

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO Z-939185
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: William MEAKENS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1962

William MEAKENS

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 7 September 1972, an Administrative Law Judge of the United States Coast Guard at New York, New York suspended Appellant's seaman's documents for four months outright plus two months on 12 months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a Deck Engine Mechanic on board the SS PONCE de LEON under authority of the document above described, on or about 23 February 1972, Appellant did engage in mutual combat with a crewmember, Marcos Colon.

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

The Investigating Officer introduced in evidence the testimony of the Third Assistant Engineer, Cristobal Jaquez.

In defense, Appellant offered in evidence his own testimony and certain medical records.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. The Administrative Law Judge then served a written order on Appellant suspending all documents issued to him for a period of four months outright plus two months on 12 months' probation.

The entire decision was served on 19 September 1972. Appeal was timely filed on 25 September 1972.

FINDINGS OF FACT

On 23 February 1972, Appellant was serving as a Deck Engine Mechanic on board the SS PONCE de LEON and acting under authority of his document while the ship was in the port of New York.

On that date Marcos Colon was relieving Appellant on watch in the engineroom. For no apparent reason Appellant shoved a heavy burner, which he was replacing, at Colon, and then moved toward him uttering profanities. Colon moved to meet Appellant and blows were exchanged simultaneously. The Third Assistant Engineer attempted to separate them, but was unable to do so. The men were finally separated by several crewmembers. Colon then went to the machine shop, obtained a brass rod and returned; however, the rod was taken from him before he could reach Appellant. Both men suffered severe injuries. Colon sustained a broken nose, partial amputation of his right ear, and a three inch cut on his leg. Appellant suffered a concussion and broken ribs.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant states a number of points on appeal, all of which can be reduced to the contention that:

- (1) the Administrative Law Judge erred in accepting Colon's testimony over that of Appellant; and

(2) the findings and order are not supported by the evidence on the record.

APPEARANCE: Bertram J. Dembo, for Appellant.

OPINION

It is the function of the Administrative Law Judge to hear the evidence and determine the credibility of the witnesses. It was fully within his prerogative to accept the testimony of Colon and reject the testimony of Appellant on certain points pertaining to the manner of inception of the fight.

The question of the weight to be accorded to the evidence is also for the Administrative Law Judge to determine and, unless it can be shown that the evidence upon which he relied was inherently incredible, his findings cannot be said to be against the weight of the evidence. The test is whether a reasonable man could have made the same findings as reached by the Administrative Law Judge, not whether he would have agreed with these findings. Here there is certainly evidence of a reliable and probative nature, in the form of the testimony of the Third Assistant Engineer and the testimony of Colon, as accepted by the Administrative Law Judge, to support the finding that Appellant engaged in mutual combat.

ORDER

The order of the Administrative Law Judge dated at New York, New York on 7 September 1972, is AFFIRMED.

T. R. SARGENT
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C., this 3rd day of July 1973.

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