

In the Matter of Merchant Mariner's Document No. Z-238088-D2
Issued to: RUVEN A. MARTINEZ

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

757

RUVEN A. MARTINEZ

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 8 December, 1953, an Examiner of the United States Coast Guard at New York, New York, suspended Merchant Mariner's Document No. Z-238088-D2 issued to Ruven A. Martinez upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as utility messman on board the American SS ROBIN WENTLEY under authority of the document above described, on or about 12 November, 1953, while said vessel was in the port of Boston, Massachusetts, he assaulted and battered another crew member, messman Ernest Tocco, with a deadly weapon; to wit, a jagged and broken beer bottle.

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 Investigation Officer made his opening statement and introduced in evidence an entry in the Official Logbook of the ROBIN WENTLEY in addition to the testimony of Ernest Tocco and Appellant's other two forecastle mates.

In defense, Appellant offered in evidence his own sworn testimony. He stated that Tocco entered the forecastle and threatened to kill Appellant; Tocco then attacked Appellant with a bread knife; and Tocco was injured when cut by a beer bottle which left Appellant's hand when he put up his arm to protect himself against the attack by Tocco. Appellant also testified that he was arrested by the local police in Boston but that he was released after investigation of the incident.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant 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-238088-D2 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard and its predecessor authority, for a period of two years - twelve months outright suspension and twelve months suspension on twenty-four months probation from 8 December, 1954.

From that order, this appeal has been taken, and it is urged that Appellant acted in self-defense when his wrist was slashed by a knife wielded by Tocco; and the Examiner should not have found Appellant guilty because he was found not guilty by the Federal Court in Boston. Appellant also pleads for clemency on the bases of his dependent family, his clear record for twelve years on American ships and his overseas Army service.

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

FINDINGS OF FACT

On 12 November, 1953, Appellant was serving as utility messman on board the American SS ROBIN WENTLEY and acting under authority

of his Merchant Mariner's Document No. Z-238088-D2 while the ship was at Boston, Massachusetts.

Until sometime prior to 1530 on this date, Appellant and Tocco had been ashore on liberty (although not together) drinking beer. Then they had returned to the ship.

At about 1600, Tocco left the forecastle which he shared with Appellant and two other members of the crew. Tocco was carrying an opened can of beer. In the passageway just outside of the forecastle, Tocco met Appellant who was then drinking a bottle of beer which he had brought aboard with him. After an exchange of words, Appellant broke the beer bottle on the passageway bulkhead and cut Tocco severely with the jagged glass edges of the broken beer bottle.

Tocco's injury consisted of a deep, jagged, six inch cut from the lower part of his ear, across his cheek and down his neck. It required forty stitches to suture the wound.

While breaking the bottle, Appellant received a jagged, one and a half inch cut on his left wrist. Appellant was arrested by local police but, insofar as the record discloses, he was later released without further action having been taken against him in connection with this incident.

OPINION

The evidence in the record does not support Appellant's contentions that he acted in self-defense and that Tocco attacked him with a bread knife. Tocco's version of the incident (which is substantially as set forth above) is supported by the testimony of the other two witnesses at the hearing. Both of these seamen arrived on the scene immediately after Tocco was injured. Their testimony was to the effect that the incident occurred in the passageway and not in the forecastle as claimed by Appellant; that Tocco did not have a knife but that Appellant was holding the remains of a bottle immediately after Tocco was cut; and that no threatening language was used by Tocco. All of this testimony is in direct conflict with the testimony given by Appellant. Since these two witnesses appeared to be unbiased, they presumably gave impartial testimony to the best of their recollection.

Regardless of whether there was any criminal action taken against Appellant, the record herein clearly contains substantial evidence in support of the charge and specification.

Since the Examiner considered the mitigating circumstances before imposing the order of suspension, there is no justification for granting clemency on this appeal.

ORDER

The order of the Examiner dated at New York, New York, on 8 December, 1953, is AFFIRMED.

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

Dated at Washing, D. C., this 9th day of August, 1954.

***** END OF DECISION NO. 757 *****

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