

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-120026-D3 AND
ALL OTHER SEAMAN DOCUMENTS
Issued to: Luis A. McDougall

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1544

Luis A. McDougall

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.

On 21 January and 4 March 1965, an Examiner of the United States Coast Guard conducted a hearing at San Juan, Puerto Rico as a result of which he suspended Appellant's seaman documents for three months outright plus three months on eighteen months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as an able seaman on the United States SS EAGLE COURIER under authority of the document above described, on 20 February 1964, Appellant wrongfully struck able seaman Borden in the face with a fist while ashore at Aruba, Netherlands Antilles.

At the beginning of the hearing on 21 January 1965, Appellant was not represented by counsel. Appellant entered pleas of not guilty to the above specification and to a second specification alleging that Appellant hit Borden with a bottle on the same date. While the Investigating Officer was introducing documents in evidence, Appellant became ill and the hearing was adjourned.

As soon as the hearing was reconvened on 4 March 1965, Appellant appeared with professional counsel and pleaded guilty to the alleged offense of wrongfully striking Borden with his fist. After Appellant entered a plea of not guilty to the second specification, it was withdrawn on motion of the Investigating Officer and dismissed with prejudice by the Examiner. No additional evidence was introduced by either party after the hearing was reconvened on 4 March.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and the only remaining specification had been proved by plea. The Examiner then entered the above order of suspension.

Appellant's prior record consists of a suspension for one year in 1943 for assault and battery, a suspension for one year in 1945 for assault with a knife and disorderly conduct, a suspension for six months outright plus probation in 1956 for failure to join his ship, and an admonition in 1961 for creating a disturbance aboard ship.

On appeal, it is contended that it was improper for the Examiner, in his decision, to have referred to the allegations in the specification which was dismissed and to have considered the evidence introduced at the hearing since it was inadmissible.

APPEARANCE: Nachman and Feldstein of San Juan, Puerto Rico, by Stanley L. Feldstein, Esquire, of Counsel

OPINION

Although it was not necessary for the Examiner to mention the allegations contained in the specification which was withdrawn and dismissed with prejudice during the hearing, there is no indication that Appellant's cause was prejudiced in this respect. The Examiner specifically stated in his decision that the offense alleged in the second specification would not be considered and the order imposed indicates that he did not take it into consideration.

It is immaterial that the Examiner considered the evidence

introduced at the hearing. Appellant eventually entered a plea of guilty to the specification found proved and his findings of fact as to this specification are worded, in substance, the same as the specification. Therefore, there is no reason to decide whether or not the evidence was admissible.

The order imposed by the Examiner is appropriate in view of Appellant's prior record.

ORDER

The order of the Examiner dated at Jacksonville, Florida, on 10 March 1965, is AFFIRMED.

W. D. Shields
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C. this 4th day of February 1966.

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