

In the Matter of Merchant Mariner's Document No. Z-110349
Issued to: MANUEL LOPEZ, JR.

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

726

MANUEL LOPEZ, JR.

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.

By order dated 10 August, 1953, an Examiner of the United States Coast Guard at San Francisco, California, suspended Merchant Marine's Document No. Z-110349 issued to Manuel Lopez, Jr., upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as Second Electrician on board the American SS ALASKAN under authority of the document above described, on or about 9 July, 1953, while said vessel was at sea, he assaulted a fellow crew member, Chief Electrician William Bernal, by brandishing a knife in a threatening manner and offering to inflict bodily harm.

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. Appellant was represented by an attorney of his own selection and 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. The Investigating Officer introduced in evidence the testimony of the Chief Electrician and an entry in the Official Logbook of the ALASKAN. It was stipulated that Appellant was serving as a member of the crew on the ALASKAN at the time alleged in the specification.

In defense, Appellant testified under oath in his own behalf. He stated that the Chief Electrician hit Appellant in the stomach after he slammed the door but before he got the knife; it was necessary for Appellant to advance on the Chief Electrician to prevent him from attacking Appellant; and Appellant only used the knife as an "equalizer" in self-defense.

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 specification. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-110349, and all other licenses and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of six months.

From that order, this appeal has been taken, and it is urged that the suspension ordered is too severe; Appellant has been going to sea for 25 years; this is his only means of earning a living; and the Chief Electrician was just as guilty as Appellant. It is requested that the suspension be made probationary.

APPEARANCES: Messrs. O'Gara and O'Gara of San Francisco by John J. Crowley, Esquire, of Counsel.

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

FINDINGS OF FACT

On 9 July, 1953, appellant was serving as Second Electrician on board the American SS ALASKAN and acting under authority of his Merchant Mariner's Document No. Z-110349 while the ship was at sea enroute to San Francisco, California.

At about 2100 on this date, Appellant entered the forecandle which he shared with Chief Electrician Bernal who was lying in his bunk at the time. Mr. Bernal remonstrated with Appellant after he had caused considerable noise by turning the radio on very loud and slamming the door to the forecandle several times. An argument followed and Appellant, who was in an intoxicated condition, produced a knife and opened the blade which was about four or five inches long. Appellant threatened the Chief Electrician with the knife. Since the latter was in fear of bodily harm, he left the forecandle and ran along the passageway with Appellant in pursuit holding the open knife in his hand. Appellant took a fire axe off the bulkhead and threw it at Mr. Bernal but it did not hit him. Shortly thereafter, the Chief Mate and then the Master appeared on the scene as Appellant continued to threaten Mr. Bernal while chasing him. Appellant surrendered the knife to the Master upon request.

Appellant's prior disciplinary record consists of absence from duty in 1943; using profane language towards a Master on two occasions and towards a ship's doctor once; all in 1944; and damaging a ship's property while in confinement in 1944.

OPINION

The evidence completely refutes Appellant's claim that he acted in self-defense. The testimony of the Chief Electrician supports the above findings of fact. The latter's testimony is corroborated by the statement of the Master which is part of the entry in the Official Logbook and it is also corroborated, to some extent, by the testimony and log statement of the Appellant.

The Examiner very definitely rejected portions of Appellant's testimony, including the statement that the Chief Electrician first struck Appellant in the stomach, because Appellant's testimony conflicted with that of the Chief Electrician on several material points. Also, Appellant's prior statement in the log does not state that the Chief Electrician struck Appellant first. But regardless of the initial cause, Appellant could not have been acting in self-defense when he chased the Chief Electrician through the passageways with a knife. A man using a deadly weapon in self-defense is required to retreat to the point where he is in grave danger of bodily harm to himself before he attempts to

inflict injury with a weapon. On the contrary, Appellant was continually on the offensive after he opened the blade of his knife and commenced to pursue the Chief Electrician while the latter was running away.

Although there was no serious injury as a result of Appellant's conduct, his actions might well have resulted in considerable bodily injury to the Chief Electrician. In view of the gravity of the offense, the order of the Examiner will be sustained despite the personal hardship this might cause Appellant by depriving him of his livelihood for six months.

ORDER

The order of the Examiner dated at San Francisco, California, on 10 August, 1953, is *AFFIRMED*.

A. C. Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 11th day of February, 1954.

***** END OF DECISION NO. 726 *****

[Top](#)