

In the Matter of Merchant Mariner's Document No. Z-595418
Issued to: VINCENT GARCIA, JR.

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

405

VINCENT GARCIA, JR.

This appeal comes before me by virtue of Title 46 United States Code 239(g) and 46 Code of Federal Regulations Sec. 137.11-1.

On 11 October 1949 an Examiner of the United States Coast Guard at New York, N.Y. suspended Merchant Mariner's Document No. Z-595418 issued to Vincent Garcia, Jr. upon finding him guilty of "misconduct" based upon two specifications alleging in substance, that while serving under authority of the document above described, on or about 25 April 1948 as Fireman-Watertender on the American merchant vessel, the SS ROBERT LOWRY, (1) at about 1500 hours wrongfully assaulted one Angelo Costakos, Chief Steward, with intent to do bodily harm and did inflict serious injury to the face and body of said Costakos while said vessel was in the port of Hamburg, Germany; and (2) wrongfully refused to obey a lawful order of the vessel's Master; the vessel then being under way from Hamburg.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. Although advised of his right to be represented by counsel of his own selection, he elected to waive that right and act as his own

counsel. He entered a plea of "not guilty" to the charge and first specification; and "guilty" to the second specification.

Thereupon, the Investigating Officer introduced in evidence the transcript of an investigation record conducted into the incidents described, at Galveston, Texas on 17 May 1948, consisting of sworn statements of the Steward; the Third Mate; Second Cook; Chief Mate; Master; one Belbouda; one Browne and this Appellant.

In defense, Appellant joined in the offer of the Galveston transcript, but offered nothing else before the Examiner.

At the conclusion of the hearing, the Examiner found the charge "proved" by plea to the second specification and proof of the first specification; and entered an order suspending Merchant Mariner's Document No. Z-595 418 and all other valid documents issued to Appellant, for a period of six (6) months, commencing 11 October 1949.

From that order, this appeal has been taken, and it is urged:

- (a) That there is no substantial evidence to find him guilty under the first specification;
- (b) The penalty is too severe; and
- (c) The Coast Guard has no jurisdiction over the second specification.

Based upon my examination of the Record submitted, I hereby make the following

FINDINGS OF FACT

Appellant, acting under authority of his Merchant Mariner's Document No. Z-595 418, was a member of the crew of the American S.S. ROBERT LOWRY in the capacity of fireman-watertender on a voyage which included 25 April 1948, during which day said vessel was in, and later, departing the port of Hamburg, Germany.

On that date, at about 1500, Appellant assaulted and battered the steward of said vessel, one Angelo Costakos or Costagos by striking the steward with intent to do bodily harm. As a result, the steward suffered various cuts and bruises necessitating his

confinement in the ship's hospital.

As the vessel was departing from Hamburg, Appellant was given a direct and lawful order by the Master to "stay below where he belonged" and away from the officer's deck; but he disobeyed that order, and upon being apprehended, was logged by the Master.

From Appellant's own admission (p. 3, 12 Galveston Record) he had been ashore with a shipmate since the day before, and he was intoxicated when he returned to the ROBERT LOWRY in the late afternoon of 25 April 1948.

Until this incident, Appellant has had an unblemished record as a merchant seaman.

OPINION

I find there is substantial evidence to support the first specification. He was positively identified by the Steward as the assailant; and there is other evidence connecting him with the assault. Appellant's own admissions respecting his condition when he returned to the ship do not inspire confidence in his later claims of self-defense.

Appellant's third proposition is untenable. It is well established that more than one sanction may be legally imposed for an identical act or omission. See *Helvering v. Mitchell*, 303 U.S. 391, 399. That the Master logged Appellant for disobedience of his order does not relieve him of responsibility for his misconduct under R. S. 4450.

In view of the complete disruption of discipline attending Appellant's assault upon the Steward, it seems to me the Examiner's order was extremely moderate, regardless of any ruling on the second specification.

CONCLUSION AND ORDER

I find no good reason to disturb the Examiner's Order dated 11 October 1949; and said Order is, therefore AFFIRMED.

MERLIN O'NEILL
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this *12th* day of *January*, 1950.

***** END OF DECISION NO. 405 *****

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