

In the Matter of License No. 43005 and Certificate of Service No.
A-15280

Issued to: BURL MILLER

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

507

BURL MILLER

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 26 January, 1951, an Examiner of the United States Coast Guard at New York City revoked License No. 43005 and Certificate of Service No. A-15280 issued to Burl Miller upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as Second Mate on board the American SS JOSIAH ROYCE, under authority of the license above described, on or about 9 October, 1947, while said vessel was in the port of Buenos Aires, Argentina, he failed to perform his duties by reason of intoxication; and on or about 30 January, 1948, while said vessel was in Goteborg, Sweden, he assaulted a member of the crew, Mitchell D. Baker, with a dangerous weapon.

At the time of service of the charge and specifications, 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. Since Appellant did not put in an appearance on the opening day of the hearing, the Examiner entered

a plea of "not guilty" on behalf of Appellant and proceeded in accordance with Title 46 C.F.R. 137.09-5(f).

Thereupon the Investigating Officer made his opening statement and introduced in evidence two certified copies of extracts from the official log book, two certified copies of extracts from the shipping articles and an authenticated copy of a Consular Report from the American Consulate General at Goteborg, Sweden. Having established a prima facie case, the Investigating Officer rested his case and the hearing was adjourned.

Appellant having appeared and satisfactorily explained his absence, the hearing was reconvened for the purpose of permitting the person charged to submit evidence in his own behalf. Being represented by counsel of his own choice, Appellant testified in his own behalf and offered the testimony of Baker, the assaulted seaman.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the two specifications and entered the order revoking Appellant's License No. 43005, Certificate of Service No. A-15280, and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that since Appellant was convicted in Goteborg, Sweden, and served an eight months' sentence, this further penalty puts him in double jeopardy, and it is an exercise of jurisdiction by one Sovereign in a situation which has already been thoroughly treated and in which jurisdiction has been exercised by another Sovereign. Appellant also pleads for clemency on the basis of his ability as a seaman and requests that he be examined by psychiatrists or neurologists to determine his suitability to hold a license as a Third Mate.

APPEARANCES: Silas Blake Axtell, Esquire, of New York City, of Counsel

Based upon my examination of the Record submitted, I hereby

make the following

FINDINGS OF FACT

From prior to 9 October, 1947, until 31 January, 1948, Appellant was serving as Second Mate on board the American SS JOSIAH ROYCE and acting under authority of his License No. 43005.

On 9 October, 1947, while said vessel was in Buenos Aires, Argentina, Appellant was absent from the ship from 1300 to 1630 while assigned to the watch when cargo was being worked. He returned aboard in an intoxicated condition and was asleep on watch from 1655 to 1810.

On 30 January, 1948, at about 2230 while the ship was in Goteborg, Sweden, Appellant attacked Mitchell D. Baker, first assistant engineer, with a thirteen inch blade galley knife and severely cut Baker in his abdomen just below the navel. Appellant, who was under the influence of intoxicating liquor, had to be driven away from Baker by others in order to prevent any further attack by Appellant upon Baker who was lying helplessly on deck.

I adopt as my findings of fact the additional detailed findings made by the Examiner in his decision. Such findings are supported by substantial evidence contained in the record.

OPINION

The petition on appeal raises two points: double jeopardy and clemency. The former has been adequately discussed by the Examiner's decision which is reproduced in part as follows:

"It is well established that double jeopardy applies only in cases where a person is placed twice in danger of punishment against his person or his property in criminal proceedings, and has no application in a proceeding such as this. It is well established, moreover, that certain acts can form the basis of proceedings of a criminal, of a civil, and of an administrative nature, the decision in one case being independent of and uncontroled upon the decisions in the other tribunals. In this case, as in every case, it is the

Examiner's bounden duty to enter such order, upon due proof of the specifications, and the charge, which is consonant with the safety of American seamen engaged in their livelihood on American merchant ships and the safety of such merchant ships, their passengers and their cargoes under the mandate of the statute aforesaid."

As to the request for clemency, it is my view that the seriousness of the offenses permits no mitigation of the order.

For the additional reasons stated and very competently discussed in his well considered decision, the order of the Examiner will be affirmed.

ORDER

The order of the Examiner dated 26 January, 1951, should be, and it is, *AFFIRMED*.

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

Dated at Washington, D. C., this 24th day of July, 1951.

***** END OF DECISION NO. 507 *****

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