

In the Matter of Merchant Mariner's Document No. Z-198929
Issued to: SAMUEL POWELL

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

505

SAMUEL POWELL

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

On 18 April, 1951, an Examiner of the United States Coast Guard at Houston, Texas, revoked Merchant Mariner's Document No. Z-198929 issued to Samuel Powell upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as messman on board the American SS CHARLOTTE LYKES under authority of the document above described, on or about 18 March, 1951, while said vessel was departing the port of Naples, Italy, he assaulted and battered a crew member of said vessel, one Clem C. Slater (oiler), inflicting such severe physical injuries as to necessitate hospitalization in the port of Genoa, Italy, on 24 March, 1951.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by an attorney of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "guilty" to the charge and specification

proffered against him except as to that part of the specification which refers to hospitalization.

The Investigating Officer then made his opening statement and Appellant made a statement in mitigation of the offense stating that the assault on Slater stemmed from a prior argument.

The Investigating Officer introduced in evidence the testimony of four witnesses, several log entries and a medical report.

At the conclusion of the hearing, having heard the Investigating Officer's request for revocation of Appellant's documents, the Examiner announced his findings and concluded that the specification had been proved by plea and the charge proved. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-198929 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

Subject's appeal is a petition for administrative clemency based upon eight years at sea including shipping during World War II. Appellant also requests that he be given another chance in order that he may be able to furnish financial aid to his family.

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

FINDINGS OF FACT

On 18 March, 1951, Appellant was serving as messman on board the American SS CHARLOTTE LYKES and acting under authority of Merchant Mariner's Document No. Z-198929 while said vessel was at sea after having departed from Naples, Italy.

On this date, as a result of Slater having complained that Appellant was not performing his duties as messman properly, he attacked Slater while the latter was lying in his bunk and gave him a severe beating before Appellant was taken out of the room by two other members of the crew. Slater's jaw was fractured in more than one place, his entire head was bruised, his face was badly swollen, he was bleeding profusely and almost unconscious. Slater was

confined to his bunk by the Master the next morning.

On 20 March, 1951, Slater was taken ashore at Genoa, Italy, for treatment by a doctor. The latter suggested X-rays and the results of the X-rays led to Slater being discharged and sent ashore to be hospitalized for treatment. The medical report gives a detailed description of the injuries received.

In 1944, Appellant received a six months' suspension of his documents for assault and battery with a knife while serving aboard ship under the influence of liquor. The person charged was admonished in 1945 for being drunk and disorderly while serving aboard a vessel.

OPINION

There is no doubt that Appellant committed a vicious, brutal and unprovoked attack upon the person of Slater while the latter was lying in his bunk, totally unprepared for any such abuse. This aggravated the seriousness of an offense which was already extremely serious in view of the severe beating administered by Appellant.

Appellant's prior record coupled with this incident indicate the probability that there would be a subsequent occurrence of this nature if Appellant were permitted to remain aboard American merchant marine vessels. Such conditions do not comply with the statutory duty of the Coast Guard to protect lives and property at sea by means of these proceedings. The presence of a person aboard ship who gives vent to a wicked disposition by violent and uncalled for assaults upon others has been held to be sufficient to make the vessel unseaworthy. *Nowery v. Smith (D.C. Pa., 1946)*, 69 Fed. Supp. 755, aff. 161 F.2d 732. For these reasons, no clemency may be permitted in such cases.

ORDER

The order of the Examiner dated 18 April, 1951, should be, and it is, *AFFIRMED*.

A. C. Richmond

Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 17th day of July, 1951.

***** END OF DECISION NO. 505 *****

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