

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1031223-D1
AND ALL OTHER SEAMAN'S DOCUMENTS

Issued to: John M. GEESE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1911

John M. GEESE

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 2 September 1971, an Administrative Law Judge of the United States Coast Guard at San Francisco, California, admonished Appellant upon finding him guilty of misconduct. The specification found proved alleges that while serving as an able seaman on board the SS AMERCREST under authority of the document above captioned, on or about 9 June 1970, while the vessel was at sea Appellant wrongfully addressed the Second Mate with foul and abusive language.

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

The Investigating Officer introduced in evidence extracts from the official logbook of the vessel and testimony by the Second Mate and Able Seaman Ruth.

In defense, Appellant offered in evidence written statements and oral testimony by himself and Able Seaman Rogers.

On 2 September 1971, the Administrative Law Judge rendered a written decision in which he concluded that the charge and the above specification had been proved and he served a written order on Appellant admonishing him.

The entire decision was served on 23 October 1971. Appeal was timely filed on 2 November 1971.

FINDINGS OF FACT

On 9 June 1970, Appellant was serving as an Able Seaman on board the SS AMERCREST and acting under authority of his document while the ship was at sea.

The Second Mate was the deck officer in charge of the 4-8 watch and Appellant was on standby in the messroom. The vessel encountered fog; and, although the standby buzzer was inoperative, Appellant took his position on the port wing of the bridge upon hearing fog signals commence. The Second Mate then wrongfully accused Appellant of having sabotaged the buzzer and having taken excessive time in reporting to the bridge. He continued to address Appellant in a sarcastic and belligerent fashion while approaching him and wagging his finger in Appellant's face. Appellant found such conduct quite inappropriate in view of the view of the vessel's passage through dense fog at the time. These circumstances, together with numerous similar prior incidents during which Appellant has contained himself, provoked an outburst of foul language directed at the Second Mate.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that Appellant's actions were provoked by the Second Mate. Because of the disposition of this ground for appeal, the Appellant's other contentions are not reproduced here.

APPEARANCE: Appellant, pro se.

OPINION

Numerous Commandant Appeal Decisions have dealt with the issue of provocation as a defense to assault. It has been uniformly held and greatly stressed that provocation is not a defense to a charge of misconduct based on assault. Because it appears both unrealistic and inherently unreasonable to demand total abstention from "impolite" responses to provocation, it would seem that some form of angry retort must fall short of misconduct. The policy behind the definition of assault as misconduct is obvious: prevention of the physical and emotional damage caused by bodily attacks and threats thereof. The policy behind the definition of the use of foul and abusive language toward an officer as misconduct is altogether different. It is grounded in the concept of insubordination. Thus, a verbal response to provocation will not constitute misconduct unless it amounts to insubordination.

Whether insubordinate conduct has occurred in a given situation is a question of fact to be resolved by the Administrative Law Judge. The department of the officer to whom the offensive language is addressed is a most important factor in this determination. This is so because an officer who fails to conduct himself in a fashion befitting his station forfeits his right to the manifestations of respect traditionally rendered ships' officers by their crewmen. This is not to say that simple provocation will excuse the direction of foul and abusive language towards an officer. However, provocation can be sufficiently obnoxious as to ripen into conduct which renders the actor liable to abusive language which would otherwise be insubordinate. While the Administrative Law Judge actually made no such specific determination in the instant case, he did conclude that there was a clear record of provocation on the part of the Second Mate and forbearance on the part of the Appellant during the incident in question and during a number of prior incidents. In view of this finding and the passage of some two and one-half years since the occurrence at issue, it would seem hardly necessary and of doubtful utility to remand this case for further findings. Under these circumstances, the record presents ample justification for reversal.

ORDER

The order of the Administrative Law Judge date at San Francisco, California, on 2 September 1971, is VACATED and the charged DISMISSED.

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

Signed at Washington, D.C., this 16th day of March 1973.

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