

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-1132486-D2
AND ALL OTHER SEAMAN'S DOCUMENTS

Issued to: Lloyd GRIFFIN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1953

Lloyd GRIFFIN

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 9 June 1972, an Administrative Law Judge of the United States Coast Guard at Jacksonville, Florida revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as an Able Bodied Seaman on board the SS AMOCO VIRGINIA under authority of the document above captioned, on or about 7 June 1972 Appellant did assault and batter with a fireaxe handle crewmember Thomas R. Casey.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence excerpts from the shipping articles and official ship's log, a medical bill and the testimony of Third Mate, James Pennino, and Thomas R. Casey.

In defense, Appellant offered in evidence his own testimony.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved. He then entered an order revoking all documents, issued to Appellant.

The entire decision was served on 5 July 1972. Appeal was timely filed on 10 July 1972.

FINDINGS OF FACT

On 7 June 1972, Appellant was serving as an Able Bodied Seaman on board the SS AMOCO VIRGINIA and acting under authority of his document while the ship was in the port of Jacksonville, Florida.

On 7 June 1972 a dispute arose between Appellant and another crewmember, Thomas R. Casey, which led to an exchange of abusive language and a fight which was broken up by other crewmembers. A short time later the two engaged in a shouting match on the main deck which ended when the Third Mate intervened, sending Appellant aft and ordering Casey to remain amidships. About ten minutes later Appellant and Casey saw each other again. The shouting began again and ended when Appellant confronted Casey with an axe handle. Appellant struck Casey a number of times with the handle before the Third Mate intervened again. Casey suffered bruises under his left arm, chest and left wrist and was treated at a hospital emergency room.

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 failed to:

- (1) obtain the testimony of the Master of the AMOCO VIRGINIA;
- (2) give any weight to Appellant's testimony;
- (3) consider the prior altercation between Appellant and Casey; and

(4) consider the verbal abuse by Casey calling Appellant "Nigger."

APPEARANCE: Appellant, by Johnson & Marshall.

OPINION

I

Both the Investigating Officer and the Administrative Law Judge thoroughly advised Appellant of his right to call witnesses and to have them subpoenaed if necessary. The record is devoid of any indication by Appellant that he desired to have the Master called and there is no evidence in the record to indicate that the Master had any pertinent testimony to offer. The time to raise this question is at the hearing and not on appeal.

II

It is the province of the Administrative Law Judge to weigh the evidence on the basis of his perception of the credibility of the various witnesses. The record provides no basis for a determination that he erred in his assessment of the conflicting testimony or that he abused his discretion in reaching his determination.

III

Appellant's last two points may be considered together. The Administrative Law Judge made specific findings as to the prior altercation and discussed it in his opinion. As for the verbal abuse, the record reflects testimony that both men engaged in verbal abuse, however, there is no mention of the term "nigger" being used. In any case neither the prior altercations nor the abusive language provides adequate justification for Appellant attacking and beating Casey with an axe handle.

ORDER

The order of the Administrative Law Judge dated at

Jacksonville, Florida, on 9 June 1972, is AFFIRMED.

C. R. BENDER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 21st day of June 1973.

INDEX

Assault (including battery)

Ax handle

Dangerous weapon

Verbal abuse as provocation

Justification for, absence of

Evidence

Credibility of, determined by Examiner

Weapons

Fire axe handle

Witnesses

Failure to request summons of

Credibility of, determined by examiner

***** END OF DECISION NO. 1953 *****

[Top](#)