

In the Merchant Mariner's Document No. Z-251288-D1
and all other Seaman Documents
Issued to: Jonah F. Clark

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1384

Jonah F. Clark

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 21 December 1961, an Examiner of the United States Coast Guard at Houston, Texas suspended Appellant's seaman documents for two months outright plus six months on eighteen months' probation upon finding him guilty of misconduct. The specification found proved alleged that while serving as an oiler on board the United States SS KENDALL FISH under authority of the document above described, on 27 November 1961, Appellant assaulted and battered messman Williams.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigation Officer introduced in evidence logbook entries and the testimony of three witnesses.

Appellant made an unsworn statement that the incident occurred

when he "tried to break up a fight" (R. 15).

The delay in this case was due to difficulty in transcribing the record after the reporter at the hearing retired from the Coast Guard.

FINDINGS OF FACT

On 27 November 1961, Appellant was serving as an oiler on board the United States SS KENDALL FISH and acting under authority of his document while the ship was in the port of Genoa, Italy.

Late on the night of this date, messman Williams was drunk when he returned on board. As Appellant stopped Williams from starting a fight with another crew member in the messroom, Williams addressed Appellant with foul and threatening language. Appellant hit Williams above the left eye and his head was cut on a door sill as he fell to the deck. Williams was sent ashore for medical treatment. Stitches were required for the cut over his left eye and the one at the base of his skull.

Appellant has no prior record during twenty years at sea.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that, due to the lack of counsel, Appellant failed to obtain the testimony of witnesses who would have stated that Williams was the sole cause of the fight. Appellant was required to defend himself when he was threatened or he would have been injured by Williams. The latter was injured when he fell as a result of his drunken condition.

In view of Appellant's past good record, it is requested that the order be set aside.

OPINION

Although Williams was the agitator, it is clear from the record that Appellant struck Williams because of the language with which he addressed Appellant rather than because Appellant felt he

was in danger of being injured by Williams. Verbal abuse does not justify assault and battery. The Master's testimony, that Williams was so drunk he would not have injured Appellant by striking him, is supported by Appellant's contention that the fall and injuries were due more to Williams condition than the blow by Appellant. In any event, it is obvious that the proximate impetus for the fall was supplied by Appellant's fist. Hence, it is not material whether the injuries were caused by the blow, the door sill, or both as seems most likely.

Despite Appellant's apparently good intentions when he interjected himself as a peacemaker, unfortunately he did not continue to act in that capacity. The Examiner considered Appellant's prior good record and commendation by the Master before rendering the order of suspension.

ORDER

The order of the Examiner dated at Houston, Texas, on 21 December 1961, is AFFIRMED.

E. J. Roland
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C. this 12th day of April 1963.

***** END OF DECISION NO. 1384 *****

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