

In the Matter of Merchant Mariner's Document No. Z-10777-D1  
Issued to: LUIS MORALES

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

732

LUIS MORALES

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

By order dated 24 September, 1953, an Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z-10777-D1 issued to Luis Morales upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a wiper on board the American SS FLYING INDEPENDENT under authority of the document above described, on or about 10 July, 1953, while said vessel was in the port of Rotterdam, Netherlands, he wrongfully stabbed a fellow crew member, Rudolph Walker, with a dangerous weapon.

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 specification proffered against him.

Thereupon, the Investigating Officer and Appellant made their opening statements and the Investigating Officer introduced in evidence two Foreign Service Despatches (and enclosures) from the American Consulate at Rotterdam, Netherlands, which were authenticated by the United States Department of State.

In defense, Appellant offered in evidence his own sworn testimony and also that of a witness who testified as to Appellant's good character. Appellant stated that he had stabbed Walker in self-defense and that the offenses would not have been committed if Appellant had been in full possession of his senses at the time.

At the conclusion of the hearing, having given both parties an opportunity to submit arguments, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-10777-D1 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that Appellant committed the alleged offenses only after Walker had knocked Appellant to the floor and injured him by kicking his face. Appellant requests that he be given a new hearing or another chance to go to sea because he had no prior record and he can best support his family by means of this kind of work.

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

#### *FINDINGS OF FACT*

On 10 July, 1953, Appellant was serving as a wiper on board the American SS FLYING INDEPENDENT and acting under authority of his Merchant Mariner's Document No. Z-10777-D1 while the ship was in the port of Rotterdam, Netherlands,

At about 0045 on 10 July, 1953, appellant went to the messroom and he was drinking coffee when Walker, a crew pantryman, entered a short time later. An argument between the two seamen was followed by a fist-fight. Walker knocked Appellant to the deck and

kicked him several times. Appellant's face was injured and his lower lip was badly cut as a result of these blows. Shortly thereafter, the two men attempted to renew the fight with weapons but they were separated by members of the crew. A few minutes later, Appellant chased Walker with a knife and he reported this to the Third Mate.

At about 0130 on the same day, Walker was descending a ladder with the Third Mate who was holding Walker's right arm to prevent him from fighting. Appellant was at the bottom of the ladder. When Walker was on the second step from the bottom of the ladder, Appellant stabbed Walker in the abdomen at least once with a sharp object (a screw driver, knife or file about 10 inches long) which Appellant had been concealing behind him. Walker was hospitalized for three days and Appellant was taken into custody by the local police. Appellant was tried and found guilty of the offense of stabbing Walker; and he received a six weeks' sentence of imprisonment which was completed by the time of the completion of the trial.

There is no record of prior disciplinary action having been taken against Appellant during his 16 years at sea.

#### *OPINION*

It is apparent from the facts that appellant stuck Walker in a spirit of revenge rather than while Appellant was acting in self-defense. The prior injuries received by Appellant from Walker did not justify Appellant's later attack upon Walker. A dangerous weapon may only be used in self-defense after the person using it has retreated as far as possible and he is still in immediate danger of receiving grave bodily injury if he does not use the weapon to repel his adversary. In this case, Appellant could have retreated from the bottom of the ladder; and the Third Mate was holding Walker in order to prevent him from inflicting further injuries upon Appellant.

In view of the seriousness of the offense, the order of revocation will be sustained despite Appellant's prior clear record and the hardship that this order will impose upon Appellant and his family. Such action is required by the necessity to protect other seamen against the possibility of a recurrence of such vicious

conduct Appellant.

*ORDER*

The order of the Examiner dated at New York, New York, on 24  
September, 1953, is AFFIRMED.

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

Dated at Washington, D. C., this 2nd day of April, 1954.

\*\*\*\*\* END OF DECISION NO. 732 \*\*\*\*\*

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