

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-704107 AND ALL OTHER
SEAMAN'S DOCUMENTS

Issued to: Robert Milton KENNEDY

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1684

Robert Milton KENNEDY

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 22 June 1967, an Examiner of the United States Coast Guard at San Francisco, Calif., suspended Appellant's seaman's documents for six months outright plus three months on 12 months' probation upon findings him guilty of misconduct. The specification found proved alleges that while serving as a night cook and baker on board the United States SS LYNN VICTORY under authority of the document above described, on or about 22 May 1967, Appellant assaulted and battered with his fists the vessel's second assistant engineer at Qui Nhon, South Vietnam.

At the hearing, Appellant did not appear. The Examiner entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of two witnesses and certain voyage records of LYNN VICTORY.

Since Appellant did not appear, no defense was offered.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of six months outright plus three months on 12 months' probation.

The entire decision was served on 24 June 1967. Appeal was timely filed on 28 June 1967.

FINDINGS OF FACT

On 22 May 1967, Appellant was serving as a night cook and baker on board the United States SS LYNN VICTORY and acting under authority of his document while the ship was in port of Qui Nhon, South Vietnam.

On the date in question, Appellant, who weighs 190 pounds, assaulted and battered the second assistant engineer of the vessel (who weighed 130 pounds) without provocation. He knocked the engineer to the deck, kicked him in the ribs and back, and then struck him from above in the face with his fists. The victim suffered multiple body bruises and his nose was broken at the bridge.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that Appellant has the backing of his union, that he had no prior record, that he could furnish affidavits about bad conditions aboard the ship, that he could produce affidavits of his good character, and that because of his good character his livelihood should not be taken away from him by a suspension.

APPEARANCE: Appellant, pro se

OPINION

Since Appellant has submitted none of the things he claims he could have submitted in the way of affidavits (whether or not they

would have established anything) there is no merit to his appeal, nor anything to consider except that the Examiner's order was excessive.

The Examiner carefully examined 46 CFR 137.20-165 and ascertained that a six months' suspension was "average" for a first assault and battery. The additional order of suspension on probation cannot be said to deviate unreasonably from the average.

The Examiner, in fact, noted the unusual violence exercised here and moderated his order only because of Appellant's clear record. Under the circumstances of this case a severer order could have been upheld.

CONCLUSION

There is no reason to disturb the findings or order of the Examiner

ORDER

The order of the Examiner dated at San Francisco, Calif. on 22 June 1967, is AFFIRMED.

P. E. TRIMBLE
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C., this 15th day of March 1968.

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