

In the Matter of Merchant Mariner's Document No. Z-739398 and all  
other Seaman Documents  
Issued to: LUIS D. VALLE

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1288

LUIS D. VALLE

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

By order dated 15 March 1961, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification found proceed alleges that while serving as a messman on board the United States SS SANTA PAULA under authority of the document above described, on 16 February 1961, Appellant assaulted and battered porter McDonald, a member of the crew.

At the hearing, Appellant voluntarily elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of McDonald, the testimony of the Third Steward and bartender as eyewitnesses, and a certified copy of an entry in the Official Logbook.

Appellant testified that McDonald was punching Appellant but he did not any time strike McDonald.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of twelve months outright plus twelve months on twenty-four months' probation.

#### *FINDINGS OF FACT*

On 16 February 1961, Appellant was serving as a messman on board the United States SS SANTA PAULA and acting under authority of his document while the ship was at sea en route from La Guaira, Venezuela to the island of Aruba.

About 0100 on this date, Appellant, age 33, entered the room he shared with porter McDonald, age 57. The latter snored very loudly and Appellant had repeatedly requested other quarters. At this time, Appellant pounded on McDonald's upper bunk because of his snoring. McDonald was awakened. When Appellant continued to hit the bunk, McDonald got the Third Steward who discussed the matter with them and then left.

Appellant continued to pound on McDonald's bunk. The porter started to get down from his bunk when Appellant grabbed him and knocked him to the deck. McDonald backed out of the room with his arms held up in a defensive position as Appellant followed punching McDonald with his fists. McDonald did not strike a single blow. Appellant knocked McDonald down in the passageway and kicked him three or four times about the head and body. McDonald suffered a fractured rib, severe facial lacerations, and numerous bruises. He was unconscious when taken to the ship's hospital McDonald received medical treatment ashore when the ship arrived at Aruba. He was still an outpatient at a Public Health Service hospital a month after the incident. Appellant was not injured.

Appellant has no prior record.

#### *BASES OF APPEAL*

This appeal has been taken from the order imposed by the Examiner. It is contended that the Examiner should have aided Appellant in the cross-examination of witnesses; there was considerable provocation because McDonald's abnormal snoring was a menace to Appellant's health; leniency is indicated since Appellant's prior clear record and reputation of good character show that this is an isolated incident. It is submitted that the suspension should be set aside or substantially reduced.

APPEARANCE ON APPEAL: Benjamin B. Sterling, Esquire, of New York City, of counsel.

*OPINION*

As a matter of credibility to be determined by the trier of the facts the Examiner accepted the testimony of the three Government witnesses and rejected Appellant's testimony that he did not touch McDonald throughout the incident. In addition to his injuries, McDonald's version as to what happened in the passageway is substantiated by the testimony of both the Third Steward and bartender. Hence, there are many reasons why the Examiner's finding that Appellant's testimony was incredible should be accepted; and there is no reason to believe that the material facts found proved would have been altered by further cross-examination on behalf of Appellant.

Although Appellant's conduct was unjustified, the suspension ordered will be reduced, as requested on appeal, because of the mitigating factors present.

*ORDER*

The order of the Examiner dated at New York, New York, on 15 March 1961, is modified to provide for an outright suspension of six (6) months and six (6) months' suspension on twelve (12) months' probation.

As MODIFIED, the order is AFFIRMED.

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

Signed at Washington, D.C., this 14th day of February 1962.

\*\*\*\*\* END OF DECISION NO. 1288 \*\*\*\*\*

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