

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-677676 and All
Other Seaman Documents
ISSUED TO: JUAN A. RAMOS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1282

JUAN A. RAMOS

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 12 April 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 three specifications found proved allege that while serving as an able seaman on board the United States SS AFRICAN PLANET under authority of the document above described, on 18 October 1960, Appellant wrongfully: had grog in his possession; failed to obey a lawful order of the Chief Mate; and struck the Chief Mate.

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

The Investigating Officer introduced in evidence the testimony of the Chief Mate and the Third Mate. Appellant testified in his defense and presented documentary evidence of medical treatment for injuries claimed to have been inflicted by the ship's mates on the

date of these alleged offenses by Appellant.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and three specifications had been proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of three months on nine months' probation.

FINDING OF FACT

On 18 October 1960, Appellant was serving as an able seaman on the United States SS AFRICAN PLANET and acting under authority of his document while the ship was at Port Amelia, Portuguese East Africa, preparing to get under way.

About 1500 on this date, Appellant returned on board carrying on his shoulder a cardboard carton which was open at the top. It contained three unopened bottles of beer, several packages of food and eight cans of sardines. The Chief Mate came down from an upper deck and ordered Appellant to permit the Chief Mate to examine the contents of the carton since he could not see into it while it rested on Appellant's shoulder. This order was given pursuant to the shipowner's policy prohibiting the bringing of contraband on board. The Chief Mate had no reason to believe that the carton contained beer which was a prohibited item under the statement in the Shipping Articles against any member of the crew taking grog (any intoxicating liquor) on board.

Appellant refused to lower the carton for inspection. He brushed past the Chief Mate striking him with Appellant's right shoulder and hip. Appellant proceeded to his room followed by the Chief and two other mates. There is considerable confusion in the testimony of the three witnesses as to what occurred while the door to the room was closed except that Appellant then disclosed the contents of the carton.

Appellant's prior record during 15 years at sea consists of probationary suspension in 1953 for drunk and disorderly conduct; an admonition in 1956 for failure to perform his duties.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the evidence does not support the findings and the order is unduly severe.

APPEARANCE: Standard, Weisberg, Harolds & Malement by Morton J. Heckerling, Esquire, of Counsel.

OPINION

Appellant has not submitted any details in support of his general contention that the evidence is insufficient. It is my opinion that there is substantial evidence to support the allegations in the three specifications and my findings of fact agree with those of the Examiner.

The prohibition against a member of the crew taking alcoholic beverages on board is covered by the Shipping Articles. This is an agreement which was binding on the crew throughout the voyage. The fact that others on the ship might have violated this prohibition does not excuse Appellant's conduct.

Appellant's failure to obey the Chief Mate's order constituted misconduct since this was a lawful order even though there is some indication in the record that the Chief Mate was somewhat crude and abusive in his demand to see the contents of the carton held by Appellant. The order was lawful since it was neither an unreasonable invasion of Appellant's privacy nor otherwise contrary to law. The need to inspect packages of crew members is directly related to the operation and safety of ships because forbidden items such as liquor, knives and narcotics in the possession of crews could interfere seriously with the maintenance of discipline and the successful completion of voyages in an orderly fashion. Furthermore, it is doubtful that this order by the Chief Mate constituted a demand to search Appellant since the contents of the carton were not hidden but open to view. *McDonald v. United States* (D.C., D.C., 1948), 166 F. 2d 957.

The bumping of the Chief Mate was battery regardless of possible provocation of Appellant by the manner in which he was approached by the Chief Mate.

The suspension on probation imposed by the Examiner is a lenient order. Therefore, it is considered to be appropriate for these offenses which are largely technical in nature.

ORDER

The order of the Examiner dated at New York, New York, on 12 April 1961, is AFFIRMED.

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

Signed at Washington, D.C., this 12th day of February 1962.

***** END OF DECISION NO. 1282 *****

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