

In the Matter of Certificate of Service No. E-318294
Issued to: ARMANDO NAVARRO

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

419

ARMANDO NAVARRO

This appeal comes before me by virtue of Title 46 United States Code 239(g) and 46 Code of Federal Regulations Sec. 137.11-1.

On 17 October, 1949, an Examiner of the United States Coast Guard at New York City revoked Certificate of Service No. E-318294 issued to Armando Navarro upon finding him guilty of "misconduct" based upon a specification alleging in substance, that while serving as head waiter on board the American SS MARINE FLASHER, under authority of the document above described, on or about 20 August, 1949, he assaulted and battered a female passenger on said vessel, one Frances Moore, while the ship was at sea. The first specification, alleging that Appellant unlawfully loitered in the passenger spaces of the MARINE FLASHER on 20 August, 1949, was found "not proved."

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. Although advised of his right to be represented by counsel of his own selection, he elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and each specification.

Thereupon, the Investigating Officer made his opening statement and requested that Frances Moore's deposition be taken since she was living in Tucson, Arizona. Interrogatories by the Investigating Officer, cross-interrogatories by the Appellant and interrogatories by the Examiner were sent to Tucson, Arizona. When the deposition had been taken and returned, the Examiner received it in evidence.

In defense, Appellant offered in evidence the testimony of three crew members who stated they were with Appellant at the time of the alleged assault and batter. Appellant also testified, under oath, in his own behalf and introduced a statement made by Frances Moore on 21 August, 1949.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant, the Examiner found the charge "proved" by proof of specification No. 2 and entered an order revoking Certificate of Service No. E-318294 and all other valid licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that:

Point 1. Appellant did not have a fair trial since he was not permitted to propound cross-interrogatories to the Examiner's interrogatories and the Assistant United States Attorney, taking the deposition, asked questions not contained in the interrogatories.

POINT 2. No substantial, reliable and probative evidence of the guilt of the Appellant is contained in the record.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On the voyage covering the date of 20 August, 1949, Appellant was serving as a member of the crew of the American SS MARINE FLASHER in the capacity of head waiter, acting under authority of Certificate of Service No. E-318294, while said vessel was at sea bound for the port of New York. Frances Moore was a passenger aboard the SS MARINE FLASHER on this date.

After dinner on the evening of 20 August, 1949, Frances Moore agreed to meet Appellant at a prearranged place at some time between 2145 and 2245 that night. At the specified time, she left a group of people and met Appellant at the agreed place. Appellant led her down a stairway to an isolated place in the forward part of the ship. When the passenger saw that there was nothing of interest in this part of the ship, Appellant told her he had her down there for other purposes. When she refused his proposition, Appellant forcefully detained her. He slapped her in the face at least two times during the course of the ensuing argument. She finally managed to escape up the stairway and hid in a nearby room for over an hour before returning to her own cabin.

The following morning, Frances Moore registered a complaint with the master of the ship. She identified Appellant by name but he was not present at the investigation conducted by the master and he was confined to the brig almost immediately after the master had received the complaint.

This record does not disclose any previous disciplinary action having been taken against Appellant by the Coast Guard.

OPINION

Appellant contends that the inclusion, in the record, of the Examiner's interrogatories and the additional questions of the Assistant United States Attorney taking the deposition, was a clear violation of the fundamental constitutional rights of the Appellant and, therefore, he was not afforded a fair hearing.

In my opinion, the evidence objected to by Appellant is not essential in order to arrive at the basic findings and conclusions set out by the Examiner. Although the evidence adduced by the Examiner's interrogatories is only of a supplemental nature and

somewhat repetitious of what is contained in other parts of the deposition, these interrogatories and answers have not been considered in making my finding of fact, supra. And the information elicited by the additional questions of the person taking the deposition was necessary in order to obtain a reasonably coherent and complete reply to the original interrogatories as propounded by the Investigating Officer and Appellant, Consequently, there was no prejudicial error in permitting the entire deposition to be received in evidence. But the wiser course would have been for the Examiner to have given the Appellant an opportunity to submit cross-interrogatories relating to the Examiner's interrogatories.

Appellant also argues that there is no substantial, reliable and probative evidence of the guilt of the Appellant. He states that the deponent's story is improbable; that Appellant should have been confronted and personally identified by the person making the charges against him; that there is no evidence that the ship's doctor detected any signs of physical injury when he examined the person allegedly assaulted; and that the Appellant's alibi defense should not have been entirely disregarded by the Examiner.

Since the statements of the deponent, which are considered by Appellant to be improbable, were in answer to the Examiner's interrogatories to which Appellant objected and which I, therefore, have not considered in this appeal, it is not necessary to give these statements any consideration. Even though improbable, the events referred to in these statement do not contradict the positive evidence as to the assault and battery.

I agree that in complete fairness to Appellant, he should have been confronted by the accuser at the investigation and given the opportunity of speaking in his own defense at that time. But since his identification was conclusively established by other means and since personal identification is not a compulsory requirement in these proceedings as in a criminal trial, this is not considered to reversible error.

The absence of corroborating evidence by the ship's doctor, concerning the injuries said to have been received by the passenger, is not proof that she was not slapped by Appellant. Miss Moore stated in her deposition that some of the marks did not

show up from the bruises until after she had departed from the ship upon the completion of the voyage the following day. And it is quite possible that the slapping by Appellant did not leave any marks on her face. Nevertheless, it was consummated assault and battery if Appellant merely touched her against her expressed desire.

Appellant's defense of alibi is based on the testimony of three fellow crew members who stated they had seen and conversed with Appellant on the night of 20 August, 1949. But the range of the times at which they testified they had first seen Appellant is considerable, varying from 2200 to 2330. In view of this and the deponent's own indefiniteness as to the time of the assault, it cannot be said that Appellant's alibi is ironclad even though the testimony of his witnesses be accepted as an honest attempt to recollect the times at which they saw Appellant. In addition to this factor, the Examiner who saw and heard the witnesses was entitled to assign whatever weight to their testimony that he deemed fit and proper. And the evidence contained in the deposition is of a substantial nature to show that the assault and battery was actually committed.

It was stated more than a century ago that the owner's and master's contractual obligation to passengers is one of peculiar responsibility and delicacy. In *Chamberlain v. Chandler, Fed. Cas. 2575*, decided in 1823, Judge Story said:

"In respect to females it [the contract] proceeds yet farther, it includes an implied stipulation against general obscenity, that immodesty of approach which borders on lasciviousness and against that wanton disregard of the feelings, which aggravates every evil, and endeavors by the excitement of terror, and cold malignancy of conduct, to inflict torture upon susceptible minds. * * * In each case the contract of the passengers for the voyage is in substance violated; and the wrong is to be redressed as a cause of damage."

And in *Nieto v. Clark, Fed. Cas. 10,262*, decided in 1858, it was held that the contract covered protection against personal rudeness from all those in charge of the vessel, and every wanton interference with the passenger's person. Hence, by his actions

while a member of the crew, Appellant subjected the ship's owner to a possible penalty. And since it is incumbent upon the owners to see that such a high degree of respect is paid to its female passengers, this duty is also imposed upon the owner's employees who are aboard the ship. Appellant's failure to comply with this strict obligation is additional reason for finding that his behavior constituted misconduct.

CONCLUSION

Although it is my opinion that the rights of Appellant were not unduly prejudiced and that there is substantial evidence that the assault and battery actually took place, I consider that the order imposed was too severe in view of the circumstances. The complainant admitted that she willingly accompanied the Appellant to an isolated part of the ship and it does not appear that Appellant forcefully attempted to carry out his original intentions after she resisted his advances.

ORDER

Accordingly, it is ORDERED and DIRECTED that the order of the United States Coast Guard Examiner dated 17 October, 1949, be, and the same is hereby modified to provide for suspension of Appellant's Certificate of Service No. E-318294, and all other valid licenses, certificates of service and documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of twenty-four (24) months. Eighteen months of the suspension ordered shall not be effective provided no charge under R.S. 4450, as amended (46 United States Code 239), is proved against Appellant for acts committed within eighteen months of 17 April, 1950. As so modified, said order is AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 16 day of March, 1950.

***** END OF DECISION NO. 419 *****

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