

IN THE MATTER OF MERCHANT MARINER'S NO. Z-865897-D1 AND ALL OTHER
SEAMAN DOCUMENTS

Issued to: Arnold F. Rehm

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1550

Arnold F. Rehm

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 November 1965, an Examiner of the United States Coast Guard at Houston, Texas, revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as an oiler on board the United States SS DEL MUNDO under authority of the document above described, on or about 3 November 1965, Appellant wrongfully assaulted and battered a fellow crewmember, William R. Alderman, by striking him with his fists and with an ax.

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

The Investigating Office introduced in evidence the testimony of the alleged victim and of five other witnesses.

In defense, Appellant offered no evidence.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order revoking all document issued to Appellant

The entire decision order was served on 9 November 1965. Appeal was timely filed on 24 November 1965.

FINDINGS OF FACT

On 3 November 1965, Appellant was serving as an oiler on board the United States SS DEL MUNDO and acting under authority of his document while the ship was in the port of Houston, Texas.

It must be noted first that the Findings of Fact made by the Examiner in this case are not attacked as erroneous in any way. These Findings may therefore be adopted *verbatim*:

1. That Arnold Frederick Rehm and William R. Alderman were both oilers aboard the SS DEL MUNDO at the material time serving under the authority of their Merchant Mariner's Documents.
2. Around 2300 hours, 3 November 1965, Mr. Alderman and Mr. Rehm met in the starboard passageway of the vessel and at this time Mr. Rehm grabbed Mr. Alderman's shirt, called him a son-of-a-bitch and commenced hitting Mr. Alderman with his fist.
3. Mr. Alderman succeeded in getting away from Mr. Rehm without hitting him and then Mr. Alderman proceeded to the four to eight forecastle to borrow some money to go ashore.
4. Mr. Alderman, after borrowing ten (\$10.00) dollars from a crewmember in the four to eight forecastle, left this forecastle and in proceeding in the starboard passageway and arriving at the thwartship passageway again encountered Mr. Rehm. At this Mr. Rehm armed himself with the fire axe which was on the bulkhead in this area and Mr. Alderman immediately ran out of the passageway and up the ladder to the deck above where there was a gangway watch being maintained. While Mr.

Alderman was proceeding up the mentioned ladder Mr. Rehm, who had been following him, caught up with Mr. Alderman and used the axe on Mr. Alderman, cutting his left leg just below the knee and his right leg just above the ankle.

5. After Mr. Alderman had gotten to the upper deck after being cut as mentioned in the preceding finding and was in close proximity of the gangway watchman, Mr. Rehm appeared on this deck with the axe in his hand and as he was approaching Mr. Alderman he passed the gangway watchman who at this time grabbed the axe away from Mr. Rehm.

6. There was no reason shown in the record to indicate why Mr. Rehm should so attack Mr. Alderman.

Additional facts may be adduced from the Record, although they are treated by the Examiner in his "Opinion;" to wit, that Appellant had been observed in an unusual and agitated condition by his roommate before the encounter between Appellant and the victim, Alderman; that Appellant had been observed in an agitated and belligerent condition by the ship's third mate after that encounter; and that Appellant had exhibited a cut hand to his roommate with a statement that he had "hit that phony." It can be further found that Appellant had served for considerable time aboard DEL MUNDO with a reputation for reputation for docility; and that Alderman, the victim, had a reputation for drinking ashore and had once failed to join the ship.

BASES OF APPEAL

Notice of appeal was filed by the attorneys first noted below in "Appearances" on 24 November 1965. It was stated in the notice, by counsel of record at the hearing, that detailed bases for appeal

would be filed at a later date.

Subsequently, on 12 April 1965, the attorneys noted second

below filed a psychiatrist's report on Appellant, and on the strength thereof, asked for a modification of the order of revocation to suspension order "more in line with the facts of *this* case." Reference is also made, in support of this request, to Appellant's eighteen years of service as a merchant seaman without prior record.

- APPEARANCES:
- (1) Schwartz and Lapin, of Houston, Texas, by Robery Levy, Esquire (at the hearing and for notice of appeal), and
 - (2) Dodd, Hirsch, Barker and Meunier, of New Orleans, Louisiana, by Harold J. Lamy, Esquire (for psychiatrist's report).

OPINION

In *this* case, I have been asked to modify an order of revocation of a seaman's document as being too severe upon the "facts of *this* case." Unfortunately for Appellant, nothing has been presented to demonstrate that the "fact of this case" are any different from the facts of any other case in which there has been found proved a charge of assault and battery with a dangerous weapon.

Before the Examiner, no defense evidence was offered to combat the testimony against Appellant. The Examiner was aware of Appellant's prior clear record. He entered an order of revocation in accord with the general practice and tradition of dealing with merchant seamen who use violence and dangerous weapons against their shipmates.

For me to disturb the Examiner's order would require persuasive material proper to consider and not available to him. What has been presented is some correspondence ancillary to the appeal proper and the report of the psychiatrist mentioned before in "Bases of Appeal."

The ancillary correspondence urges Appellant's prior good record and the allegation that the victim is "an alcoholic." Whether the latter be true or not, it is not of itself sufficient

to permit condonation of assault and battery upon him.

As to the psychiatrist's report, while Appellant was found not to have "been one accustomed to aggressive, hostile acts, and, in fact,. . . a passive, demure individual, who has tended to shy away close personal relationships," with respect to the assault and battery in this case it is stated that Appellant "was extremely vague and indefinite as to the reality of the situation surrounding his aggressive act,. . ."

While there is no substantial evidence of Appellant's intoxication in the record (an opinion of the victim that Appellant was intoxicated was objected to by counsel), the psychiatrist says, "the only explanation concerning his past aggressive act would be based on his intoxication, which loosened his somewhat tenuous controls on reality."

To take the record of this hearing on its face, Appellant committed an unprovoked and inexplicable assault and battery, actually two such offenses -- one with a dangerous weapon. The fact that such actions are not explained is no reason to give special consideration in this case.

The additional element of intoxication, introduced first on appeal and then only indirectly *via* the psychiatrist's report, and possibly, if true, well suppressed at the hearing level, does not call for any modification of the order here. The customary life of the seaman does not urge special consideration for one whose "somewhat tenuous controls on reality" are loosened by alcohol.

In sum, what has been asked for on this appeal is an action of clemency after an appropriate order of revocation. The exercise of clemency is not reached through the appeal route but is, upon good cause shown, governed by the regulations at 46 CFR 137.13. This route will be open to Appellant.

ORDER

The order of the Examiner dated at Houston, Texas, on 9 November 1965, is AFFIRMED.

P. E. TRIMBLE
Rear Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 6th day of May 1966.

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