

In the Matter of Merchant Mariner's Document No. Z-1069001-D1  
and all other Seaman Documents  
Issued to: PEARLIE KATO

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1344

PEARLIE KATO

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

By order dated 5 February 1962, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for two months outright plus four months on twelve months' probation upon finding her guilty of misconduct. The specification found proved alleges that while serving as a waitress on board the United States SS BRASIL under authority of the document above described, on 28 December 1961, Appellant assaulted bus boy Arnold.

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

The Investigating Officer introduced in evidence the testimony of four witnesses including Arnold and an entry in the ship's Official Logbook with attached statements by members of the crew.

In defense, Appellant testified that after an exchange of words, Arnold rushed at her with a raised bread box, she screamed and other members of the crew prevented either party from touching the other.

#### *FINDINGS OF FACT*

On 28 December 1961, Appellant was serving as a waitress on board the United States SS BRASIL and acting under authority of her document while the ship was at Cristobal, Panama Canal Zone.

While serving the evening meal, Appellant had an argument with bus boy Arnold. As a result of this, Appellant attempted to strike Arnold as he backed away. She was restrained by one or more of the members of the crew who were attracted to the scene by the disturbance.

Appellant has been going to sea since 1958 and has no prior record.

APPEARANCE ON APPEAL: Peter S. Kurtz, Esquire of  
New York City, of Counsel.

#### *OPINION*

As a result of a slight arm injury received by Arnold during this incident, the Examiner found that Appellant was guilty of assault and battery by striking Arnold with some instrument. Concerning this, it is immaterial whether there is substantial evidence to show that Appellant injured Arnold, with or without an instrument, because she was charged with assault rather than assault and battery. A battery has been defined as consummated assault, an assault as an inchoate battery.

Since Appellant's version was rejected by the Examiner, it is my opinion that the remaining evidence is sufficient to establish that Appellant was guilty of the offense alleged in the specification. The order will be reduced accordingly.

#### *ORDER*

The order of the Examiner dated at New York, New York, on 5 February 1962, is modified to provide for a suspension of one (1) month.

As so MODIFIED, the order is AFFIRMED.

D. McG. Morrison  
Vice Admiral, United States Coast Guard  
Acting Commandant

Signed at Washington, D. C., this 8th day of October 1962.

\*\*\*\*\* END OF DECISION NO. 1344 \*\*\*\*\*

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