

In the Matter of Merchant Mariner's Document No. 761337 and all other Seaman Documents

Issued to: LUIS A.

MEDINA

DECISION OF THE

COMMANDANT

UNITED STATES COAST

GUARD

1465

LUIS A.

MEDINA

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.

1.

By order dated 23 March 1964, an Examiner of the United States Coast Guard at New York, N. Y., revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as an engine yeoman on board the United States SS BRASIL under authority of the document above described, on or about 11 September 1962, Appellant wrongfully assaulted and battered a fellow crew member by stabbing him with a

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knife.

At the original hearing Appellant was not represented by counsel. On Appeal from an order of revocation, I remanded so that witnesses "vital to the defense" could be heard. (Appeal Decision No. [1407](#).)

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

The Investigating Officer first introduced in evidence the testimony of the alleged victim and that of a witness to a conversation between the victim and Appellant. Appellant then testified in his own behalf. After the remand, Appellant introduced the testimony of seven witnesses and placed five documents in the record. The Investigating Officer presented the testimony of two more witnesses.

At the end of the hearing, the Examiner reserved decision. He then concluded that the charge and specification had been proved. The Examiner entered an order revoking all documents issued to Appellant.

The entire decision order was served on 24 March 1964. Appeal was timely filed on 21 April 1964.

FINDINGS OF

FACT

On 11 September 1962, Appellant was serving as an engine yeoman on board the United States SS BRASIL and acting under authority of his document while the ship was at sea en route from Europe to New York.

As the vessel was to arrive at New York the next day, a union meeting was held that night in the crew's messroom. During the meeting one Francisco J. Pereira, engine department delegate, was extremely vocal on the subject of the prospective discharge of a stewardess. His conduct appeared to irritate several members attending.

After the meeting Pereira and Appellant engaged in a scuffle. Pereira went to his room and then started back to the messroom at about eleven fifteen to get a cup of coffee before going on watch. As Pereira passed through a door in the passageway he encountered Appellant on the other side. Appellant had a knife with a narrow five inch blade. With this he cut Pereira on the left side of the chest. A seaman named Day was present at the time.

Pereira wanted to take Day and Appellant to the staff captain, but was persuaded by one Davila to go to the hospital for treatment. Report was made to the watch officer that Pereira accused Appellant of cutting him, with Day as a witness. Third Officer Frank went to the hospital and then to Appellant's room. Appellant was feigning sleep. Mr. Frank told him to get up and go to the hospital.

There Pereira identified Appellant as his assailant.

Mr. Frank observed fresh blood on Appellant's hands. Appellant stated that he had cut his hand but inspection showed no cut. Somewhat later Third Officer Schiot also observed blood on Appellant's shirt and on his hands and arms.

Twenty two stitches were taken in Pereira's wound.

The next day, after arrival at New York, one Vicente Andino was present in Pereira's room when Appellant stopped in front of the open door and accused Pereira of hitting him in the eye. He declared that if Pereira hit him again he would cut Pereira again.

Pereira was unfit for duty until 27 September 1962.

A month or two after the cutting Appellant was again serving aboard SS BRASIL. Third Officer Frank engaged him in conversation. Appellant made a remark to the effect that although Pereira was a big man, he, Appellant had taken care of him.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that

- "1. Decision rendered is contrary to the weight of the evidence.
2. Hearing examiner considered facts not in evidence.
3. Hearing examiner before hearing all the facts and evidence pre-determined and pre-judged the person charged."

There are no specific assignments of error.

APPEARANCE: Zwerling and Zwerling, by Sidney Zwerling,
Esquire of New York City.

OPINION

This is a case in which Appellant and the only identified witness both deny any knowledge of or participation in the alleged assault and battery. There are conflicts in the testimony of other witnesses as to what happened after Pereira was cut, particularly with respect to what happened after Pereira was cut, particularly with respect to the presence of Appellant and Day with Pereira in the messroom at the time when Pereira in the messroom at the time when Pereira was persuaded to go to the ship's hospital.

As the trier of facts, the Examiner has the duty to sift the evidence, to discard the unreliable and immaterial, and to determine whether any facts have been established. When the Examiner has made findings it is the function of review to ascertain whether the record contains evidence sufficiently reliable to sustain a reasonable man's conclusion that such were the facts.

It is undeniable that Pereira was cut. His testimony was that Appellant cut him. Despite Appellant's claim to have been asleep shortly after this time, there is evidence that he was feigning sleep. There is testimony of two witnesses that he had blood on his hands and shirt when he arrived at the hospital. There is evidence that on the next day he made a threat to cut Pereira "again." Finally, there is evidence that on a later voyage of BRASIL he boasted that although Pereira was a big man, he had "taken care" of him.

All this provides sufficient basis for the Examiner to find, despite Appellant's denials, that he had in fact cut Pereira.

As to the naked assertions that the Examiner prejudged the case and relied on facts not in evidence, I have reviewed the record thoroughly and can find nothing to provide a basis for even a hint of such impropriety.

CONCLUSION

I conclude that the charge and specification were proved by the necessary quantum of evidence.

ORDER

The order of the Examiner dated at New York, N.Y., on 23 March 1964, is AFFIRMED.

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

Signed at Washington, D. C., this 11th day of August 1964.

***** END OF DECISION NO. 1465 *****

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