

IN THE MATTER OF DOCUMENT NO. Z-661069-D3 DOCUMENT AND ALL OTHER  
SEAMAN'S DOCUMENTS

Issued to: Buena Ventura Cruz JAVIER, JR.

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1929

Buena Ventura Cruz JAVIER, JR.

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 18 June 1970, an Administrative Law Judge of the United States Coast Guard at San Francisco, California, suspended Appellant's seaman's documents for three months upon finding him guilty of misconduct. The specifications found proved allege that while serving as an oiler on board SS FRONTENAC VICTORY under authority of the document above captioned, on or about 6 August 1968, Appellant, at San Francisco, California:

- (1) wrongfully used abusive language to an officer of the United States Coast Guard, LTJG David B. Weiner, in the performance of his duties; and
- (2) wrongfully assaulted a member of the Coast Guard, Chief Petty Officer R. J. Collins, in the performance of his duties.

At the hearing, Appellant was represented by professional

counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence voyage records of FRONTENAC VICTORY and the testimony of three witnesses.

In defense, Appellant offered in evidence his own testimony.

After the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specifications had been proved. The Judge then entered an order suspending all documents issued to Appellant for a period of three months.

The entire decision was served on 18 November 1970. Appeal was timely filed on 18 November 1970. Although Appellant had until 18 March 1971 to do so, he has added nothing to his original notice of appeal.

#### *FINDINGS OF FACT*

On 6 August 1968, Appellant was serving as an oiler on board SS FRONTENAC VICTORY and acting under authority of his document while the ship was in port of San Francisco, Cal. In view of the ultimate disposition of this case, no further fact finding is needed.

#### *BASES OF APPEAL*

Discussion of the specific points on appeal raised by Appellant is not necessary for the disposition of his case.

#### *OPINION*

The hearing in this case was held on 9 August 1968, three days after the conduct in question occurred. It has now been almost five years since the conduct occurred and the hearing was held. Such delay does not *per se* constitute grounds for reversal, but it does require close scrutiny of the facts to determine if prejudice to the Appellant has been occasioned thereby.

In this case there is no reasonable explanation for the lengthy delay. In relation to the facts in the case, it is noted that it is questionable whether the evidence adduced at the hearing will support the finding that Appellant was guilty of assault. In light, of the relative minor nature of the other charge, use of abusive language, and the fact that these proceedings are intended to be remedial in nature, there appears to be no appropriate reason to now invoke the suspension order.

*ORDER*

The findings of the Administrative Law Judge dated at San Francisco, California, on 18 June 1970, are SET ASIDE. The order is VACATED, and the charges are DISMISSED.

C. R. BENDER  
Admiral, United States Coast Guard  
Commandant

Signed at Washington, D.C., this 22nd day of May 1973.

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\*\*\*\*\* END OF DECISION NO. 1929 \*\*\*\*\*

