

In the Matter of License No. A-8604
Issued to: OWEN J. DAYTON

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

710

OWEN J. DAYTON

This appeal had been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 10 August, 1953, an Examiner of the United States Coast Guard at San Francisco, California, suspended License No. A-8604 issued to Owen J. Dayton upon finding him guilty of misconduct based upon three specifications alleging in substance that while serving as the operator of the American motorboat SEA BEE under authority of the document above described, on or about 13 July, 1953, while said vessel was at sea, he used indecent language to Albert Sposeto, a passenger (First Specification); he threatened to do bodily harm to Albert Sposeto without reasonable cause (Second Specification); and he assaulted Albert Sposeto by brandishing a club in a threatening manner and offering to inflict bodily harm (Third Specification).

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel.

He entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer and Appellant made their opening statements and the Investigating Officer introduced in evidence the testimony of Albert Sposeto and William A. Baker who was also one of the passengers. The latter witnessed the incident from a distance of four or five feet and his testimony corroborates that of Mr. Sposeto with respect to the allegations contained in the three specifications.

In defense, Appellant testified under oath in his own behalf. He stated that Mr. Sposeto's method of fishing prevented the other passengers from catching fish and this would hurt Appellant's ability to obtain passengers in the future. Consequently, Appellant was pulling in Mr. Sposeto's line when he pushed Appellant away twice, and then Appellant picked up the club for his own protection.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the three specifications. He then entered the order suspending Appellant's License No. A-8604, and all other licenses and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of six months.

From that order, this appeal has been taken, and it is urged that the evidence does not support the First Specification; and that the order entered is too severe.

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

FINDINGS OF FACT

On 13 July, 1953, Appellant was serving as the Operator of the American motorboat SEA BEE and acting under authority of his License No. A-8604 while the motorboat was at sea with a fishing party consisting of Albert Sposeto and nine other passengers.

Appellant had instructed the passengers to keep their fishing lines out at a length of 35 feet. Since the fish were not biting, Mr. Sposeto commenced varying the length of his line in order to fish at shallower and deeper depths than Appellant had instructed. Appellant rebuked Mr. Sposeto for doing this and a dispute arose between the two men concerning the manner in which Mr. Sposeto was fishing and fishing methods in general. When Mr. Sposeto did not agree with Appellant, the latter commenced shouting at Mr. Sposeto, picked up a club which was used to kill fish, and threatened to strike Mr. Sposeto with the club after grabbing hold of the front of his shirt. Appellant raised the club in a gesture as though he intended to hit Mr. Sposeto with it and told him that he would get hit on the head if he did not shut up. Mr. Sposeto did not do anything to justify this assault and he did not attempt to repel Appellant when he took hold of Mr. Sposeto's shirt and raised the club. Among other verbal abuses which were directed toward Mr. Sposeto by Appellant in a loud voice, he called Mr. Sposeto a bum, a tramp, and a poor sportsman for not keeping his bait at the same level as others. Appellant did not strike Mr. Sposeto with the club but told him that he would do no more fishing and took his rod away from him. Mr. Sposeto said that he would not pay for the trip if not permitted to fish and he later refused to pay Appellant when he was collecting from the other passengers.

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

OPINION

Much of Appellant's testimony was in conflict with that of Mr. Sposeto and Mr. Baker who was a disinterested eyewitness to the incident in question. The Examiner accepted the mutually corroborative testimony of the latter two witnesses and he specifically rejected the testimony of Appellant. Since questions of credibility are for the trial Examiner who has an opportunity to hear and observe the demeanor of the witnesses, my findings are substantially in accord with those of the Examiner.

On the basis of these findings, I do not agree with Appellant's contention that the order imposed is too severe. There was no danger to Appellant of the other passengers as a result of

Mr. Sposeto's failure to cooperate with the instructions issued by Appellant. (In fact, Mr. Baker testified that he was using the same fishing method as that which was employed by Mr. Sposeto.) It was Appellant's responsibility as operator in charge of the motorboat to treat his passengers with respect and to care for their personal welfare rather than to address one of them with indecent language and to put this passenger in fear of bodily harm without reasonable cause. Appellant's resort to such tactics was completely inconsistent with his duty under the prevailing circumstances.

ORDER

The Order of the Examiner dated at San Francisco, California, on 10 August, 1953, is AFFIRMED.

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

Dated at Washington, D. C., this Third day of November, 1953.

***** END OF DECISION NO. 710 *****

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