

IN THE MATTER OF LICENSE NO. 357523
MERCHANT MARINER'S DOCUMENT NO. Z-168982-D2
AND ALL OTHEER SEAMAN'S DOCUMENTS
Issued to: PEARSON, Brek R.

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1733

PEARSON, Brek R.

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 January 1968, an Examiner of the United States Coast Guard at San Francisco, California, suspended Appellant's seaman's documents for four months upon finding him guilty of misconduct. The specification found proved alleges that while serving as second assistant Engineer on board SS CAPE SAN DIEGO under authority of the document and license above described, on or about 14 December 1967, Appellant wrongfully assaulted and battered one Peter Tusa, the radio officer, with a dangerous weapon, a knife the vessel was at sea.

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

The Investigating Officer introduced in evidence voyage records of CAPE SAN DIEGO and the testimony of two witnesses.

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 four months.

The entire decision was served on 25 January 1967. Appeal was timely filed on 23 February 1968.

FINDINGS OF FACT

On 14 December 1967, Appellant was serving as second assistant Engineer on board SS CAPE SAN DIEGO and acting under authority of his license and document while the ship was at sea.

On that date, at breakfast time, Appellant was sitting at a table in the saloon mess with the radio officer sitting to his right. In the course of a verbal argument, Appellant spoke in a threatening manner to Tusa, the radio officer, and placed a jack-knife, blade open, on the table. Appellant then, as the Examiner finds, "put the point of the knife against the left side of the radio officer."

The entry of other persons into the saloon mess terminated the episode.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the finding of the Examiner that the charge and specification were proved was not supported by the evidence in the record.

APPEARANCE: Newton B. Schwartz, of Houston, Texas, by Garry F. Wanzong, Esq.

OPINION

The only ground for appeal stated by Appellant was that the

Examiner's finding "that the specification and charges were proved . . . was not supported by the evidence in the record." This was stated in Appellant's notice of appeal filed on the date of service of the Examiner's decision. Despite the fact that a transcript of the proceeding was then furnished on request, no further grounds have been specified.

Since the statement was made in a notice filed by an attorney who did not participate in the hearing and who did not have a record available at the time, the "appeal" could be dismissed as frivolous. The only attention called for is a review for plain error.

There was testimony from the victim and testimony of an eyewitness in support of the delegation of the specification. This testimony was unchallenged. It is sufficient to establish a *prima facie* case and to support the Examiner's findings.

ORDER

The order of the Examiner dated at San Francisco, California, on 25 January 1967, is AFFIRMED.

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

Signed at Washington, D. C., this 28th day of October 1968.

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