

In the Matter of Merchant Mariner's Document No. Z-975529
Issued to: BRIAN THOMAS MYNES

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COST GUARD

704

BRIAN THOMAS MYNES

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 21 July, 1953, and Examiner of the United States Coast Guard at Mobile, Alabama, suspended Merchant Mariner's Document No. Z-975529 issued to Brian Thomas Mynes upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a fireman-watertender on board the American SS PLYMOUTH VICTORY under authority of the document above described, on or about 12 July, 1953, while said vessel was at sea, he assaulted and battered by beating Carl A. Dahl, a deck maintenance man.

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 counsel of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer and Appellant made their opening statements and the Investigating Officer introduced in evidence the testimony of the person named in the specification, Carl a. Dahl. The Investigating Officer then rested his case.

In defense, Appellant offered in evidence the testimony of another member of the crew who stated that the encounter between Appellant and Dahl on the poop deck was provoked by Dahl when he threw a can of paint thinner on Appellant. Appellant declined to testify in his own behalf.

At the conclusion of the hearing, having 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 specification. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-975529 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of one year outright and an additional period of six months on 24 months probation from 21 July, 1953.

From that order, this appeal has been taken, and it is urged that the decision was against the weight of the evidence and the charges have not been proved; Appellant merely used the amount of force necessary to defend himself; Appellant did not receive a fair hearing; and the order was extremely severe under the circumstances.

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

FINDINGS OF FACT

On 12 July, 1953, Appellant was serving as a fireman-watertender on board the American SS PLYMOUTH VICTORY and acting under authority of his Merchant Mariner's Document No. Z-375529 while the ship was at sea.

At about 1000 on this date, the deck maintenance man, Carl A. Dahl, approached Appellant on the poop deck and spoke to him about some uncomplimentary drawings which had been placed on Dahl's door

or in his forecastle the previous night. Appellant spat in Dahl's face, punched him and ripped his shirt. Then Dahl struck Appellant and he went away. Dahl put on another shirt and walked into the crew's messhall about fifteen minutes later. As Dahl went into the messhall, Appellant came up from behind and struck Dahl a hard blow on the head with a piece of wood. Dahl turned and saw Appellant before being knocked down by a second blow. Appellant stepped on Dahl and kicked him while he was on the deck. This continued until the steward grabbed Appellant and held him. Dahl received serious injuries for which he was still being treated at the time of the hearing and which have prevented him from working since the time of the beating.

There is no record of prior disciplinary action having been taken against Appellant's document during the period of more than two years he has been going to sea.

OPINION

There is no evidence in the record to support Appellant's contention that he acted in self-defense when he attacked Dahl in the messhall; nor does there appear to be any basis for Appellant's claim that he was not given a fair hearing. The testimony of Appellant's only witness was concerned solely with the incident which took place on the poop deck and this encounter had definitely come to an end before Dahl was badly beaten by Appellant in the messhall about fifteen minutes later. While questioning Dahl, Appellant admitted that he had kicked Dahl while he was on the deck. The Examiner asked Appellant if he wanted to testify in his own behalf but he did not do so. Hence, there was no evidence about the messhall incident except the testimony of Dahl; and the Examiner accepted Dahl's testimony as representing the true facts of the matter. In addition, the Examiner stated that he considered the testimony of Appellant's witness with respect to the poop deck incident to be untruthful. For these reasons, the specification was proved by substantial evidence; and, in view of the brutal nature of the attack in the messhall, the order imposed is not excessive.

ORDER

The Order of the Examiner dated at Mobile, Alabama, on 21

July, 1953, is

AFFIRMED.

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

Dated at Washington, D. C., this 23rd of October, 1953.

***** END OF DECISION NO. 704 *****

[Top](#)