

In the Matter of License No. R-4803 and all other Licenses,
Certificates and Documents

Issued to: EUGENE KAUDER

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

808

EUGENE KAUDER

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.

On 28 December 1953, an Examiner of the United States Coast Guard at Mobile, Alabama, suspended License No. R-4803 issued to Eugene Kauder upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as Radio Officer on board the American SS VIRGINIA CITY VICTORY under authority of the license above described, on or about 21 December 1953, while said vessel was in the port of Mobile, Alabama, he wrongfully directed obscene and abusive language towards the Master while he was engaged in the performance of his duties; and on or about 21 December 1953, Appellant wrongfully created a disturbance by using loud and boisterous language.

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. Appellant was represented by an attorney of his own selection and he entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of several witnesses.

In defense, Appellant offered in evidence his sworn testimony. Appellant stated that when he returned to the ship and saw signs of a fight, he called to the Master to get the police. Appellant denied that he used obscene language towards the Master even after he threatened Appellant while the police were investigating the disturbance on the ship.

At the conclusion of the hearing, having given both parties an opportunity to submit argument, proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the two specifications. He then entered the order suspending Appellant's License No. R-4803, and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of six months on twelve months probation.

From that order, this appeal has been taken, and it is urged that the Master and the Purser were the cause of numerous difficulties on the ship which culminated in the fight on 21 December; the Master did not attempt to maintain discipline although the Purser was running amuck; and Appellant was not guilty of the offenses charged against him. In conclusion, Appellant states that he has never had any trouble during nine years of continuous sea service; and that a review of the record will support his contentions.

APPEARANCES: Albert S. Gaston, Esquire, of Mobile, Alabama, of Counsel.

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

FINDINGS OF FACT

On a foreign voyage including the date of 21 December 1953, Appellant was serving as Radio Officer on board the American SS

VIRGINIA CITY VICTORY and acting under authority of his License No. R-4803. During the course of the voyage, there was considerable friction among the ship's officers and several incidents of open hostility.

The ship arrived at Mobile, Alabama, on 20 December 1953. Appellant returned on board early on the morning of 21 December, shortly after a fight in which the Purser was severely beaten by the First Assistant Engineer and the Second Assistant Engineer. The latter two officers were also injured in the fight.

In the resulting confusion, there was a noisy disturbance just outside of the Master's quarters and Appellant was present. Shortly afterwards, while they were on the dock, Appellant directed abusive language towards the Master.

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

OPINION

Although Appellant was on the scene of the confusion after the fight, there is no substantial evidence that he directed obscene language towards the Master; nor that any language he used on the ship either created or wrongfully contributed to the disturbance. Appellant testified that he was only trying to get the Master to stop the disturbance. However, there is ample support in the record to support the allegation that, later, Appellant verbally abused the Master on the dock. For these reasons, one specification is dismissed *in toto* and the other specification is found proved in part to the extent that Appellant directed abusive language towards the Master.

Such disregard of the authority of the Master cannot be condoned regardless of his lax attitude towards the three participants in the fight. But in view of the modification of the Examiner's conclusions as to the two specifications and Appellant's prior clear record, the order will be modified to an admonition.

ORDER

The order of the Examiner dated at Mobile, Alabama, on 28 December 1953 is modified to directing an admonition against Appellant. In accordance with 46 CFR 137.09-75(d), Appellant is advised that this admonition will be made a matter of his official record.

As so MODIFIED, said order is

AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 16th day of May, 1955.

***** END OF DECISION NO. 808 *****

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