

In the Matter of Merchant Mariner's Document No. Z-73524-D1 and all
other Seaman Documents
Issued to: ALEX O. CORNELIUS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1321

ALEX O. CORNELIUS

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 27 October 1961, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for two years upon finding him guilty of misconduct. The specification found proved alleges that while serving as an able seaman on board the United States SS SANTA REGINA under authority of the document above described, on 30 August 1961, Appellant wrongfully cut (assaulted and battered) a member of the crew, utilityman Margenat, with a deadly weapon, a knife.

At the hearing, Appellant was represented by counsel, Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of four witnesses including that of the person allegedly assaulted, and an entry in the ship's Official Logbook with statements by

several members of the crew attached.

Appellant was the only defense witness. He testified that after Margenat got a knife which the chief cook took away from him, Margenat threw a pot of water at Appellant and ran away; Appellant then took out his knife to cut a lemon for tea; Margenat returned to the messroom and hit Appellant with a turnbuckle; Appellant did not know he cut Margenat although he pushed the knife toward Margenat to scare him when Appellant was warned that Margenat was swinging the turnbuckle at Appellant; when the Master came, Appellant denied knowledge of the cutting; he took the knife out of his pocket before handing it to the Master.

FINDINGS IF FACT

On 30 August 1961, Appellant was serving as an able seaman on board the United States SS SANTA REGINA and acting under the authority of his document while the ship was at Porto Cabello, Venezuela.

During the noon meal on this date, Appellant and steward utilityman Margenat had an argument concerning food. As a result of this, Appellant grabbed Margenat and held him across a table while Appellant took a pocketknife with a sharp three-inch long blade out of his pocket. Margenat broke loose from Appellant and ran into the galley asking the chief cook for a knife. When the cook refused to comply, Margenat threw a pot at Appellant and ran unarmed out of the galley with Appellant in pursuit. Appellant caught Margenat and cut him on the right shoulder and arm with the knife. (The wound required ten stitches and Margenat was incapacitated for the balance of the voyage which ended 11 September.)

When the Master arrived on the scene, Appellant still had the knife in his hands and at first refused to surrender it to the Master. Appellant admitted the knifing to the Master and said he should have killed Margenat. The Master temporarily handcuffed Appellant.

Appellant's prior record consists of an admonition in 1958 for wrongfully striking a crew member.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that Margenat was the aggressor; the injury was inflicted accidentally; and the statements attached to the logbook entry were improperly admitted in evidence.

OPINION

The above findings of fact are based on the testimony of the Master, utilityman Margenat, and two eyewitnesses to the incident whose testimony was accepted by the Examiner in preference to the considerably different story told by the Appellant. Thus it is established that Appellant took out his knife after trouble started, chased Margenat and, after cutting him, admitted to the Master that it was done intentionally.

Whether the cutting was accidental or not is not material to the proof of the specification since the injury was a probable consequence of Appellant's conduct. Nevertheless, the facts, showing that this was an intentional act and that Appellant was the aggressor throughout, have a definite bearing on the appropriateness of the order imposed by the Examiner. I agree with the order for these reasons.

The statements attached to the logbook entry were properly admitted in evidence as part of the logbook entry since they were obtained by the Master in connection with his investigation of this incident.

ORDER

The order of the Examiner dated at New York, New York, on 27 October 1961, is AFFIRMED.

E. J. Roland
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 2nd day of August 1962.

***** END OF DECISION NO. 1321 *****

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