

In the Matter of Merchant Mariner's Document No. Z-141278
Issued to: LOUIS HENRY ESTOLT

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

738

LOUIS HENRY ESTOLT

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 28 January, 1954, an Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z-141278 issued to Louis Henry Estolt upon finding him guilty of misconduct based upon four specifications alleging in substance that while serving as boatswain on board the American SS LENA LUCKENBACH under authority of the document above described, on or about 2 January, 1954, while said vessel was at Terminal Island, California, he wrongfully took a bottle of liquor on board said vessel; he wrongfully threw a fire extinguisher at the ship's carpenter Primitivo Vargas; he wrongfully assaulted Primitivo Vargas with a deadly weapon, a fire axe; and he wrongfully assaulted and battered able seaman Juan Ramos with a dangerous weapon, a four-foot section of dunnage.

Since Appellant did not put in a appearance, the hearing was conducted "in absentia" in accordance with 46 C.F.R. 137.09-5(f). On behalf of Appellant, the Examiner entered a plea of "not guilty" to the charge and each specification which had been properly served

upon Appellant two days prior to the commencement of the hearing.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of Vargas and Ramos as well as several documentary exhibits.

The Examiner received in evidence a letter from Appellant which stated that he would not appear at the hearing. The letter also set forth Appellant's grounds for defense. Appellant stated that he could not remember clearly the extent of his participation in the alleged incidents but that if the offenses charged were true, then some one would have been hurt and Appellant would have been taken into custody by the police.

At the conclusion of the hearing, the Examiner announced his findings and concluded that the charge had been proved by proof of the four specifications. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-141278 and all other licenses, certificates, endorsements and documents issued to Appellant.

From that order, this appeal has been taken, and it is urged that Appellant acted in self-defense in a fight which was initiated by another member of the crew. It is also contended that the Examiner would have decided the case differently and justice would have prevailed if all the witnesses to the incidents had testified. For these reasons, Appellant requests that his livelihood not be taken away from him forever.

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

FINDINGS OF FACT

On 1 and 2 January, 1954, Appellant was serving a boatswain on board the American SS LENA LUCKENBACH and acting under authority of his Merchant Mariner's Document No. Z-141278 while the ship was at Terminal Island, San Pedro, California.

On 1 January, 1954, Appellant left the ship on authorized shore leave and returned on board at about midnight with a "fifth"

bottle of whiskey in his possession. Appellant consumed most of the contents of the bottle shortly after coming on board.

Early on the morning of 2 January, 1954, Appellant went to his forecastle and started an argument with Vargas who occupied the same forecastle. When Appellant attempted to kick Vargas, the latter grabbed Appellant and held him on the deck until Ramos was called to the scene. Appellant was then released and he became very belligerent. Appellant was violent and used threatening language due to his intoxicated condition. He obtained a fire extinguisher and threw it at Vargas. It missed Vargas but hit the deck and struck Ramos in the left shin. Then Appellant attempted to strike Vargas with a fire axe but Vargas and Ramos took the axe away from Appellant before he succeeded. Appellant ran out on deck and Ramos followed. Appellant picked up a four-foot section of dunnage and swung it at Ramos whose left forearm was injured when he raised his arm to ward off the blow. When Ramos and another seaman attempted to take Appellant below, he wrenched free and caused Ramos to fall down a ladder.

In addition to the above, I adopt the findings of fact as more fully set forth in the decision of the Examiner.

Appellant's prior record consists of two suspension within approximately a year of the above recited incidents. One of the suspensions was imposed for taking part in a disturbance aboard ship and the other one was for several offenses including assault and battery upon a ship's officer.

OPINION

There is not considered to be any merit in the points raised on appeal. Appellant was afforded adequate opportunity to appear at the hearing and present whatever evidence he desired in his defense. Appellant did not appear or make any request that witnesses be summoned in his behalf. Therefore, the record must be reviewed in its present form.

The testimony of Vargas and Ramos was substantially similar and in support of the allegations contained in the specifications. The record indicates that serious injuries would have resulted from Appellant's conduct if he had not been impeded in his endeavors.

In view of the incidents herein related and Appellant's prior record, it can readily be seen that Appellant is a serious threat to lives and property at sea. Since it is the statutory duty of the Coast Guard to take appropriate action against the documents of such dangerous seamen, the order of the Examiner will be sustained.

ORDER

The order of the Examiner dated at New York, New York, on 28 January, 1954, is AFFIRMED

A. C. Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 11th day of May, 1954.

***** END OF DECISION NO. 738 *****

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