

In the Matter of Merchant Mariner's Document No. Z-947185D2 and all
other Seaman Documents
Issued to: ROBERT B. ARNOLD

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1298

ROBERT B. ARNOLD

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 2 March 1961, an Examiner of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's seaman documents upon finding him guilty of misconduct. The two specifications found proved allege that while serving as an ordinary seaman on board the United States SS COPPER STATE under authority of the document above described, on 31 January and 1 February 1961, Appellant failed to perform his duties; on 9 February 1961, Appellant assaulted and battered the ship's Steward.

At the hearing, Appellant was not represented by counsel. Appellant entered a plea of guilty to the first specification above and not guilty to the specification alleging assault and battery.

The Investigating Officer introduced in evidence the testimony of the Steward, certified copies of entries in the Official Logbook, and a certified copy of extracts from the Shipping Articles.

Appellant testified in his defense. He stated that he knocked on the Steward's door and turned on the light before awakening him to prepare some food; Appellant did not touch the Steward until after he hit Appellant on the head with a metal ruler.

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

FINDINGS OF FACT

From 20 December 1960 to 28 February 1961, Appellant was serving as an ordinary seaman on board the United States SS COPPER STATE and acting under authority of his document while the ship was on a foreign voyage.

While the ship was at Rotterdam, Holland on 31 January and 1 February, Appellant was absent without permission from his duties between 0800 and 1700.

About 0600 on 9 February while the ship was at Le Havre, France, Appellant went to the Steward's room, shook him until he was awake, and told him to prepare food for a night lunch. The Steward got up and dressed as Appellant shouted for the Steward to hurry and referred to him as a "belly robber". The Steward smelled alcohol on Appellant's breath. Since the Steward is a small man (120 pounds) and felt that he was in danger, he picked up a metal ruler and struck Appellant with it. The latter then grabbed the Steward, lifted him onto his bunk, and banged his head against the steel bulkhead. Also, the Steward's leg was cut while grappling before he broke loose and ran out of the room. The Chief and Third Mates came to his rescue by taking Appellant to his room.

Appellant's prior record consists of a two months' outright suspension plus probation in 1953 for creating a disturbance, possession of intoxicating beverages, assaulting and battering a crew member.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant reiterates his statement that he was hit first and contends that the suspension ordered is not fair for this minor incident.

OPINION

Apparently, the reason for Appellant's conduct was that there had been occasions at sea when no food was prepared for the seamen on watch during the night. This condition did not authorize Appellant to awaken the Steward at 0600 while the ship was in port and Appellant was not on watch. Hence, the fact that, as testified to be the Steward and accepted by the Examiner, Appellant went into the Steward's room and shook him constituted an assault and battery.

The important factor in this case is that Appellant was guilty of assault and battery for the manner in which he attacked the Steward after being hit with the ruler. Appellant's conduct while waiting for the Steward to dress indicates that the Steward was in danger of being injured. Whether or not Appellant was justified in striking the first blow with the ruler, Appellant exercised excessive force when he lifted the Steward and knocked his head against the steel bulkhead. Therefore, Appellant cannot properly contend that he acted in self-defense.

It is my opinion that the order imposed is not unfair. It also applies to Appellant's failure to perform his duties on two dates.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 2 March 1961, is AFFIRMED.

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

Signed at Washington, D. C., this 23rd day of March 1962.

***** END OF DECISION NO. 1298 *****

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