

In the Matter of Merchant Mariner's Document No. Z-1070020 and all
other Seaman Documents
Issued to: Francisco Pacheco

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1409

Francisco Pacheco

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 10 December 1962, an Examiner of the United States Coast Guard at New York, New York revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a Wiper on board the United States SS ORION STAR under authority of the document above described, on 22 October 1962, Appellant assaulted and battered Bilyk, a fellow crew member, by cutting him with a knife.

Appellant was also charged with creating a disturbance on the same date. The Examiner deemed this specification merged with the assault and battery specification.

At the hearing, which was conducted *in joinder* with Bilyk's hearing, Appellant elected to act as his own counsel and entered a plea of not guilty to the charge and specification.

The Government introduced in evidence the Shipping Articles of the SS ORION STAR, an entry from the Official Logbook of the vessel with attached statements by Bilyk, a crew member by the same name of Hindenes, Boatswain Murry and Appellant. In addition, the Government offered the testimony of Bilyk.

In defense, Appellant introduced no evidence but adopted his statement, attached to the logbook entry, in which Appellant claimed that he cut Bilyk with a pocketknife only after he came out of the mess hall, grabbed Appellant and kicked him in the stomach.

FINDINGS OF FACT

On 22 October 1962, Appellant was serving as a Wiper on board the United States SS ORION STAR and acting under authority of his document while the vessel lay in the port of Aioi, Japan.

During that day Bilyk, Appellant and another crew member from the ORION STAR went ashore and visited a local barroom where they proceeded to consume intoxicants. A disagreement arose between Bilyk and Appellant and Bilyk abused Appellant with vulgar language. Appellant left the bar and went back to his room on board the vessel. Shortly thereafter Bilyk entered Appellant's room and threatened to kill him. When Bilyk refused to leave, Appellant summoned Hindenes who escorted Bilyk from Appellant's quarters. A few minutes later Appellant left his room and proceeded toward the mess hall in order to get a sandwich. Near the entrance to the mess hall Appellant met Bilyk and, after a brief scuffle, cut him with a pocketknife on the left side of the neck. Bilyk fell down a flight of stairs to the lower deck. Boatswain Murry, who saw Bilyk rolling down the steps, gave Bilyk medical aid and ordered Appellant to go to his room. An ambulance was called and Bilyk was removed from the vessel to a local hospital where he remained for three or four days.

Appellant has no prior record.

BASES OF APPEAL

The several grounds alleged on appeal are the following:

1. That Appellant took Bilyk's threats seriously and acted in self-defense when the latter attacked him.

2. That the Examiner's decision was "unreasonable, unjust and against the weight of the evidence".

3. That there were extenuating circumstances which should have been taken into consideration by the Examiner and which did not justify the order of revocation. Appellant's conduct was not "savage", as stated by the Examiner, since the stabbing was accidental.

APPEARANCE: Fields and Rosen, Esquires, of New York, New York
on the brief for Appellant.

OPINION

Appellant's contentions on appeal are not tenable. His signed statement attached to the logbook entry indicates that he did not take Bilyk's threats seriously. It is reasonable to conclude that a man in fear for his life would not state "Tony, tomorrow you kill me when you are sober". Furthermore, when Appellant asked Hindenes to escort Bilyk from Appellant's room, he did not indicate to Hindenes that he was in fear for his life. On the contrary, he acted annoyed with Bilyk's behavior. Therefore, I am of the opinion that Appellant's use of a lethal weapon was not justified on the basis of fear caused by Bilyk's drunken threats.

In his statement, Appellant claims that he met Bilyk in the passageway leading to the messroom and that Bilyk, unarmed, kicked him in the stomach. Even if this were true, the use of a knife by Appellant was not justified since there is no indication that Appellant was in danger of death or serious bodily injury.

Where Appellant's conduct is classified as "savage" is immaterial since the facts show that the stabbing was done deliberately. The evidence indicates that there was clearly no need to resort to the use of a knife to escape being injured by Bilyk and there is no evidence that Appellant was injured by the alleged kick in the stomach.

Consequently, the order of revocation will be upheld.

ORDER

The order of the Examiner dated at New York, New York on 10 December 1962 is AFFIRMED.

D. McG. Morrison
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D.C., this 8th day of August 1963.

***** END OF DECISION NO. 1409 *****

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