UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. (REDACTED)
Issued to: RONALD D. BROWN

DECISION OF THE COMMANDANT
UNITED STATED COAST GUARD

2105

RONALD D. BROWN

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 21 December 1976, an Administrative Law Judge of the United States Coast Guard at New York, New York suspended Appellant's seaman document for 8 months outright plus 4 months on 12 months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as an Able Seaman/Quartermaster on board the United States SS GULFQUEEN under authority of the document above captioned, on or about 6 March 1976, Appellant wrongfully committed assault and battery upon another member of the crew with his fists and a metal bucket.

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

The Investigating Officer introduced in evidence three exhibits and the testimony of three witnesses.

In defense, Appellant offered in evidence his own testimony.

At the end of the hearing, the Judge postponed rendering a decision. He subsequently entered an order suspending all documents, issued to Appellant for a period of 8 months outright plus 4 months on 12 months' probation.

The entire decision and order was served on 4 November 1976. Appeal was timely filed on 27 November 1976.

FINDINGS OF FACT

On 6 March 1976 Appellant was serving on board the United States SS GULFQUEEN and acting under authority of his document while the ship was in the port of Odessa, USSR. On the evening of 5 March the Appellant has gone ashore and consumed approximately four to five drinks of liquor at the local Seaman's club. Appellant returned to the ship at about 12:00 o'clock that night. Mr. Morris, the Appellant's watch partner, has also gone ashore the same evening, although not in the Appellant's company. Mr. Morris had four glasses of cognac at the Seaman's club. He later imbibed another four glasses of brandy while socializing with the ship's Boatswain and some Russian women and after returning to the vessel at about 12:00 o'clock went to the Wiper's quarters and drank an additional three glasses of vodka. Mr. Morris returned to his own quarters between 1:30 and 2:00 o'clock in the morning.

At approximately 2:45 A.M. the Appellant passed by Mr. Morris' quarters and dropped in to talk. During the course of the conversation the Appellant showed Mr. Morris a ring which he had purchased ashore. Mr. Morris attempted unsuccessfully to put the ring on his finger and testified at the hearing that he then either placed the ring on his desk or returned it to the Appellant. The Appellant testified that he had left the room for two minutes to go to the head and upon his return requested that Mr. Morris give him his ring. Mr. Morris insisted that he had already given the ring back to him. The Appellant accused Mr. Morris of taking the ring and a loud argument ensued. An Ordinary Seaman who was quartered next to Mr. Morris asked the Appellant and Mr. Morris to quiet down and testified at the hearing that he thought that there was danger of a fight, although he did not see any blows himself. The Appellant began to search Mr. Morris' quarters and continued to accused him of having stolen his ring. Finally, the Appellant struck Mr. Morris in the right eye with his fist and knocked him

backwards over the chair in which he had been seated. The Appellant threw the chair at Mr. Morris as well as a trash can. The Appellant then grabbed a galvanized ten quart bucket and repeatedly swung it at Mr. Morris who was attempting to get off the deck, striking him on the head and causing a severe gash. The Appellant then left the room with Mr. Morris laid out in a dazed condition. At approximately 4:00 A.M. Mr. Morris recovered sufficiently to make his way down to the Second Officer and reported the altercation to him. The Second Officer called the Chief Officer who testified at the hearing that Mr. Morris was bleeding heavily from the gash in his head and appeared as though he had been badly beaten. He also stated that when he went to Mr. Morris' quarters the room was in a shambles with blood all over the bunk and on the bulkhead. The Chief Officer also testified that he discovered the bucket allegedly used by the Appellant in the assault and described the bucket as being dented and covered with blood.

After Mr. Morris had been assisted by the Chief Officer, the Appellant came to the Chief Officer complaining of a sore wrist. The Appellant made no mention of the fight. Later that same day at 2000 hours, the Master made an entry into the log book relating that the Appellant while under the influence of alcohol assaulted Mr. Morris, causing him injuries that required medical attention. The entry was signed by the Master, Chief Officer, Ship's Chairman and Deck Delegate and read to the Appellant the next day, 7 March. The Appellant in reply said only, "He got my ring and I wanted it." The entry of 7 March which recorded Appellant's statement was signed by the Master and Chief Officer. On 11 March, Mr. Morris turned the Appellant's ring over to the Master, stating that he had found it in his soap dish above the sink. The Master returned the ring to the Appellant. The Appellant and Mr. Morris were repatriated to the United States by the Master on 11 March.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

(1) The charge of misconduct has not been proven by substantial evidence of a reliable and probative nature

(2) The Judge erred in the weight give to the testimony of the witnesses

(3) The Judge in his finding that the Appellant and Mr. Morris were intoxicated at the time of the altercation.

(4) The Judge erred in the severity of the order imposed upon the Appellant.

APPEARANCE: Klein, Cohen and Schwartzenberg of New York, New York by Mr. Walter J. Klein

OPINION

I

Substantial evidence has been defined by Judge Learned Hand as that which is, "supported by the kind of evidence on which responsible persons are accustomed to rely in serious affairs. *NLRB* v. *Remington Rand, Inc*., 94 F.2d 862, 873 (2d Cir. 1938). Justice Rutledge explained further in *International Association of Machinists* v. *NLRB*, 110 F.2d 29, 35 (D.C. Cir. 1939), that to have substantial evidence, "it is only convincing, not lawyer's evidence, which is required". Convincing evidence of the assault by the Appellant has been presented in this case. The record indicates that both parties to the altercation had been drinking. A cause for the altercation has been firmly established in the failure of Mr. Morris, for whatever reason, to return the Appellant's ring. Vivid proof of the assault existed in the form of the serious injuries inflicted upon Mr. Morris consisting of a gash to his head and bruised right eye and face as well as the blood stained bucket, bulkhead and bunk found by the Chief Officer in Mr. Morris' quarters. Finally, I note that the Appellant made no attempt to deny the assault when the log entry was read to him stating that he had attacked Mr. Morris. A log entry made in substantial compliance with the statutory requirements of 46 U.S.C. 702, as was the entry here, is regarded prima facie evidence of the facts stated therein (see Commandant's Appeal Decision Numbers 1784 and 1775). The introduction of the log entry into evidence therefore shifted the burden of proceeding with evidence to rebut the prima facie case to Appellant, a burden that Appellant's testimony failed to sustain. I therefore conclude that substantial evidence of a reliable and probative nature has been presented to support the charge and of misconduct against the Appellant.

II

Appellant contends that the Judge erroneously evaluated the testimony of the Appellant, the Chief Officer and Mr. Morris. The Judge is the Individual charged with the duty to determine the credibility of the witness. The findings of the Judge will be upheld barring evidence showing that his determinations of credibility are arbitrary and capricious. There is no showing in this case that the testimony accepted by the Judge was such that it

could not be believed by a reasonable man. In fact, the most incredible testimony was that of the Appellant whereby he denied ever striking Mr. Morris at all (TR 104) but instead stated that he merely took the bucket away from him after which Mr. Morris allegedly ran out of the room (TR 94, 104). The Appellant's testimony strains the imagination in view of the undeniable injuries suffered by Mr. Morris. I conclude that the Judge was neither arbitrary nor capricious in his determinations of the weight to be given the testimony of the witnesses and therefore his evaluations will stand.

III

The Judge did not find that the Appellant and Mr. Morris were intoxicated but that they were under the influence of alcohol. This finding is only of peripheral importance to the case as intoxication is not an element of the charge. Regardless, the testimony of the parties as well as that of another witness clearly illustrates that they had consumed substantial amounts of alcohol the evening prior to the assault. I find the Judge did not err in his conclusion that both parties were under influence of alcohol during the events in question.

IV

The Appellant's assertion that the order of the Judge is excessive in its severity is without merit. 46 CFR 5.03-5, entitled, "Offenses for which revocation of licenses or documents is sought", states in subsection (b) that:

> These offenses, which are deemed to affect safety of life at sea, the welfare of seamen or the protection of property aboard the ship, are:
>
> (1) Assault with dangerous weapon (injury)

Commandant's Appeal Decision No. 977 clearly established that a metal bucket, used in the manner as was the case here, is a dangerous weapon. The Appellant could have had his document revoked in view of the seriousness of the offense and the Investigating Officer had requested that this course of action be taken by the Judge. The order of suspension rendered by the Judge cannot therefore be regarded as too severe.

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 assaulted and battered another crewmember with his fists and a metal bucket.

ORDER

The order of the Administrative Law Judge dated at New York, New York on 21 September 1976 is AFFIRMED.

E.L. PERRY
VICE ADMIRAL, U.S. COAST GUARD
VICE COMMANDANT

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

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