

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-45682-D1
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Willie H. JOHNSON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1904

Willie H. JOHNSON

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 23 July 1971, an Administrative Law Judge of the United States Coast Guard at San Francisco, California, suspended Appellant's seaman's documents for three months outright upon finding him guilty of misconduct. The specifications found proved allege that while serving as an Ordinary Seaman on board the SS HANS ISBRANDTSEN under authority of the document above captioned, on or about 10 February 1969, Appellant, while the vessel was in the port of Singapore:

- (1) was wrongfully unable to perform his assigned duties by reason of intoxication;
- (2) did wrongfully urinate in the passageway outside the 4-8 Ordinary Seaman's forecastle; and
- (3) did wrongfully assault and batter with a dangerous weapon, to wit, a knife, a member of the crew.

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

The Investigating Officer introduced in evidence a Consular Report with attachments and depositions of the victim and six other crewmembers.

In defense, Appellant offered in evidence his testimony, his military record, photographs of his room, a letter from his attorney to the Singapore Police, two letters written by Appellant and the receipt for a fine paid to the Singapore Police.

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

The entire decision was served on 29 July 1971. Appeal was timely filed on 2 August 1971.

FINDINGS OF FACT

On 10 February 1969, Appellant was serving as an Ordinary Seaman on board the SS HANS ISBRANDTSEN and acting under authority of his document while the ship was in the port of Singapore. Sea watches had been broken and the deck crew were on day work. At approximately 1430, the Chief Mate ordered Appellant to his quarters because the latter was intoxicated. He was awakened for the evening meal, after which he returned to bed. At approximately 2145, an Able Seaman witnessed Appellant urinating in the passageway. After the A.B. demanded the cessation of this activity, there erupted between the two men a scuffle, which was broken up by the Quartermaster. As the latter continued down the passageway, the altercation resumed by virtue of Appellant's attacking the A.B. with a knife. The Quartermaster returned and found the seaman atop Appellant, holding Appellant's hand, which held a knife. The Quartermaster wrested control of the weapon, disposed of it through a porthole and separated the two scufflers. He then discovered that the A.B. had suffered knife wounds of the

chest, foot and buttocks.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that the evidence is insufficient and the order overly severe.

APPEARANCE: Appellant, *pro se*.

OPINION

I

To say that the evidence in this case is insufficient to support the findings is to quibble with the Administrative Law Judge's evaluation of the credibility of witnesses. This evaluation is peculiarly within the jurisdiction of the trier of fact, and there is no ground for meddling therewith in this case, where the statements and depositions of seven witnesses are pitted against the testimony of Appellant, who was admittedly drinking heavily throughout the day in question.

The assertion that the order is overly severe is incorrect. Appellant is, in fact, fortunate that the Administrative Law Judge failed to treat his misconduct as an offense meriting revocation under the terms of 46 CFR 137.03-5 and Group F of 46 CFR 137.20-165. Instead, he inexplicably considered this case as warranting, on the Scale of Average Orders, a mere suspension of six months under Group E. He, thus, in effect ignored the apparently serious injuries inflicted upon the victim with a dangerous weapon.

There is, however, another element of this case which should be taken into consideration. The final session of the hearing was held on 12 May 1969. In view of the remedial nature of suspension and revocation proceedings, it is difficult to find any benefits flowing from a three months suspension taking effect some 3 1/2 years after the hearing of charges. In view of Appellant's spotless record before and after 10 February 1969, the outright

suspension of three months is hereby modified to three months' suspension on six months' probation.

ORDER

The findings of the Administrative Law Judge dated at San Francisco, California, on 23 July 1971 are AFFIRMED and the order MODIFIED as above stated.

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

Signed at Washington, D. C., this 30th day of January 1973.

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