

In the Matter of Merchant Mariner's Document No: Z-533115-D1
Issued to: WELLINGTON T. MATTHEWS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

458

WELLINGTON T. MATTHEWS

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 2 June, 1950, an Examiner of the United States Coast Guard at Houston, Texas, suspended Merchant Mariner's Document No. Z-533115-D1, issued to Wellington T. Matthews upon finding him guilty of "misconduct" based upon a specification alleging in substance, that while serving as crew messman on board the American S.S. LENA LUCKENBACH, under authority of the document above described, on or about 2 May, 1950, while said vessel was in the port of Coos Bay, Oregon, he severely wounded a member of the crew, one Calvin Hall, in the right shoulder with a ten-inch bread knife.

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 specification.

Thereupon, the Investigating Officer and Appellant made their

opening statements. The Investigating Officer then introduced in evidence the testimony of four witnesses including the person who was injured, a certified copy of the log entry concerning the incident, and a copy of the casualty report. Appellant offered no evidence in his defense.

At the conclusion of the hearing, having heard the argument of the Investigating Officer, the Examiner found the charge "proved" by proof of the specification and entered an order suspending Appellant's Merchant Mariner's Document No. Z-533115-D1 and all other valid documents, certificates and licenses held by him, for a period of twelve months.

From that order, this appeal has been taken, and it is urged that (1) the one year suspension is excessive in view of the facts and circumstances surrounding the case; (2) that Matthews did not provoke the fight and under the circumstances the sentence is too harsh; (3) that he was not represented by legal counsel and although given an opportunity did not testify in his behalf which was due to unappreciation of the seriousness of the charges; and (4) that for the above reasons counsel requests that the suspension be rescinded or materially reduced.

APPEARANCES: Leonard Liepman of Counsel

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

FINDINGS OF FACT

On 2 May, 1950, Appellant was serving as crew messman on board the American S.S. LENA LUCKENBACH, under authority of Merchant Mariner's Document No. Z-533115-D1, while said ship was in the port of Coos Bay, Oregon.

On the evening of this date, Appellant and several other members of the crew went ashore to visit at a private home. While at this place, there was an argument between Appellant and Hall but no blows were exchanged. Shortly afterwards, Appellant returned to the vessel. When Hall returned to the ship at about 2300 accompanied by Powell, another crew member, both of them went into the forecabin occupied by Appellant, Hall and another member of

the crew.

The prior argument was continued and blows were exchanged between Appellant and Hall. Appellant picked up a bread knife with a ten-inch blade and chased Hall into the messroom where he stabbed Hall in the right shoulder inflicting a very deep cut. Hall was bleeding profusely from the wound and was immediately rushed to the hospital where he remained for three or four days recuperating after the wound was sewed up.

There is no record of any prior disciplinary action having been taken against Appellant.

OPINION

Appellant does not deny that he inflicted the injury received by Hall but he contends that the one year suspension is excessive in view of the fact that Appellant did not provoke the fight. Assuming that Appellant was assaulted by Hall while the former was lying in his bunk, this was not sufficient justification for Appellant pursuing Hall into the messroom and stabbing him with a dangerous weapon which might well have resulted in Hall's death.

A man is justified in using the necessary means at his disposal to defend himself against an illegal attack by another; but he is not permitted to become the aggressor and inflict serious bodily harm unless it appears to be reasonably necessary to do so in order to protect his own life. It does not seem from the facts in this case that Appellant was in any danger of receiving serious bodily harm. This is true, especially, as pertains to the time after which Appellant had sent Hall running from his room. There was no need for Appellant to chase Hall in order to protect himself. For these reasons, the order of the Examiner must be upheld.

ORDER

The Order of the Examiner dated 2 June, 1950, should be, and it is, AFFIRMED.

Merlin O'Neill

Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 6th day of September, 1950.

***** END OF DECISION NO. 458 *****

[Top](#)