

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. (Redacted)
Issued to: Frederick FOMICH

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2140

Frederick FOMICH

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 28 January, 1977, an Administrative Law Judge of the United States Coast Guard at New York, N.Y., suspended Appellant's seaman's documents for ten months upon finding him guilty of misconduct. The specifications found proved allege that while serving as able seaman on board the United States SS EAGLE VOYAGER under authority of the document above captioned, on or about 13 July 1976, Appellant assaulted another crewmember with a dangerous weapon; on 19 and 20 July 1976, failed to perform duties aboard the vessel; on 24 July 1976 failed to join the vessel at Iljichevsk, U.S.S.R.

At the hearing, Appellant failed to appear, and a plea of not guilty to the charge and each specification was entered by the Administrative Law Judge.

The Investigating Officer introduced in evidence voyage records of EAGLE VOYAGER, the testimony of one Abdulla A. Mohsin, and a deposition of one David H. Regester, Jr., taken pursuant to order.

There was no defense.

At the end of the hearing, the Administrative Law Judge rendered a decision in which he concluded that the charge and

specifications had been proved. He then entered an order suspending all documents issued to Appellants for a period of ten months.

The entire decision was served on 5 May 1977. Appeal was timely filed.

FINDINGS OF FACT

On all dates in question, Appellant was serving as able seaman on board the United States SS EAGLE VOYAGER and acting under authority of his document while the ship was at Iljichevsk, U.S.S.R.

On 13 July 1976, after commencing difficulties with Abdulla A. Moshin, a messman, ashore at Iljichevsk, and aboard a launch while returning to the anchored EAGLE VOYAGER, Appellant went to the room of Moshin who had retired. When Moshin opened the door, Appellant struck him on the side of the head, without provocation, with a fourteen inch long deck scraper. In the struggle which followed Appellant was forced to the deck. Another member of the crew saw the last part of this episode.

On 19 July 1976, Appellant left the vessel at 1200 and never returned before sailing time on 24 July, although he was seen ashore by other members of the crew. During the period of absence Appellant failed to perform on two watches, 1300 to 1700, 19 July, and 0800-1700, 20 July. In addition, Appellant failed to join on sailing on 24 July 1976.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that the victim of the assault lied at the hearing, that the master of the vessel was moved by a misdirected race prejudice, that Appellant did not work at Iljichevsk because of injuries, and that the order is too severe for a person who has to make a living.

APPEARANCE: Appellant, *pro se*

OPINION

I

The testimony given by the victim of the assault, confirmed in part by another member of the crew, is plausible and uncontradicted. Appellant forfeited his right to attempt to impeach

credibility, and to contravene, by failing to appear for hearing. The bare assertion now that the witness lied avails nothing on appeal. Similarly, the voyage records show the failures to perform duties and the failure to join. In addition, it was recorded that Appellant was recommended for five days off duty after his self-provoked injury. The non-performance which occurred came after the time at which he had been restored medically to duty status and the unsupported assertion on appeal that he could not work on 19 and 20 July carries no weight.

II

The allegations against the master of race prejudice are completely irrelevant and the serious assault specification is amply proved by eyewitness testimony.

III

The "severity" of the order cannot rightly be complained of. The Administrative Law Judge properly saw that the offense proved was assault and battery with a dangerous weapon, but, mindful that the pleadings could not be amended in the absence of Appellant to conform to the evidence of the greater offense, he carefully limited his order on that score to one appropriate only to the lesser "assault with a dangerous weapon." The additional time was, of course, merited by the failures of performances compounded by a record of prior misconduct properly entered after findings. The hardship to Appellant is of his doing.

ORDER

The order of the Administrative Law Judge dated at New York, N.Y., on 28 January 1974, is AFFIRMED.

R. H. SCARBOROUGH
Vice Admiral, U. S. Coast Guard
ACTING COMMANDANT

Signed at Washington, D.C., this 9th day of November 1978.

INDEX

Credibility of Witness

Unimpeached in "in absentia" proceeding

Cross-examination

Right to, forfeited by non-appearance

Evidence

Not contravened in "in absentia" proceeding

Order

Severity of, proportional to offenses

Race Prejudice

Not shown

***** END OF DECISION NO. 2140 *****

[Top](#)