

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-1256309
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Ruben VELEZ

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1941

Ruben VELEZ

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 May 1972, an Administrative Law Judge of the United States Coast Guard at San Francisco, California suspended Appellant's seaman's documents for 2 months outright plus 2 months on 12 months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a Crew Pantryman on board the SS BEAUREGARD under authority of the document above captioned, on or about 23 February 1972, Appellant did wrongfully fail to join said vessel upon her departure from DaNang, Vietnam.

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 excerpts from the Shipping Articles and the official ship's log, and the testimony of the Master.

In defense, Appellant offered in evidence his own testimony and a letter and memorandum from the Consulate in DaNang, Republic of Vietnam.

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 entered an order suspending all documents issued to Appellant for a period of 2 months outright plus 2 months on 12 months's probation.

The entire decision was served on 23 May 1972. Appeal was timely filed on 12 June 1972.

FINDINGS OF FACT

On 23 February 1972, Appellant was serving as a Crew Pantryman on board the SS BEAUREGARD and acting under authority of his document while the ship was in the port of DaNang, Republic of Vietnam.

For several months Appellant had shared a room with Third Cook, John Silva. An intense mutual dislike arose between the two which affected both their off duty and on duty relationship. On the day in question, Appellant, pursuant to the orders of the Steward, placed some vegetable scraps on Silva's work table. Silva objected and, as Appellant turned to leave, hit him in the back with a celery stick. Appellant insisted on going to the Master who heard Appellant's story and then ordered the Steward to move Appellant to a new room while ordering Appellant and Silva to avoid each other. Appellant was not satisfied and requested the Master to either make a log entry or write a letter relating to the incident. The Master refused and Appellant then asked to be signed off by mutual consent. The Master at first agreed, but then refused when he realized that the ship was due to leave DaNang in four hours. Appellant left the ship without permission to see the U. S. Consul in DaNang. He related his story to the Consul, who instructed Appellant to return to the ship, stating that there was not time to prepare the letter prior to the ship's departure, but that a letter and full report would be forwarded the next day to Cam Rahn Bay, the vessel's next port of call. Appellant refused to

return to the ship without the letter in hand and consequently missed its departure.

Later events in Saigon saw the Appellant signed off the ship for cause under protest; however, the only charge lodged against him was failure to join in DaNang.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that a seaman who goes ashore for the purpose of seeking redress from the Consul for any reasonable cause cannot be held to have failed to join if the vessel sails without him while he was so engaged.

APPEARANCE: Appellant, by David C. Moon, Esq.

OPINION

Appellant was contractually bound by the Shipping Articles which he signed "to stand by the ship and obey the Master until the voyage be done, unless she come to such a pass as to be dangerous to human life." *The Condor* 196 Fed. 71 (D.C.N.Y. 1912). In order to justify leaving the ship there must be genuine fear of grave bodily injury and reasonable cause for such fear. See Commandant's Appeal Decision No. [435](#). In the instant case such reasonable cause does not appear on the record. Appellant brought the situation to the Master's attention and received both a change of room and the Master's protection. Unsatisfied with this, Appellant demanded a log entry or a letter on the incident. It is hard to visualize how this could have afforded the Appellant any further protection. When the Master refused this request, Appellant took it upon himself to bring his problem to Consul and request a letter from him. Seeking redress from the Consul was within Appellant's legal right, but when the Consul told Appellant to return to the ship, Appellant was bound to do so, since once "the Consul has acted, his decision is prima facie correct and it must be followed unless persuasive evidence to the contrary is presented by the person who seeks to go behind the Consul's decision." Commandant's Appeal Decision No. [608](#). Appellant did not present such persuasive evidence to the contrary. At that

point Appellant had the protection of both the Master and the Consul, as well as the Consul's assurance that a full report on the matter would be made. If fear of grave bodily harm was the basis of Appellant's actions, at this point, regardless of how reasonable such fear was at the outset, it was no longer reasonable. In fact Appellant's statement that the mere writing of a letter relating the incident would be sufficient to induce him to return to the ship would indicate that fear for personal safety was not the prime motivation for his actions.

The record reflects insufficient justification for Appellant failing to join his ship when it departed DaNang and thereby depriving it of his services for which he had lawfully contracted. The refusal by the Master and the Consul to immediately provide Appellant with the letter which he demanded before he would return to the ship did not provide adequate justification for his refusal to return.

ORDER

The order of the Administrative Law Judge dated at San Francisco, California on 18 May 1972, is AFFIRMED.

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

Signed at Washington, D. C., this 12th day of June 1973.

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