

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-929271 AND ALL
OTHER SEAMAN DOCUMENTS

Issued to: Leo F. McCloud

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1545

Leo F. McCloud

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 15 October 1965, an examiner of the United States Coast Guard at Galveston, Texas suspended Appellant's seaman documents for six months upon finding him guilty of misconduct. The specification found proved alleges that while serving as a fireman-watertender on board the United States SS AMOCO VIRGINIA under authority of the document above described, on 5 August 1965, Appellant assaulted and battered Second Assistant Engineer Herpenn with his fist while the ship was in a domestic port.

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

The Investigating Officer introduced in evidence the testimony of Second assistant Engineer Herpen, the deposition of the First Assistant Engineer, and an entry in the Engine Room Logbook pertaining to the offense alleged.

Appellant and the oiler on watch testified for the defense. Appellant testified that during the voyage he was continually harassed by Second Assistant Herpen; on 5 August, a dispute arose concerning Appellant's performance of duties; both seamen went to see the First Assistant about this; Herpen did not claim to have hit by Appellant until after Herpen left the First Assistant's room and returned later; Appellant told the First Assistant that the accusation was not true.

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

FINDINGS OF FACT

On 5 August 1965, Appellant was serving as a fireman-watertender on board the United States SS AMOCO VIRGINIA and acting under authority of his document while the ship was in the port of Texas City, Texas.

On this date, Appellant and second Assistant Engineer Herpen were standing the 0000 to 0400 watch. Shortly after the beginning of the watch, the Second Assistant saw appellant in the engine room and ordered him to stay in the fireroom to perform his duties of watching the boiler steam pressure and water level. Instead of obeying, Appellant followed the Second Assistant down to the operating platform in the engine room, called him names, and punched him in the mouth. After a brief struggle, the Second Assistant broke away and went to the First Assistant Engineer's room followed by Appellant.

The Second Assistant told the First Assistant that he had been hit by Appellant. The Second Assistant's mouth was bleeding due to cuts on the outside and inside of his lip from the blow by appellant. The latter denied having struck the Second Assistant but was ordered off watch by the First Assistant pending investigation of the matter. The Second Assistant returned to the engine room and completed his watch.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended, without amplification, that the Examiner's findings are against the weight and preponderance of the evidence.

APPEARANCE: Schwartz and Withers of Galveston, Texas, by K.
 Ball Withers, Esquire, of Counsel

OPINION

The above findings of fact, which agree with those of the Examiner in all material respects, show that the Examiner rejected Appellant's denial that he hit the Second Assistant Engineer and accepted the latter's version as to what occurred. The oiler on watch testified that he did not see what happened because he was on a lower level in the engine room and could not see the other two seamen at the time of the alleged offense.

Appellant's testimony about prior harassment was not corroborated, but, in any case, this would not excuse his conduct. Appellant's testimony, that the Second Assistant did not say anything to the First Assistant about being hit by Appellant until going to the First Assistant's room a second time, is discredited by both the First Assistant and the oiler. The former testified the Second Assistant, upon first entering the First Assistant's room, was bleeding from the mouth and said he had been struck by Appellant. The First Assistant specifically stated that this report was not made after the Second Assistant left the room and later returned. The oiler's testimony indicates that the Second Assistant did not go to the First Assistant's room twice because he only left the engine room once. Other than that he was struck by Appellant, there is no explanation as to how the Second Assistant was injured.

Since there is no reason to reject the Examiner's choice as to the credibility of the witnesses, it is concluded that the findings are supported by substantial evidence. Therefore, Appellant was guilty of the offense alleged.

A deliberate attack on a ship's officer, aggravated by the fact that he was then performing his duties while on watch, is a very serious offense. The strict shipboard discipline necessary to promote safety at sea requires that the order of suspension be sustained.

ORDER

The order of the Examiner dated at Galveston, Texas, on 15 October 1965, is AFFIRMED.

E. J. Roland
Admiral United States Coast Guard
Commandant

Signed at Washington, D. C., this 10th day of February 1966.

***** END OF DECISION NO. 1545 *****

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