

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT [REDACTED]
Issued to: George WRET

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2110

George WRET

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 27 January, 1977, an Administrative Law Judge of the United States Coast Guard at Long Beach, California, suspended Appellant's seaman's documents for twelve months plus twelve months on twelve months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a wiper on board the United States SS BALDBUTTE under authority of the document above captioned, on or about 6 December 1976, Appellant assaulted and battered the chief engineer of the vessel with a crescent wrench, at Los Angeles, California.

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

The Investigating Officer introduced in evidence certain documents, photographs, and the testimony of two witnesses.

In defense, Appellant offered in evidence his own testimony and that of a witness.

At the end of the hearing, the Judge rendered a decision in which he concluded that the charge and specification had been proved. He then entered an order suspending all documents issued to Appellant for a period of twelve months plus twelve months on twelve months' probation.

The entire decision was served on 31 January 1977. Appeal was timely filed.

FINDINGS OF FACT

On 6 October 1976, Appellant was serving as a wiper on board the United States SS BALDBUTTE and acting under authority of his document while the ship was in the port of Los Angeles, California.

On that date, Appellant had been assigned to paint in the engine spaces during working hours. On one occasion, the Chief Engineer ordered Appellant to use a roller rather than a brush for most of the painting. Later, just after 1600, the chief returned to the work area, found that Appellant had "knocked off" although his work day ran to 1645, and noted that his order as to use of the roller had been disobeyed.

At 1620 the chief went to Appellant's room to tell him that he was being discharged because of his poor performance. When the chief returned to his own room to prepare a report for the master on the discharge, Appellant followed him.

Outside the chief's door, Appellant jumped on him from behind, took a crescent wrench from the chief's back pocket, and struck him several times with it on the head. Appellant then left the scene. The chief telephoned the master and reported the attack.

The master recorded the matter in the official log book and summoned Appellant to his office. When confronted with the report and the log entry, Appellant said only, I don't know what he's talking about."

BASES OF APPEAL

This appeal has been taken from the order imposed by the

Administrative Law Judge. It is contended that the Administrative Law Judge improperly gave credence to testimony of licensed officers, against that of unlicensed men, and that Appellant had a witness who saw who had perpetrated the assault and battery on the chief engineer. It is said also that the order is too severe.

APPEARANCE: Appellant, pro se.

OPINION

I

Appellant's contention that a predisposition of the Administrative Law Judge to give greater weight to the testimony of licensed officers than to that of unlicensed seaman was prejudicial is not bolstered by any specific examples in the record and has no suspicion of support in the record itself. Not only did the trier of facts, on the face of the matter, exhibit no arbitrary or capricious attitude toward or disregard of the evidence, he accorded to the testimony of record the only reasonable interpretation that could be placed on it.

Appellant's reiterated attack on the reliability of the chief engineer as having a known habit of "firing" seamen without cause, rendering his story of an assault upon him by Appellant a mere concoction, is rendered pointless by the unquestionable fact that the chief engineer had already discharged him for other reasons before the assault took place.

The witness who testified at the hearing to provide Appellant an alibi, that he could not have committed the assault and battery at the time and place described by the victim because he was elsewhere in the company of the witness for the whole time, cannot be accorded much credibility, if any. That witness was departing from the vessel with Appellant, who was going to drive him home. When Appellant was summoned to the master, the witness stood by on board waiting for him. Appellant, assertedly, never discussed with the witness the reason for the delay or the accusation by the chief engineer even though they drove home together. This goes to Appellant's own credibility because it is inconceivable that he would have failed to produce before the master, or even to mention to him, the witness who was waiting for him, who was immediately

available, and who would have accounted for Appellant's presence elsewhere on the ship at the material time.

II

Appellant also says, "I had no witnesses that I didn't do the act, only a witness to the fact that they saw someone else do it, and that would be about the only way I could be exonerated since I was in my room with no one present. Further, my room mate testified that during the short period of time that I was not his sight, I would not have had the time to go to the location of the alleged attack and return to my room."

It would appear that the witness who "saw someone else do it" is not the roommate who did testify at the hearing. Appellant does not, however, speak in terms of "newly discovered evidence" in this attempt to place the blame elsewhere. In view of the manifest unreliability of the witness who turned up at the hearing but was never mentioned at the time of the initial confrontation with the accusation, I find no reason to bend backwards to construe Appellant's statement as somehow a petition to reopen the hearing for the production of relevant and probative evidence. There is no evidence in the record that someone else assaulted and battered the chief engineer, and there is convincing evidence that Appellant did..

III

The order was not too severe for the offense found proved.

ORDER

The order of the Administrative Law Judge dated at Long Beach, California on 27 January 1977, is AFFIRMED.

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

Signed at Washington, D. C., this 20th day of Sept. 1977.

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