

In The Matter of License No. 268504 and all other Seaman Documents  
Issued to: Joseph C. Wild

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1347

Joseph C. Wild

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 4 October 1961, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as Chief Engineer on board the United States SS EXPRESS under authority of the license above described, on 3 December 1960, Appellant assaulted and battered the Third Assistant Engineer.

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 Third Assistant Engineer Barnette, the ship's Purser, an oiler and a fireman. The latter two witnesses were on watch with Barnette at the time of the alleged offense.

Three character witnesses testified concerning Appellant's outstanding record as a seaman, and Appellant's employment record was submitted in evidence. Appellant did not testify.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. The Examiner then entered on order suspending all documents, issued to Appellant, for a period of two months outright plus four mouths's on eight months' probation.

#### *FINDINGS OF FACT*

On 3 December 1960, Appellant was serving as Chief Engineer on board the United States SS EXPRESS and acting under authority of his license while the ship was at sea.

About 0030 on this date, Third Assistant Engineer Barnette was on watch in the engine room when he called Appellant to come to the engine room concerning a minor defect which Barnette could easily have corrected. As a result, Appellant was aggravated when he arrived and was told what the trouble was. Appellant angrily reprimanded Barnette and hit him in the mouth knocking out three front, upper teeth which were loose due to their decayed condition. Appellant was not otherwise injured except for a slight cut on the upper lip. There was some bleeding. The oiler and fireman on watch were nearby when this occurred.

Appellant relieved Barnette of the watch and he reported the incident to the Master. The latter sent the Purser to Barnette's room to treat the injury. The Purser observed that one or more teeth were missing, there was dried blood around the lips, and no swelling. He advised Barnette to rinse his mouth with salt water.

The Third Assistant Engineer filed a claim for damages against the shipowner as a result of this incident.

Appellant has no prior record.

#### *BASES OF APPEAL*

This appeal has been taken from the order imposed by the Examiner. It is contended that the alleged offense was not proved by substantial evidence because Barnette's testimony is contradicted by the testimony of the oiler and fireman that they did not see anything unusual occur. Barnette testified that these two witnesses were in a position to see what happened. Barnette's testimony is incredible for many reasons including the fact that he attempted to get the oiler and fireman to sign statements that they saw the alleged offense. In effect, the Government disproved the case against Appellant by the testimony of these two witnesses.

The Examiner, by stating that Appellant offered nothing to rebut Barnette's testimony, drew an adverse inference from Appellant's failure to testify since he was the only other person present.

For these reasons, the charge should be dismissed. Alternatively, it is submitted that the order is excessive in view of Appellant's long record of excellent sea service.

APPEARANCE: Haight, Gardner, Poor and Havens of New York City  
by Clifford J. Brenner, Esquire, of Counsel.

#### OPINION

The contentions raised on appeal were discussed by the Examiner in his decision. He, as the trier of the facts, was in the best position to judge the credibility of the witnesses since he heard them testify and observed their demeanor. The Examiner accepted Barnette's testimony as the truth despite the testimony of the oiler and fireman that they saw the two officers together but did not notice anything unusual happen. Actually, this negative testimony does not contradict Barnett's testimony since the other two witnesses did not affirmatively testify that the Chief Engineer did not strike the Third Assistant. The fact that Barnette tried to get the fireman and oiler to sign statements about the blow because he thought they saw it does not reflect on his credibility.

Additional reasons given by the Examiner for believing Barnette are that there was no other explanation as to why Appellant stood the balance of Barnette's watch (over three hours); Barnette reported the incident to the Master; the Purser saw the condition of Barnette's mouth; and the absence of additional injury was accounted for by the fact that not much force was required to knock out the loose teeth. Since the Examiner did not apply any irrational tests in deciding in favor of the credibility of the Third Assistant Engineer, his finding in this respect will not be disturbed.

The Examiner did not draw an adverse inference of any kind resulting from the fact that Appellant did not testify. The Examiner simply concluded that the Government's case was not rebutted.

The order will not be modified. The offense of assault and battery is a form of misconduct which occurs so often that unlicensed crew members should have a particularly good example set for them by the ships' officers.

*ORDER*

The order of the Examiner dated at New York, New York, on 4 October 1961, 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. 1347 \*\*\*\*\*

