

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. Z-1136071
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: RAFAEL ELIPE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2000

RAFAEL ELIPE

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 1973, an Administrative Law Judge of the United States Coast Guard at New York, New York suspended Appellant's seaman's documents for 2 months outright plus 2 months on 9 months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as an Able Seaman on board the SS SANTA BARBARA under authority of the document above captioned, on or about 10 August 1973, Appellant did wrongfully engage in mutual combat with a fellow crew member, to wit, Mario Fernandez, Steward Utility, while the vessel was in the port of Kingston, Jamaica.

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

The Investigating Officer introduced in evidence the testimony of a messman and an Ordinary Seaman, an abstract of the Shipping

Articles of the vessel and two Official Log entries.

In defense, Appellant offered in evidence his own testimony, the testimony of Boatswain Norman Clew and Vincent McGuire, the prior signed statement of Messman McLenan and a photograph of himself.

After the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. He served a written order on Appellant suspending all documents issued to him for a period of 2 months outright plus 2 months on 9 months' probation.

The entire decision and order was served on 30 November 1973. Appeal was timely filed and perfected on 20 March 1974.

FINDINGS OF FACT

On 10 August 1973, Appellant was serving as an Able Seaman on board the SS SANTA BARBARA and acting under authority of his document while the ship was in the port of Kingston, Jamaica. At approximately 0630, Appellant and Mario Fernandez met in the messhall, and exchanged words. A scuffle of short duration ensued, during which Appellant suffered minor injury about his ears and neck. These events occurred in the presence of two eyewitnesses.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that the Investigating Officer failed to sustain the burden of proof. Due to the disposition of this contention, it is unnecessary to note or

discuss Appellant's further grounds for appeal.

APPEARANCE: Mattioni, Mattioni & Mattioni, Ltd., Philadelphia.

OPINION

When an individual is charged with mutual combat, it is incumbent upon the investigating officer to prove mutuality as opposed to defense against assault and battery. Such proof requires either the adduction of the facts surrounding the onset of the altercation or evidence of the combatants' conduct after the onset sufficient to justify an inference of mutuality. Unfortunately neither eyewitness was able to testify as to who struck the first blow or as to the progress of the fight. The only evidence in point is the testimony of Appellant to the effect that he was victimized by the other man. Under these circumstances, it cannot be said that a finding of mutual combat is supported by substantial evidence of a reliable and probative character.

ORDER

The order of the Administrative Law Judge dated at New York, New York on 9 November 1973, is VACATED and the charge DISMISSED.

O. W. SILER
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D. C., this 5th day of June 1974.

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