

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENT NO. Z-906884-D1  
Issued to: JEREMIAH TODD

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

2097

JEREMIAH TODD

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 14 May 1976, an Administrative Law Judge of the United States Coast Guard at Mobile, Alabama suspended Appellant's seaman document for 6 months outright plus 6 months on 12 months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as an Oiler on board the United States SS JAMES LYKES under authority of the document above captioned, on or about 5 October 1975, Appellant:

- (1) wrongfully failed to obey a lawful order of the vessel's Third Assistant Engineer;
- (2) wrongfully struck the Third Assistant Engineer; and,
- (3) wrongfully struck the Chief Engineer.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence six exhibits, including the depositions of four eyewitnesses.

In defense, Appellant offered in evidence one exhibit and his own testimony.

at the end of the hearing, the Judge rendered a written decision in which he concluded that the charge and three specifications had been proved. He then served a written order suspending all documents, issued to Appellant, for a period of 6 months outright plus 6 months on 12 months' probation.

The entire decision and order was served on 14 May 1976. appeal was timely filed on 10 June 1976.

#### *FINDINGS OF FACT*

On 5 October 1976, Appellant was serving as an Oiler on board the United States SS JAMES LYKES and acting under authority of his document while the ship was in the port of Cadiz, Spain. On that day Appellant was manning the 1600 to 2400 engine room watch with the Third Assistant Engineer. At approximately 1830 an argument arose between the Appellant and the Third Assistant regarding the necessity for frequent soundings of the starboard boiler to insure that a safe level of water was maintained. The Third Assistant directed the Appellant to check the level and Appellant replied that if the Third Assistant wanted another sounding he could take one himself. When the Appellant persisted in his refusal to take a sounding, the Third Assistant ordered him to leave the engine room. the Appellant did not comply with the command and stated that the only the First Assistant Engineer or the Chief Engineer had the authority to order him from his post. When the Third Assistant informed the Appellant that he was going to log him for insubordination the Appellant struck him with his fist. The Appellant continued to attack the Third Assistant until he was pulled off by the Fire/Watertender. The Appellant, then, still refused to leave the engine room as he insisted that he first wished to explain his version of the altercation to the Chief Engineer.

At approximately 2200 the First Assistant Engineer arrived in the engine room and ordered the Appellant out. Soon after, the

Chief Engineer returned to the vessel from shore leave and had the Appellant report to his office. The Appellant went to the Chief Engineer's office with his union delegate at about 2330 and was requested to make a statement in regard to the alleged assault upon the Third Assistant. The Appellant declined to say or sign anything regarding the altercation. The Chief Engineer therefore told the Appellant to go to his quarters and that he would speak to him in the morning.

The Appellant then turned toward the Chief Engineer who was positioned in the doorway and kicked him in the right leg and struck him in the eye. The Union delegate who had accompanied Appellant restrained him after a short struggle. The Appellant was put off the vessel by the Master on 5 October 1975 as not fit for duty. On 1 November 1975, the Appellant was charged with misconduct by a United States Coast Guard Investigating Officer at Mobile, Alabama.

### *Bases of Appeal*

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that there is insufficient evidence to support the findings of the Judge.

APPEARANCE: Appellant pro se.

### *OPINION*

Appellant contends that there was insufficient evidence to sustain the charge of misconduct against him. Hearings held under the authority of R.S. 4450 (46 U.S.C. 239) are remedial in character, not criminal, and therefore the standard of evidence required is that the findings of the Judge be supported by substantial evidence of a reliable and probative nature. Substantial evidence is not "lawyers" evidence but that which a reasonable man would rely upon in the conduct of serious affairs. The testimony of four eyewitnesses whom the Appellant admits had no

reason to harbor ill will toward him constitutes substantial evidence upon which a Judge may base his decision. The Appellant assess that all four witnesses are lying about the facts and circumstances of the alleged assaults but fails to offer any evidence to support his accusation. It is the function of the Judge to determine the credibility of witnesses. His determinations will be upheld absent a demonstration that they are arbitrary and capricious. The Judge was present when all four depositions were taken under oath and was therefore able to scrutinize the demeanor of the witnesses. His conclusions as to their credibility will therefore be accepted since there is no showing that they are either arbitrary or capricious. See *Commandant's Appeal Decision No. 1754* which held that the uncontradicted testimony of the victim of an assault and of another eyewitness constitutes substantial evidence of a reliable and probative nature. I conclude that the evidence relied upon by the Judge meets the requirement of substantiality and supports the ultimate findings.

#### CONCLUSION

I conclude that substantial evidence of a reliable and probative nature has been presented to support the findings of the Judge that Appellant wrongfully failed to obey a lawful order of the Third Assistant Engineer and wrongfully committed two counts of assault.

#### ORDER

The order of the Administrative Law Judge dated at Mobile, Alabama on 14 May 1976, is AFFIRMED.

E. L. PERRY  
Vice Admiral, U. S. Coast Guard  
Vice Commandant

Signed at Washington, D. C., this 7th day of March, 1977.

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Assault (including battery)  
Aggressor

Evidence  
Conflicts in testimony, resolved by Examiner  
credibility of, determined by Examiner  
Examiner's determination of credibility accepted  
unless arbitrary and capricious

Findings of Fact  
based on substantial, reliable and probative evidence

Proof  
degree required

Substantial evidence  
substantial, reliable and probative when composed of  
testimony of victim and other eyewitness

\*\*\*\*\* END OF DECISION NO. 2097 \*\*\*\*\*

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