In the Matter of Merchant Mariner's Document No. Z-746197
Issued to: JOHN BRETTA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

472

JOHN BRETTA

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 6 September, 1950, an Examiner of the United States Coast Guard at Honolulu, T.H., suspended Merchant Mariner's Document No. Z-746197 issued to John Bretta upon finding him guilty of "misconduct" based upon three specifications alleging in substance, that while acting as able seaman in the service of the American S.S. PIONEER MAIL, under authority of the document above described, on or about 2 September, 1950, while said vessel was at Pearl Harbor, he assaulted and battered a U.S. Marine sentry; he refused to obey a lawful order of the Marine Commander of the Guard and he created a disturbance against order and discipline. Another specification, alleging that Appellant assaulted the Marine sentry by brandishing a knife, was found "not proved" by the Examiner.

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 each

specification.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of the Marine alleged to have been assaulted, the testimony of the Chief Officer on the PIONEER MAIL and the testimony of the Marine Sergeant in Charge whose order Appellant refused to obey.

In defense, Appellant offered in evidence the testimony of a seaman who witnessed the events in question. He also testified under oath in his own behalf.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant, the Examiner found the charge "proved" by proof of the three specifications and entered an order suspending Appellant's Merchant Mariner's Document No. Z-746197, and all other documents or certificates issued to him, for a period of nine months.

From that order, this appeal has been taken, and it is urged that the trouble resulted from the improper action of the Marine sentry in refusing to let Appellant enter the designated "smoke house" at the ammunition depot near which the PIONEER MAIL was moored; that there was a heated argument at the "smoke house" but no blows were struck; that the reports of the incident were highly exaggerated by the Marines; and that his prior unblemished record for five years at sea should be taken into consideration in mitigating the order imposed.

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

FINDINGS OF FACT

On 2 September, 1950, Appellant was in the service of the American S.S. PIONEER MAIL as an able seaman, acting under authority of his Merchant Mariner's Document No. Z-746197, while said ship was moored at the U.S. Naval Ammunition Depot, Pearl Harbor, Territory of Hawaii.

On this date, while Appellant was on authorized leave, he

visited an Army, Navy and Marine canteen in Pearl Harbor. Appellant and several others began creating a disturbance at the canteen and they were finally removed from the premises by a Marine who was acting under orders from his superior officer. Appellant engaged in an argument with this Marine while returning to the PIONEER MAIL.

When Appellant arrived at the ammunition depot where his ship was located, he wanted to take a smoke and went to the "smoke house" for this purpose. Regulations forbade smoking at any other place in this area, including aboard the PIONEER MAIL which was then loading ammunition. The same Marine with whom Appellant had previously exchanged heated words was on duty in the vicinity of the "smoke house". The two men again commenced arguing and the Marine Sergeant of the Guard joined them and ordered Appellant to return to his ship. Appellant refused to do so; used profane language directed towards both of the Marines; spit at them; threatened the Marine sentry and attempted to strike the latter. The Chief Officer of the PIONEER MAIL then appeared and Appellant immediately obeyed his order to return to the ship. While going up the gangway, Appellant became loud and boisterous when he saw the same two Marines following them. He offered to fight them and spit on the Marine Sergeant. Finally, the Chief Mate persuaded Appellant to go peacefully to his quarters aboard ship. Appellant had been drinking beer while at the canteen but he was not considered by anyone to have been in an intoxicated condition during the course of these events.

OPINION

There is no doubt that Appellant created an unseemly disturbance and refused to obey the order of the Sergeant of the Guard whose duty it was to preserve peace and order in the vicinity of the ammunition depot. As stated by the Examiner, there was no excuse for Appellant failing to obey this duly constituted authority.

The extent of the assault and battery upon the person of the Marine sentry is questionable. The sentry did not testify that Appellant hit him at any time but that Appellant pushed him once and spit on him during the course of their arguments. The sentry specifically stated that Appellant missed the side of his face when

he tried to hit him at the "smoke house". Although not as serious an offense as if Appellant had struck the sentry with his fists, the pushing and spitting are sufficient basis for upholding the charge of assault and battery.

There are certain factors, however, which mitigate in Appellant's favor. Apparently, he did not cause any disturbance after having left the canteen except when in the presence of the Marine sentry and, later, the Marine Sergeant. It seems that the initial irritation with the first Marine grew into a resentment towards Marines in general. Quite possibly, the beer drinking had something to do with this. At any rate, Appellant obeyed the Chief Mate of his ship immediately when he was ordered to return to the ship. This was soon after he had refused to obey a similar order given by the Marine Sergeant.

In addition, there is some indication from the record that the argument at the "smoke house" developed because the sentry attempted to prevent Appellant from taking a smoke. The argument must have been about something but, when asked what it was about, the sentry testified that he had no idea. Regardless of what the reason for the argument was, Appellant was in the wrong; but in view of his clear record and the above circumstances, the order will be modified.

ORDER

The Order of the Examiner dated 6 September, 1950, is hereby modified to read as follows:

> Appellant's Merchant Mariner's Document No. Z-746197, and all other documents, certificates and licenses held by him, are hereby suspended for a period of nine months; four months of this suspension are to be outright and the remaining five months are to be probationary for a period of twelve months after expiration of the four months outright suspension. As so modified, the Order of the Examiner is AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 15th day of December, 1950.

***** END OF DECISION NO. 472 *****

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