

In the Matter of Merchant Mariner's Document No. Z-756291-D3 and  
all other Seaman Documents  
Issued to: FRANCISCO P. CASTRO

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1319

FRANCISCO P. CASTRO

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 1 August 1961, an Examiner of the United States Coast Guard at New York, New York admonished Appellant upon finding him guilty of misconduct. The three specifications found proved allege that while serving as an electrician on board the United States SS SANTA PAULA under authority of the document above described, on 7 April 1960, Appellant wrongfully created a disturbance in the passenger's galley; Appellant wrongfully entered a restricted area, the passengers' galley; Appellant wrongfully used profane and obscene language. Specifications alleging a disturbance on "C" deck and assault on the night steward Reyes, also on 7 April, were dismissed.

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 entries in

the ship's Official Logbook and the testimony of four witnesses.

Appellant testified in his defense. He denied all of the offenses alleged.

#### *FINDINGS OF FACT*

On 7 April 1960, Appellant was serving as an electrician on board the United States SS SANTA PAULA and acting under authority of his document while the ship was in the port of La Guaira, Venezuela.

When Appellant returned on board early on the morning of this date, pantryman Benitez told Appellant that there were no sandwiches available when he requested one at the passengers' galley. It was customary for members of the crew to eat sandwiches and drink coffee in the passengers' galley during the night.

While night steward Reyes was calling men at 0330 on "C" deck for the next watch, Appellant told Reyes that he and pantryman Benitez were "company stiffs". Upon returning to the passengers' galley where he was in charge, Reyes told Benitez what Appellant had said.

Benitez went below to Appellant's room and angrily confronted him with this information. Appellant went to the galley and engaged in an argument with Reyes about the matter. Appellant did not threaten Reyes or indicate that he intended to strike Reyes. Nevertheless, passenger utilityman Fuentes, who was the only other person present at the time, started a fight with Appellant. Benitez arrived at the galley and separated the two seamen. Fuentes picked up a carving knife and approached Appellant. Benitez disarmed Fuentes. In the meanwhile, Reyes had telephoned the bridge and, shortly after Fuentes was disarmed, the Chief Mate and Third Mate arrived on the scene.

Appellant's prior record consists of a probationary suspension in 1946 for attempting to remove a small quantity of ship's stores from a vessel.

APPEARANCE for Appellant:            Bernard Rolnick, Esquire, of New

York City, of Counsel.

*OPINION*

I agree with the contention on appeal that, due largely to the discrediting of the testimony of the Government's witnesses by the Examiner, the findings and conclusions that three of the five specifications are proved should be reversed for lack of substantial evidence.

By concluding that Appellant did not assault night steward Reyes, the Examiner rejected as incredible the testimony of Reyes and Fuentes that the latter started the fight with Appellant in order to restrain him from striking Reyes. Further reflection is cast upon the testimony of the two witnesses by the Examiner's refusal to believe their testimony that Fuentes did not pick up a carving knife with which to attack Appellant as testified to by pantryman Benitez. Consequently, there is no reason to find Appellant guilty of creating disturbance which resulted from the improper conduct of Fuentes.

The specification alleging profane and obscene language is not proved. The words addressed to Reyes on "C" deck at 0330 were little, if any, more than referring to Reyes and Benitez as "company stiffs". The language used by Appellant later in the galley was described by Reyes as insulting. Again, even this is based on the impeached testimony of Reyes.

Regarding the question of whether the passenger galley was a restricted area, even Reyes conceded that members of the crew habitually went to the passenger's galley at night for coffee and sandwiches. Judging from Appellant's experience when he returned to the ship on 7 April, crew members could not obtain sandwiches at this galley without the cooperation of the night pantryman who worked under the authority of the night steward Reyes. Hence, if this were an authentic restricted area, the sandwiches would not have been freely distributed as they usually were. There is evidence which indicates that "no loitering" signs were posted in the passengers' galley, but not until after this incident occurred. Also, Appellant went to the galley at the request of Benitez to discuss something with the night steward whose watch station was in the galley.

The three specifications and the charge of misconduct are dismissed.

*ORDER*

The order of the Examiner dated at New York, New York, on 1 August 1961, is VACATED.

E.J. ROLAND  
Admiral, United States Coast Guard  
Commandant

Signed at Washington, D. C., this 13th day of July 1962.

\*\*\*\*\* END OF DECISION NO. 1319 \*\*\*\*\*

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