

UNITED STATES OF AMERICA

U.S. DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

UNITED STATES COAST GUARD

Complainant

vs.

GARRICK SLACK,

Respondent.

Docket Number CG S&R 02-0158

CG Case No. 1494874

DECISION AND ORDER

Issued: November 7, 2002

Issued by: Peter A. Fitzpatrick, Administrative Law Judge

APPEARANCES

FOR THE COAST GUARD

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FOR THE RESPONDENT

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I.

PRELIMINARY STATEMENT

This case began on March 20, 2002 when the Coast Guard filed a Complaint against the Respondent under the statutory authority contained in 46 U.S.C. § 7703 and the Coast Guard regulation codified at 46 C.F.R. 5.27. Mr. Slack is the holder of the Coast Guard issued Merchant Mariner's Document Number 438 15 0011. The Coast Guard alleged that "... on March 19, 2002 on board the M/V LYKES MOTIVATOR, while said vessel was at sea, the Respondent: wrongfully assaulted and battered the Second assistant Engineer, David D. Perry in the engine control room, resulting in injury." The Coast Guard sought the revocation of Mr. Slack's Coast Guard document under 46 U.S.C. § 7703.

The same day the Complaint was served, the Respondent deposited his document with the Coast Guard Marine Safety Office, Hampton Roads. See Good Faith Deposit Agreement. The Respondent's Answer was filed on April 9, 2002 in which Mr. Slack admitted all Jurisdictional Allegations, denied all Factual Allegations, and "... denied paragraph 1." The case was assigned to this Judge on April 10, 2002 and the hearing was scheduled at Norfolk on September 10, 2002.

Subsequently, the Investigating Officer requested a Pre-Hearing Conference and it was held on August 28, 2002. Respondent's counsel and the Investigating Officer were present. Counsel's request for subpoenas were granted. Both sides requested that certain witnesses be allowed to testify by telephone. Those motions too were granted in accord with 33 C.F.R. 20.707. Witness and Exhibit Lists were also scheduled for service.

The hearing commenced as scheduled and the Investigating Officers, the Respondent, and his counsel were present. During the hearing, the Coast Guard sponsored four witnesses and

nine exhibits which were admitted on the record. The Respondent testified and sponsored one other witness. One exhibit was offered. All exhibits and witnesses are identified in Appendices A and B.

At the conclusion of the hearing, I announced that the evidence supported the Coast Guard's allegation that the Respondent assaulted and battered the Second Assistant Engineer, Mr. David Perry, resulting in injury to his person. I held that the attack involved was devastating to the victim and that Respondent's Merchant Mariner's Document was Revoked.

II.

STATUTES AND REGULATIONS INVOLVED

1. This proceeding is governed by the Administrative Procedure Act , which is incorporated into these proceedings under 46 U.S.C. 7702, which reads:

§ 7702. Administrative procedure

- (a) Sections 551-559 of title 5 apply to each hearing under this chapter about suspending or revoking a license, certificate of registry, or merchant mariner's document.

2. 46 U.S.C. §§ 7701-7705 sets out the general procedures governing the suspension and revocation of merchant mariners' licenses and documents. 46 U.S.C. § 7703 reads in pertinent part:

§ 7703. Bases for suspension or revocation

A license, certificate of registry, or merchant mariner's document issued by the Secretary may be suspended or revoked if the holder--

(1) when acting under the authority of that license, certificate, or document--

(A) has violated or fails to comply with this subtitle [46 USCS §§ 2101 et seq.], a regulation prescribed under this subtitle [46 USCS §§ 2101 et seq.], or any other law or regulation intended to promote marine

safety or to protect navigable waters; or
(B) has committed an act of incompetence, misconduct, or negligence;

3. The term Misconduct which is involved here, is defined at 46 C.F.R. 5.27 as follows:

§ 5.27 Misconduct.

Misconduct is human behavior which violates some formal, duly established rule. Such rules are found in, among other places, statutes, regulations, the common law, the general maritime law, a ship's regulation or order, or shipping articles and similar sources. It is an act which is forbidden or a failure to do that which is required.

III.

FINDINGS OF FACT

1. Respondent holds Merchant Mariner's Document Number 438 15 0011.
2. Garrick Slack signed Shipping Articles for service as Electrician aboard the M/V LYKES MOTIVATOR (ON 1105959) on March 11, 2002. (Exhibit IO-3). He was discharged 9 days later. (*Id.*; Exhibit IO-4).
3. The M/V LYKES MOTIVATOR is a U.S. vessel owned and operated by Lykes Lines Limited LLC, Weehawken, NJ. (Exhibit IO-1).
4. Members of the crew on the M/V LYKES MOTIVATOR during the period March 11-19, 2002 included the Respondent, the Master Richard Johnson, the Chief Mate Robert Hart, the Second Assistant Engineer David Perry, and a Deckhand, Charles Hill.
5. On March 19, the M/V LYKES MOTIVATOR was underway on the high seas having departed Norfolk, VA at approximately 0630 hours. (Transcript, hereinafter TR., 156).
6. At approximately 1120 hours Second Assistant Engineer Perry was seated near the console in the engine room drinking a cup of coffee. Mr. Slack entered, stopped, and stared at Perry. The electrician made no response when addressed by the Second Assistant. (TR. 44). Next, Slack approached Perry and slapped him on the hand and knocked the coffee cup he was

holding across the engine room. (TR. 45-47). Then, Slack walked into the electrician's shop and returned 20-30 seconds later. (TR. 49). This time he carried a blue electric wire about 2.5 feet in length. (TR. 51). Next, Slack yelled at Perry, approached him, wrapped the wire around both Slack's fists, threatened to kill Perry, and pushed the wire against Perry's face. (TR. 51). After Slack cut the Second Assistant's lip (TR. 54-55), Perry retreated and picked up the telephone near the console and called the bridge for help. (TR. 56, 77). At that point, Slack shoved the Second Assistant into a shelf near the phone and Perry suffered a serious injury to his right eye. (TR. 57-58). (Exhibit IO-7).

7. Perry lost vision in the eye which was swollen shut. This incident occurred four hours out of Norfolk and the ship was required to turn back to that port to obtain medical treatment for Perry. (TR. 65).
8. Mr. Perry was taken to Virginia Beach General Hospital when the ship returned and he received 13 stitches above the right cheek and 7 stitches across the eyelid. (TR. 59, 65). As a result of the injury, Mr. Perry was removed from the ship and was unfit for duty for one month. (TR. 63-64).
9. Mr. Slack was fired for cause and discharged at Norfolk that same day. (TR. 162).

IV.

CONCLUSIONS OF LAW

1. The Respondent was acting under the authority of his Merchant Mariner's Document on March 19, 2002 aboard the M/V LYKES MOTIVATOR when the incident involved here occurred.
2. The Coast Guard has jurisdiction in this case under the provisions of 46 U.S.C. 7703.
3. The allegations of the Complaint are **PROVED** by a preponderance of the evidence.

4. Respondent's Merchant mariner's Document Number 438 15 0011 is **REVOKED**.

V.

OPINION

A. General

1. This matter is within the jurisdiction of the Coast Guard pursuant to 46 U.S.C. § 7703, which authorizes the Coast Guard to suspend or revoke a license or Merchant Mariner's Document for, among other thing, acts of Misconduct. In these proceedings, the Coast Guard has the burden of proving the allegations in the complaint by a preponderance of the evidence. 33 C.F.R. §§20.701 and 20.702; Appeal Decisions 2468 (LEWIN), 2477 (TOMBARI). See also Dept. of Labor v. Greenwich Collieries, 512 U.S. 267 (1994); Steadman v. SEC, 450 U.S. 91, 100-103 (1981). This proceeding is conducted under the provisions of 33 C.F.R. Part 20, and 46 C.F.R. Part 5, and the Administrative Procedure Act, as amended and codified in 5 U.S.C. § 551 *et seq.*

In a Complaint dated March 20, 2002, the Coast Guard charged Garrick Slack with Misconduct resulting from the alleged wrongful assault and battery of the Second Assistant Engineer David D. Perry. Coast Guard regulations define the term Misconduct as human behavior that violates a formal duly established rule. 46 C.F.R. § 5.27. It is well settled that assault is a form of misconduct. Appeal Decision 2561 (CARTER); 2198 (HOWELL); 1218 (NOMIKOS); Ladner v. United States, 358 U.S. 169, 177 (1958), Guarro v. United States, 237 F.2d 578, 580 (D.C. Cir. 1956). Assault is a willful attempt or threat to inflict injury upon the person of another, when coupled with the apparent ability to do so, and any intentional display of force such as would give the victim reason to fear or expect immediate bodily harm. *Id.*

Battery has been defined by the National Transportation Safety Board in Commandant vs. Robert William Bozeman, Docket ME-20, Order No. EM-19, as “any unauthorized touching.” (p.3). See also Appeal Decision 2452 (MORGANDE), (p. 5).

2. Turning now to the case at hand, there is no doubt that the Coast Guard had jurisdiction over the Respondent when the acts involved here were committed. First, his Answer filed April 9, 2002 admits all jurisdictional allegations. See Answer, No. 1, TR. 7. Specifically, the Respondent admitted that he was acting under the authority of his Merchant Mariner’s Document No. 438 15 0011 on March 19, 2002 by serving as a Qualified Member of the Engineer Department (QMED). (*Id.*)

In any event, the evidence here shows that Mr. Slack signed Shipping Articles on March 11, 2002 aboard the M/V LYKES MOTIVATOR and was serving under those Articles on March 19, 2002 when the incident here occurred. (Exhibit IO-3, 4). The M/V LYKES MOTIVATOR is a U.S. vessel 751.6 feet in length and the ship displaces 37,474 gross tons. (Exhibit IO-1). Mr. Slack stipulated to the Coast Guard’s jurisdiction in this case. (TR. 21). Thus, Mr. Slack was required to have his document in order to serve aboard the M/V LYKES MOTIVATOR. Accordingly, jurisdiction is established under 46 U.S.C. 7703.

3. Second Assistant Engineer Perry testified regarding the unprovoked attack by Mr. Slack he suffered at approximately 1130 in the engine room of the M/V LYKES MOTIVATOR when that vessel was at sea. The Second Assistant was alone in the engine room and seated at the console having a cup of coffee when Slack entered. The Respondent went over to the engineer and knocked the coffee cup across the room. (TR. 45). Slack briefly went into the electrician’s room and came back to the engine room carrying a piece of electric wire. This time he backed the Second Assistant against the console and brandished the wire wrapped

tightly between his fists against the engineer's face. (TR. 52). At that point, Slack threatened to kill the victim. (*Id.*). Next, when the Second Assistant broke loose and picked up the phone to call for help from the bridge, Slack violently shoved him into a wooden shelf above the phone. (Exhibit IO-6, TR. 56). The victim suffered severe injury to his face. (Exhibit IO 7, 8).

Indeed, the injury was so severe that the Master ordered the ship to return to Norfolk to obtain medical care for Perry. At the time the vessel was about six hours out of that port at sea. (TR. 156). Additionally, the Second Assistant had to be replaced. When the ship arrived off Norfolk, Mr. Slack was relieved of duty, fired, and removed from the ship. (TR. 162).

4. Mr. Slack denies that he was in the engine room at approximately 1130 and denies that he assaulted or bothered the Second Assistant. (TR. 119-129). Instead, he testified that he arose that morning about 0900 after having worked late the night before. He entered the engine room about 1030 to pick up materials but spent the next 1.5 hours on deck making his rounds checking the refrigerated containers. (TR. 116, Exhibit RSP A). He testified that another crewmember (Charles Hill) saw him during this time and that he did not see the Second Assistant during that period. (TR. 119-121). He points to his statement which was completed the day following the incident and to the testimony of Mr. Hill. (Exhibit RSP A). Finally, Mr. Slack alluded to the fact that Mr. Perry may have injured himself to avoid disciplinary action from the Master. (TR. 132).
5. Mr. Hill testified that he was serving as the Able Seaman on the vessel on March 19 on the day shift (TR. 100). Between 1100-1200 he was working between bay 22 near hatch number six receiving cargo. (*Id.*). He said he saw Slack between 1120-1130 working on

deck. (Tr. 100-101). He remembered the time since it was getting close to lunch break.

(TR. 102). Hill left the area for lunch at 1130 and testified Slack was still working on deck.

(TR. 103).

In regard to Hill's testimony, the Coast Guard sponsored Mr. Jerry Crooks who testified that he interviewed Hill the day of the incident and the AB could not give him the specific time when he saw Slack on deck. (TR. 140-141). Time ranged between 1030 to 1125. (TR. 141). Nor did Hill indicate that he was working with Slack on deck as Hill testified at the hearing. (TR. 142-144).

6. I have reviewed the testimony at the hearing and the exhibits including the pictures of the injury to Mr. Perry's face. As I announced at the conclusion of the hearing, I believe Mr. Perry is a credible witness and Mr. Slack and Hill are not. The evidence presented by the Coast Guard is very persuasive and established that Slack wrongfully assaulted and battered Mr. Perry as charged.

Mr. Perry is a very convincing witness and suffered severe injury in this unprovoked attack by Slack. Indeed, the consequences of the attack were widespread, not only severely injuring the victim but requiring the M/V LYKES MOTIVATOR to return to port and encounter a 12 hour delay. Moreover, this assault and battery was perpetrated at sea upon an officer. The maintenance of good order and discipline make it imperative that seamen like Mr. Slack who commit violent acts like that involved here be prohibited from serving in any capacity aboard a vessel. Slack constitutes a danger to life and property at sea and the revocation of his credentials is imperative.

B. Other Matters.

Mr. Slack testified that he overheard the Second Assistant's remark to the Third Officer in the vestibule outside the Captain's office "Look, all masters and no slaves." (TR. 110-111). Apparently, the Second was referring to the number of Master's licenses held by the officers aboard and displayed on the wall. Also, Slack heard the Second Assistant refer to the current passage to Belgium as the "chocolate" run. He brought these remarks to the Master's attention and warned if it doesn't stop, something is going to happen. (TR. 149). Slack interpreted the remarks as racial slurs. The Master testified that the reference to the chocolate run was commonly and openly understood to refer to the current trip to Belgium where "usually everyone is buying chocolate." (TR. 150). Mr. Perry explained that his reference to masters and slaves meant that despite the higher qualifications of their licenses, the officers served in lesser capacities in order to sail. (TR. 74-75, 89).

Even if Perry's language was inappropriate, it does not provide a basis for the unprovoked and vicious attack Slack initiated in the incident here.

C. Conclusion.

For all of the foregoing reasons, the Jurisdictional and Factual Allegations of the Complaint are **PROVED** by a Preponderance of the Evidence. The Coast Guard's recommendation that the Respondent's Merchant Mariner's Document be revoked is **GRANTED**. The unprovoked assault and battery committed by the Respondent upon the Second Assistant Engineer while the vessel was underway and at sea resulting in serious injury to the Second and causing the vessel to return to port, provide firm support to terminate Mr. Slack's career at sea. Such behavior is violative of good order and discipline aboard ship and cannot be tolerated.

V.

ORDER

Merchant Mariner's Document Number 438 15 0011 issued to Garrick Slack by the
United States Coast Guard is **HEREBY REVOKED.**



PETER A. FITZPATRICK
Administrative Law Judge
United States Coast Guard

Done and Dated on November 7, 2002 at
Norfolk, Virginia