

In the Matter of Merchant Mariner's Document No. Z-11719(R)  
Issued to: MILTON B. BATES

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

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MILTON B. BATES

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 2 November, 1953, an Examiner of the United States Coast Guard at Baltimore, Maryland, suspended Merchant Mariner's Document No. Z-11797(R) issued to Milton B. Bates upon finding him guilty of misconduct based upon one specification alleging in substance that while serving as Cook and Baker on board the American SS FERDINAND WESTDAHL under authority of the document above described, on or about 6 June, 1952, while said vessel was in port of Yokohama, Japan, he wrongfully inflicted wounds on a crew member, Paul F. Santos, with a dangerous weapon; to wit, a butcher knife. A second specification, alleging that Appellant threatened to kill Paul F. Santos, was found not proved by the Examiner.

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. When Appellant was arraigned, he stated that he had hit Santos with

the butcher knife and knocked him down but had not cut him. The Examiner then ordered a plea of "not guilty" to be entered on behalf of Appellant.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence a certified copy of an entry in the ship's Official Logbook and an extract from the shipping articles for the voyage including the date of 6 June, 1952. On motion of the Investigating Officer, the hearing was then continued for the purpose of taking depositions. When the hearing was reconvened, two depositions were offered in evidence by the Investigating Officer and received in evidence without objection.

In defense, Appellant testified under oath in his own behalf. Appellant stated that he and Santos were arguing; Santos knocked Appellant down twice in the galley; Appellant was then in fear of Santos; and the Third Cook got Santos out of the galley but he was returning to the galley when Appellant went out into passageway and twice struck Santos on the head with the blunt edge of a foot long carving knife.

At the conclusion of the hearing, having given both parties an opportunity to submit argument and proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the one specification. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-117197(R) 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 six months from 30 October, 1953.

From that order, this appeal has been taken, and it is urged that:

1. The order is excessive and Appellant requests the Commandant to take into consideration Appellant's previous good record for a period of 20 years at sea.
2. Both men returned to the ship in a somewhat intoxicated condition. Santos was initially the aggressor. He entered the galley twice and said he would "get" Appellant. Thereafter, Appellant brandished the butcher knife, which Appellant used in the galley to cut roast beef, in order to prevent Santos from attacking

Appellant. But Appellant did not cut or strike Santos with the blade of the knife and there was no bloodshed.

3. Appellant knows no other occupation and the economic effect of the order is disastrous since Appellant has four dependents.

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

#### *FINDING OF FACT*

On 6 June, 1952, Appellant was serving as Second Cook and Baker on board the American SS FERDINAND WESTDAHL and acting under authority of his Merchant Mariner's Document No. Z-117197(R) while the ship was at Yokohama, Japan.

At approximately 1300 on 6 June, 1952, Appellant and messman Santos engaged in a heated argument and fight shortly after they had both been drinking. The Chief Mate and other members of the crew separated the two men while they were fighting in the galley. Santos was taken into the passageway outside of the galley. Appellant remained in the galley as both he and Santos continued to shout threatening and abusive language at each other. The Chief Mate and seaman Lee were restraining Santos when Appellant came out of the galley and struck Santos two or three times on his head with either the blunt edge or the flat part of the blade of a knife which was about 18 inches in length and had a blade approximately 2 1/2 inches in width.

Santos was bleeding profusely from lacerations on the top and back of his head. He was given first aid on the ship and sent ashore for additional medical treatment. Appellant was also sent ashore and hospitalized for observation.

Appellant's prior record consists of a one-month suspension in 1947 for absence without leave, intoxication, theft of ship's property and failure to properly perform his duties.

#### *OPINION*

The weight of the evidence does not support Appellant's

contentions that he merely brandished the knife in order to protect himself and that there was no bloodshed. Both the Chief Mate and seaman Lee testified by deposition that Appellant pursued Santos into the passageway and struck him two or three blows with the large knife, causing considerable bleeding from Santos' head. These facts are also supported by Appellant's testimony at the hearing.

Regardless of whether Santos had knocked Appellant down at some earlier time, there was no element of self-defense present when Appellant struck Santos with the knife. Santos was being restrained by the Chief Mate and Lee when Appellant advanced and inflicted the injuries with a deadly weapon. A person using such a weapon in self-defense is permitted to do so only when he has himself retreated to the point where he is in danger of grave bodily harm if he does not attack. Such were not the facts in this case since Appellant took this aggressive action at a time when he was in no immediate danger of harm from Santos. The latter did not have any weapon in his possession during the entire incident.

In view of the seriousness of the offense, it is my opinion that the order of the Examiner was lenient and it will not be mitigated despite Appellant's prior record and the hardship brought upon himself and his dependents.

*ORDER*

The Order of the Examiner dated at Baltimore, Maryland, on 2 November 1953, is AFFIRMED.

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

Dated at Washington, D. C., this 12th day of March, 1954.

\*\*\*\*\* END OF DECISION NO. 729 \*\*\*\*\*

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