ashore for medical treatment. Prior to leaving the ship, Ziembka stated to the Master that the Steward had come into his

room and beaten him up. Ashore, the Third Cook was examined by a doctor who gave his some medicine and told him to return to the ship but to rest for a few days until the swelling in his jaw subsided. Ziembka returned to the ship and returned to duty after two days in "off duty" status. The day following the incident, the Master called Ziembka and Appellant into his cabin and asked them about the incident. Appellant stated at the time that Ziembka had lied and denied ever striking the Third Cook. Appellant had previously told the Chief Mate that he had heard that the Third Cook was injured by falling.

Later in the voyage, Mishel Michalik, a bedroom utility man aboard the LA SALLE stated, after questioning by the Master, that he had been standing outside the Third Cooks's stateroom porthole at about 1720 on 18 February 1958 and had seen the Steward swinging his fists at the Third Cook. He further stated that the Steward apparently grabbed hold of Ziembka and he had heard Ziembka holler "Help, help." michalik stated that the Chief Cook was also present in the room.

When the LA SALLE arrived in Portland, Oregon, Ziembka went to the U. S. Public Health Service Office for further examination of his jaw. Diagnosis of fracture of right mandible was made there and Ziembka was referred to the U. S. Public Health Hospital, San Francisco for further treatment. He was paid off the ship in Portland, Oregon in an "unfit for duty, fit for travel" status.

At the time of the incident, Ladislaus Ziembka was approximately fifty-seven years old, five feet five inches in height, and weighed 150 pounds. Robert A. Sanchez was approximately thirty-six years old, five feet eleven inches in height, and weighed 210 pounds.

In addition to the foregoing material I find further that at approximately 1720, 18 February 1958, aboard the SS LA SALLE, Appellant and the Chief Cook entered the room of Ladislaus Ziembka, to speak to the Third Cook about his duties. An argument ensued and Appellant acting wrongfully, without cause or justification, struck the Third Cook's face with his fists and tore the buttons from the front of his shirt by grabbing it. Appellant's blows fractured the right mandible of Ziembka.

Appellant has no prior record.

BASES OF APPEAL

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

I. The findings of the Examiner are not supported by the evidence.

II. The order of the Examiner is extremely harsh and without justification.

Appearance on appeal: Diamond, Engel and Lattof of Mobile, Alabama, by Ross Diamond, Jr., Esquire, of Counsel.

OPINION

In his letter of appeal, Appellant contends that the determination of his guilt hinges upon finding greater credibility in the testimony of Ziembka and Michalik than in the testimony of Appellant and Robert E. Weeks the Chief Cook. The Examiner in his opinion found generally that the demeanor, manner of testifying, and details testified to make the evidence elicited from the first two above mentioned witnesses more credible than that elicited from the latter two witnesses. He found sufficient credibility in the evidence against Appellant as opposed to that in favor of him to support findings of guilty to the charge and specifications. I too am convinced that the evidence presented against Appellant is of greater legal efficacy than that which was presented in his favor. Accordingly, it is my opinion that the charge and specifications are proved.

Appellant next contends that the order of the Examiner is extremely harsh and without justification. It must be remembered, however, that the assault charged in this case caused serious injuries to the Third Cook, Ziembka. I agree with the Examiner's statement that it was entirely without justification. I will however take into consideration the fact that Appellant has been going to sea since 1940 and that his prior record is good.

CONCLUSION

It is my conclusion that there is substantive and probative evidence in the record to warrant affirmance of the finding of guilty to the charge and both specifications. I further conclude, however, after consideration of Appellant's prior good record, that the order of the Examiner is excessive.

ORDER

The order of the Examiner dated at San Francisco, California on 19 June 1958 is modified to provide for an outright suspension of twelve (12) months.

As so modified, said order is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 8th day of February, 1960.

***** END OF DECISION NO. 1137 *****

Top