

In the Matter of Merchant Mariner's No. Z-794274-D2 and all other
Seaman Documents
Issued to: EMANUEL T. WARE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1289

EMANUEL T. WARE

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 29 May 1961, an Examiner of the United States Coast Guard at San Francisco, California suspended Appellant's seaman documents for six months upon finding him guilty of misconduct. The specification found proved alleges that while serving as a utilityman onboard the United States SS FLYING DRAGON under authority of the document above described, on 14 March 1961, Appellant assaulted and battered messman Hesse.

At the Beginning of the hearing on 11 April 1961, Appellant requested an adjournment to obtain counsel. Appellant received notice on 13 May that the hearing would reconvene on 29 May. Since Appellant was not present on the latter date, the hearing was conducted in *absentia*.

The Investigating Officer introduced in evidence the testimony of Hesse and another eyewitness to the incident.

FINDINGS OF FACT

On 14 March 1961, Appellant was serving as a utilityman on board the United States SS FLYING DRAGON and acting under authority of his document while the ship was at sea.

About 0900 on this date, Appellant and messman Hesse were arguing concerning the issuance of towels to Hesse when Appellant struck the other seaman two or three blows on the head. Hesse was knocked against a bulkhead and then to the deck by these blows. He suffered a scalp laceration.

Appellant has no prior record.

OPINION

Appellant claims that he was unable to attend the hearing on 29 May because he was sick and there was no telephone in the house. Also, he feels that the order is excessive for this minor offense.

Appellant's reason for his failure to appear at the hearing is not convincing. Nothing was heard from Appellant until after the Examiner's decision was mailed on 6 June. Appellant had more than a week within which to contact the Coast Guard after 29 May but he failed to do so.

The above findings are supported by the uncontroverted testimony of Hesse and another messman. Since there was no provocation, other than words, for this offense it is my opinion that the order imposed is not excessive.

ORDER

The order of the Examiner dated at San Francisco, California, on 29 May 1961, 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. 1289 *****

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