

In the Matter of Merchant Mariner's Document No. z-273401 and all
other Seaman Documents
Issued to: CHARLY HALL

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1467

CHARLY HALL

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 9 January 1964, an Examiner of the United States Coast Guard at Houston, Texas, revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specifications found proved allege that while serving as a fireman-watertender on board the United States SS ALMERIA LYKES under authority of the document above described, on or about 27 September 1963, Appellant failed to obey an order of the master to go to his quarters and assaulted and battered the master.

At the opening of the hearing, Appellant was represented by non-professional counsel. Appellant entered a plea of not guilty to the charge and each specification. At a second session of the proceedings, Appellant was not present and was not represented.

The Investigating Officer introduced in evidence the testimony of the master or the vessel and two documents, entries in the Official Logbook and the shipping articles.

No defense was presented.

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 entered an order revoking all documents issued to Appellant.

The entire decision order was served on 30 April 1964. Appeal was timely filed on 27 May 1964.

FINDINGS OF FACT

On 17 September 1963, Appellant was serving as a fireman-watertender on board the United States SS ALMERIA LYKES and acting under authority of his document while the ship was in the port of Jacksonville, Florida. While ashore Appellant drank some vodka. After he returned to the ship, he reported to the engine room to stand his watch. The first assistant engineer judged Appellant to be in no fit condition for watchstanding and ordered him out of the engineroom. Appellant protested. The chief engineer was sent for. He ordered Appellant to leave and Appellant did so.

The ship sailed from Jacksonville. The chief mate then searched Appellant's quarters for liquor but found none.

About two hours later Appellant went to the master's room. In a discussion about his failure to be on watch, Appellant became boisterous. When he refused to leave on order, the master handcuffed him and started down the passageway with him. Appellant resisted and knocked the master against a water cooler, cutting the master's hand and causing bruises to his chest.

The chief mate and third mate then took Appellant to his quarters where they handcuffed him to his bunk. He was released about four o'clock in the morning.

BASES OF APPEAL

This appeal has been taken from the order imposed by the

Examiner. It is urged that the order is excessive.

Appearance: Mandell & Wright, by Herman Wright, Esquire, of Houston, Texas

OPINION

In this case Appellant was originally served with charges on 23 September 1963. He was then advised of his right to counsel. He made efforts to retain the counsel who has appeared on the appeal, but was unable to have representation on 27 September, the day the hearing opened. Since an essential witness, the master, was leaving Houston that night, the Examiner was naturally desirous of obtaining his testimony.

A union patrolman appeared to act as counsel for Appellant. The master's testimony was taken, but the patrolman desired to have the cross-examination conducted by professional counsel. He asked for, and received, a postponement to the date of the master's return to Houston, 20 December 1963. However, The Examiner advised Appellant and his then counsel that if a change were required because of advance or delay of the vessel's return he would so inform them by registered mail.

On 18 December 1963, the Examiner addressed letters to both persons declaring that the hearing would reconvene on 30 December 1964. When no one appeared at the time specified the Examiner concluded the hearing *in absenia*.

On the appeal two affidavits have been submitted, one by Appellant and one by his wife. They establish to my satisfaction that Appellant, through a series of misunderstandings, honestly believed that his interests were being represented at the hearing. Had the object of the appeal been to reopen, I would probably be inclined to grant the petition.

However, Appellant does not seek reopening. In his affidavit he admits the fundamental misconduct and offers matter in mitigation.

The material offered establishes, again to my satisfaction,

that when Appellant went to the master his intention was not to make trouble but to obtain permission to communicate with his wife. When he was questioned as to why he was not on watch, he was reminded of what he thought, rightly or wrongly, was unjust suspension from duty and he protested angrily.

Without condoning either Appellants's failure to obey a lawful command of the master or his resistance to arrest, I am persuaded that the assault and battery were committed with the intention of resistance and not with the intention of inflicting injury on the master.

Noting that Appellant has had a previously unblemished record of twenty two years' service at sea, I am willing to believe that this can remain an isolated instance in his career and therefore one not meriting revocation.

CONCLUSION

I conclude that Appellant committed the acts of misconduct alleged and that the charge and specification were properly found proved. Because of mitigating factors and Appellant's prior good record, I will reduce the order from one of revocation.

ORDER

The order of the Examiner dated at Houston, Texas, on 9 January 1964, is MODIFIED to provide for a suspension of six months, plus three months on a year's probation, this year to begin on the day after the expiration of the outright suspension. As MODIFIED, this order is AFFIRMED.

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

Signed at Washington, D. C., this 12th day of August 1964.

***** END OF DECISION NO. 1467 *****

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