UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. Z-972749
Issued to: HORACE DUGGINS, JR.

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2290

HORACE DUGGINS, JR.

This appeal was taken in accordance with Title 46 United States Code 239 (g) and 46 CFR 5.30-1.

By order dated 9 March 1981, an Administrative Law Judge of the United States Coast Guard at New York, New York issued an order of 12 months suspension outright of the above captioned document, and all other valid licenses, documents, certificates, and endorsements issued to the Appellant upon finding him guilty of misconduct.

The specification found proved alleges that while serving as Boatswain on board the USNS SEALIFT CHINA SEA under the authority of the above captioned document, on or about 11 February 1980, while said vessel was at sea, the Appellant wrongfully assaulted First assistant Engineer, John K. Brown, by brandishing a fire hose nozzle in a threatening manner and offering to inflict bodily harm.

The hearing was held in New York on 11 March, 17 April, 19 May, 3 June, 2 July, 2,15,30 September, 24 October, and 12, 24 November 1980.

At the hearing Appellant was represented by professional

counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer entered into evidence five documents, the testimony of John K. Brown, the First Assistant Engineer of the vessel, and the deposition of Janie Bodwell, steward utility on the vessel and an eye witness to the incident resulting in the charge.

The defense entered into evidence three exhibits and the testimony of the Appellant and Joseph J. Kelly, Assistant Personnel Manager of Marine Transport Lines, Inc..

After the hearing, the Administrative Law Judge rendered a written decision and order in which he concluded that the charge and specification were proved, and ordered 12 months suspension of Appellant's above captioned document.

The decision was served on 14 March 1981. Appeal was timely filed on 31 March 1981 and perfected on 29 May 1981.

FINDINGS OF FACT

On 11 February 1980 Appellant was serving on board the USNS SEALIFT CHINA SEA as Boatswain under authority of his document. At or about 1000 of that day Appellant approached John K. Brown, the First Assistant Engineer, in the crew messroom concerning a disagreement about the assignment of duties to an ordinary seaman. John K. Brown testified that the Appellant used obscene language and threatened him verbally. Appellant then raised a fire hose nozzle over his head in such a manner as to cause John K. Brown to reasonably be in fear that the Appellant was going to strike him with it. John K. Brown's testimony was corroborated by the deposition of Janie Bodwell, an eye witness to the incident. The Appellant testified that he used the firehose nozzle to point out directions to an ordinary seaman and that he made no verbal or physical threats to John K. Brown.

BASES OF APPEAL

The appeal was taken from the order imposed by the Administrative Law Judge. Appellant asserts that the testimony of Janie Bodwell was inaccurate and that the Administrative Law Judge should not have believed her or John K. Brown. The Appellant further asserts that his behavior on 11 February 1980 was justified because he was provoked. Appellant requests clemency because he is supporting a sick wife and four children.

OPINION

A finding as to credibility of witnesses is a function of the Administrative Law Judge, Commandant's Appeal Decision 2156 (EDWARDS). "Questions involving the credibility of the witness must be decided by the trier of facts and logically so, as it is only at this level the testimony of a witness may be elicited and his demeanor observed." Commandant's Appeal Decision 2017 (TROCHE). Resolving inconsistencies in the evidence and determining the veracity of witnesses are clearly subject to the same strictures. Commandant's Appeal Decision 2212 (LAWSON). The Administrative Law Judge's determination will be upheld absent the demonstration that he was arbitrary and capricious. Commandant's Appeal Decision 2255 (BASIR). In this case the Administrative Law Judge believed John K. Brown and Janie Bodwell and not the Appellant. The record shows that the Administrative Law Judge's determination was reasonable, therefore, it will not be disturbed.

The Appellant alleges he was provoked into his behavior by harassment. "The only real provocation which justifies the use of force is an actual attack leaving the victim with no means of defense except the use of force." Commandant's Appeal Decision 2193 (WATSON). Such provocation justifying the Appellant's behavior is not present in this case.

Finally, Appellant prays for relief based on his need to support a sick wife and four children. This is a matter for consideration by the Administrative Law Judge in his determination of penalty. "The hardship on the family is one of the unfortunate but foreseeable consequences of the type of conduct indulged in and Appellant's prior record...must be influential." Commandant's

Appeal Decision 2145 (WALKER). In this case, there are seven prior recorded offenses, all of the nature of insubordination and assault/battery, over a period of over 19 years. Under the circumstances of this case the order was appropriate.

CONCLUSION

There is substantial evidence of a reliable and probative nature to support the Administrative Law Judge's findings. The sanction imposed is appropriate under the circumstances. There is no reason to disturb the findings of the Administrative Law Judge or sanction which he imposed.

ORDER

The order of the Administrative Law Judge, dated at New York, New York, on 9 March 1981 is AFFIRMED.

B.L. STABILE
Vice Admiral, U.S. Coast Guard
VICE COMMANDANT

Signed at Washington D.C., this 27th day of February 1983.

***** END OF DECISION NO. 2290 *****

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