

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs
MERCHANT MARINER'S DOCUMENT No. (REDACTED)
Issued to: John Edward Staples

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2313

John Edward Staples

This appeal has ben taken in accordance with Title 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 3 December 1981, an Administrative Law Judge of the United States Coast Guard at Boston, Massachusetts revoked Appellant's seaman's document upon finding him guilty of misconduct. The specifications found proved allege that, while serving as Second Pumpman on board the SS GULF OIL, O.N. 283424, under authority of the above captioned Merchant Mariner's Document, on or about 12 October 1981, Appellant did wrongfully assault and batter by beating with fists, a member of the crew, the Chief Engineer, Richard J. Driscoll; and, that Appellant, while serving as aforesaid, did wrongfully assault the Third Assistant Engineer, David W. Thunell by brandishing a fire axe and a pocketknife in a threatening manner and offering to inflict bodily harm.

The hearing was held at Boston, Massachusetts on 3 December 1981.

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

specifications.

The Investigating Officer introduced two documents and the testimony of two witnesses into evidence.

In defense, Appellant introduced seven documents and his own testimony into evidence.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and both specifications had been proved. He then served a written order on Appellant revoking his Merchant Mariner's Document.

The entire decision was served on 11 December 1981. Appeal was timely filed and perfected on 4 January 1982.

FINDINGS OF FACT

On 12 October 1981, Appellant was serving as Second Pumpman under the authority of Merchant Mariner's Document No. [REDACTED] on board the SS GULF OIL in Port Everglades, Florida.

At approximately 0330 on 12 October 1981, Appellant returned to the vessel from authorized shore leave and proceeded to the stateroom of Richard J. Driscoll, the Chief Engineer. Appellant was agitated because there had been no overtime work available for him on 11 October 1981 and decided to enter the Chief Engineer's living area and office because he "felt like cussing him out" over the missed overtime. The Chief Engineer, who had already retired for the evening, was awakened when Appellant made noise upon entering his office through the door which was left open in case of emergency. Chief Engineer Driscoll left his bed and went to investigate. When the privacy curtain between the office and stateroom was pulled aside, Appellant struck the Chief Engineer in the face with his fist and severely bloodied his nose. The Chief Engineer then grabbed Appellant to prevent further blows and they fell to the office deck. As a result of the fall the Chief Engineer was cut and broke a rib, and Appellant received cuts and abrasions to both his leg and abdomen.

The Chief Engineer, his nose bleeding profusely, then wrestled Appellant into the passageway, pounded on the door of the Third

Assistant Engineer, David W. Thunell, and called for his help. When Mr. Thunell came to the aid of the Chief Engineer, Appellant was still punching him. Mr. Thunell tried to restrain Appellant by stepping between the two and pushing Appellant against the bulkhead. Appellant tried to strike further blow, but the Chief Engineer, bleeding and covered with blood, backed away and was not struck further. Mr. Thunell then pushed Appellant, who was still yelling and screaming obscenities, down the passageway and into his stateroom and returned to the Chief Engineer's room to assist him.

Appellant did not remain in his room but returned to the vicinity of the Chief Engineer's room. On the way he took a fire axe from its holder on a nearby bulkhead and began swinging it wildly from side to side denting the passageway bulkheads. Upon seeing the Chief Engineer, Appellant shouted, "I'm waiting for you." Although Mr. Thunell was afraid of what Appellant might do and retreated two or three feet down the passageway, he did not run from the scene because he wanted to prevent Appellant from returning to the Chief Engineer's stateroom. Appellant tried to order Mr. Thunell out of the way but dropped the axe and returned to his room screaming and yelling after being told that his behavior would do him no good. Shortly thereafter, Appellant returned to the passageway waving a pocket knife with its 3 to 6 inch blade open. He shouted that he was still waiting for the Chief Engineer and lunged forward Mr. Tunnell with the knife, telling him to get out of his way. Appellant was finally subdued.

Appellant was later removed from the vessel, discharged for cause, and paid off. He returned to his home in Wakefield, Massachusetts. The Chief Engineer was treated for a bloody nose, cuts, and a broken rib. Mr. Thunell received no injuries.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that the sanction of revocation is too severe.

APPEARANCE: Malone and Hunt, Boston, Massachusetts by Thomas L. Crotty, Jr., Esq.

OPINION

I am not persuaded that the order of revocation is unduly severe and affirm it for the following reasons.

Appellant suggests that the Administrative Law Judge is bound by the Table of Average Orders in determining an appropriate sanction. 46 CFR 5.20-165 makes it clear that the table is provided for guidance only and is not intended to limit the orders of Administrative Law Judges. See also Decision on Appeal No. [2242](#) (JACKSON & GAYLES).

I have previously held that:

"...The Administrative Law Judge is not and cannot be bound by the Table of Average Orders.."

Decision on Appeal No. [2243](#) (TRIGG).

"...Since the Table is merely for guidance purposes, it would be folly to read more authority into its pronouncements than would be accorded by the Administrative Law Judge in a case... Thus an order of revocation may, in some circumstances, be entered even in the event of a first offense when deemed appropriate."

Decision on Appeal No. [2240](#) (PALMER).

Appellant also suggests that the order is not appropriate in light of mitigating factors before the Judge such as his age, prior record and the hardships he will suffer.

I have said that the order in a particular case is peculiarly within the discretion of the Administrative Law Judge and, absent some special circumstance, will not be disturbed on appeal. See Decisions on Appeal Nos. [2236](#) (CLUFF), [1980](#) (PADILLA), [1936](#) (VARGAS) and [1585](#) (WALLIS). Generally there must be a showing that an order is obviously excessive or an abuse of discretion before it will be modified on appeal. Decisions on Appeal Nos. [1994](#) (TOMPKINS) and [1751](#) (CASTRONUOVO). See also Decision on Appeal No. [2267](#) (ERVAST). I have affirmed revocations of the Merchant Mariner's Documents in similar assault and battery cases involving seamen with unblemished previous records. Decision on Appeal Nos. [2017](#) (TROCHE) and [1892](#) (SMITH).

The record here indicates that Appellant is an honorably discharged, young veteran with no previous misconduct. He is unmarried with no dependents. However, his misconduct is very serious. He assaulted two separate superior officers, the Chief Engineer by battering him with his fists, and the Third Assistant Engineer by first brandishing a fire axe and later a pocket knife. In both assaults on the Third Assistant he offered to inflict bodily harm. Although restrained and urged to stop, Appellant first maintained his attack against the Chief Engineer and then returned on two separate occasions to further assault both the Chief Engineer and the Third Assistant. This extreme violence was aggravated further by his tenacity in pursuing it and the fact that it occurred with no provocation whatsoever. The Administrative Law Judge found that revocation was the only appropriate remedial order after balancing Appellant's violent tendencies against the hardship of losing his Merchant Mariner's Document. I agree. The promotion of safety of life at sea and the welfare of individual seamen is of paramount concern in these decisions. The grave nature of Appellant's action is a definite challenge to this policy. The offense merits revocation. It is neither excessive nor an abuse of discretion.

CONCLUSION

There was substantial evidence, reliable and probative in nature to support the findings of the Administrative Law Judge. The hearing was fair and conducted in accordance with the requirements of applicable regulations. The order of revocation is not unduly severe.

The order of the Administrative Law Judge dated at Boston, Massachusetts, on 3 December 1981, is AFFIRMED.

J. S. GRACEY
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D.C., this 22d day of May 1983.

***** END OF DECISION NO. 2313 *****

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