

In the Matter of Merchant Mariner's Document No.z-1135114 and all
other Seaman Documents
Issued to: John D. Pompey

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1420

John D. Pompey

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 19 April 1963, 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 Specification found proved alleges that while serving as chief crew cook on board the United States SS ATLANTIC under authority of the document above described, on 7 April 1963, Appellant assaulted and battered bedroom steward Chapman with his hands.

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

The Investigating Officer introduced in evidence the testimony of Chapman and two other eyewitnesses -- Idlett and Richard. An entry in the ship's Official Logbook concerning this incident was received in evidence as a Government exhibit.

In defense, Appellant offered in evidence his testimony and that of another seaman who did not witness the incident in question. Appellant testified that the only blow was a light slap on Chapman's face.

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

FINDINGS OF FACT

On 7 April 1963, Appellant was serving as chief crew cook on board the United States SS ATLANTIC and acting under authority of his document while the ship was at sea.

About 2100 on this date, two of Chapman's roommates (Idlett and Richard) were in their room when Chapman (age 63) entered with Appellant (age 39). The latter two seamen were indulging in gin drinks and conversation concerning various topics until a heated argument developed between them which led to the use of very offensive language by both seamen. Appellant slapped Chapman hard on the side of his face and, when Idlett approached to intervene, Appellant punched Chapman who did not defend himself or retaliate. Appellant pushed Idlett aside and Chapman hurriedly left the room. He reported the incident to the Chief Mate.

There is no evidence of specific injuries to Chapman and he did not miss any work on the ship. Appellant was discharged from employment on the ship at the end of the voyage.

Appellant's prior record consists of a suspension in 1955 for possession on ship's stores and revocation later in 1955 for assault and battery with a dangerous weapon. He was issued a new document in 1959 and has sailed steadily on the ATLANTIC since then.

BASES OF APPEAL

This appeal has been taken from the order imposed by the

Examiner. It is contended that the Examiner's decision is not consistent with the testimony taken at the hearing. Chapman admitted that he addressed Appellant with foul language and this is what provoked Appellant to act as he did. The only blow by Appellant was a light slap on Chapman's face and this did not cause any injury. Chapman is shown by the record to be an aggressive, antagonistic seaman who drank every day and lied when testified that he had not hit messman Manigault on a prior occasion.

APPEARANCE: Zwerling and Zwerling of New York City
 by Irving Zwerling, Esquire, or Counsel

OPINION

Most of the matter mentioned on appeal is not relevant to the issue as to whether there is substantial evidence to prove the alleged offense. Verbal abuse by Chapman is not a good defense and Chapman's character is not important as to proof of the assault and battery since Appellant admitted in his testimony that he slapped Chapman and there is no evidence of a single blow of any kind by Chapman against his much younger opponent.

The evidence as a whole indicates that the slap on the face was at least a fairly hard blow. Apparently, Idlett thought it was serious enough to try to prevent anything further from happening and a seaman from an adjoining room was attracted by the noise made by the blow(R. 26).

Also, the record supports the Examiner's evaluation that there was a second blow. Chapman testified that he was punched in the face the second time. Idlett stated that he saw Appellant punch Chapman as Idlett was rushing toward them, but he does not know where the blow landed on Chapman's body. Richard testified that he only saw the slapping but that he was in a corner of the room and his view was obstructed by Idlett as he approached the other two seamen. The logbook entry states that both Idlett and Richard confirmed Chapman's claim that he was hit twice by Appellant. Aside from the logbook entry, positive testimony by a witness that he saw something happen will usually prevail over negative testimony such as was given by Richard. Accepting Idlett's testimony on this basis, the conclusion that there was a second blow agrees with the result arrived at by the Examiner's belief,

based on observation of the witnesses, that Chapman and Idlett were telling the truth.

Appellant attempted to impeach Chapman's credibility as a witness by showing his general bad character. After this failed when Chapman denied ever having any trouble with a messman named Manigault, the latter testified that he had been struck in the face by Chapman on a prior occasion. Manigault's testimony was not admissible for this purpose because, although such alleged acts of misconduct may be brought out on cross-examination, they may not be established by extrinsic evidence other than a record of conviction. *Wigmore on Evidence*, 3rd Edition, sections 979 to 981. A witness cannot be expected to be prepared to disprove every alleged act of his life when on the witness stand.

This offense by Appellant was definitely a breach of the discipline which must be maintained on ships for the safety of all on board. Considering Appellant's prior record of revocation in 1955 for assault and battery, the present order is an extremely lenient one.

ORDER

The order of the Examiner dated at New York, New York, on 19 April 1963, is AFFIRMED.

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

Signed at Washington, D. C., this 1st day of October 1963.

***** END OF DECISION NO. 1420 *****

