

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-941725
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Eugenio GONZALEZ

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1763

Eugenio GONZALEZ

This appeal has been taken accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 25 April 1968, an Examiner of the United States Coast Guard at New York, N. Y. suspended Appellant's seaman's documents for twelve months upon finding him guilty of misconduct. The specifications found proved allege that while serving as a messman on board SS EXFORD under authority of the document above captioned, on or about 16 December 1967, at Seville, Spain, Appellant:

- (1) assaulted and battered the chief mate by slamming a door into his face;
- (2) wrongfully had intoxicating liquor in his possession aboard the vessel;
- (3) disobeyed a lawful order of the master to open his locker; and
- (4) assaulted and battered the master by striking

him in the face.

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 EXFORD, and the testimony of the master and the chief mate.

In defense, Appellant offered in evidence the testimony of another crewmember and his own testimony.

At the end of the hearing, the Examiner rendered a decision in which he concluded that the charge and four specifications had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of twelve months.

The entire decision was served on 30 April 1968. Appeal was timely filed on 22 May 1968, but the Examiner's order was not complied with until 15 August 1968. Appeal was perfected on 3 March 1969.

FINDINGS OF FACT

On 16 December 1967, Appellant was serving as a "roomsman" on board SS EXFORD and acting under authority of his document while the ship was in the port of Seville, Spain.

On the night of 15 December, Appellant had been ashore and had drunk a considerable quantity of brandy. On his return to the ship he invited a wiper, Fuertes, to his room for some drinks. Each had at least six drinks of brandy, and both were noisily singing.

The noise attracted the chief mate, who went to the room and ordered the men to be quiet. Appellant was argumentative, and slammed the door of his room closed, striking the mate on the left side of the face.

At about 0740, the master and the chief mate, accompanied by the steward department delegate, Laguna, went to the Appellant's

room to search for liquor. Appellant refused to obey an order of the master to open the locker, which Laguna later opened. No liquor was found in the locker but under the pillow of Appellant's bunk were found a full bottle of brandy, a partially filled bottle of brandy, and an empty one gallon wine jug.

After Appellant had been "logged," he returned to the master's quarters with Laguna, the delegate. The master was seated when Laguna entered and advised him that Appellant wished to be paid off because he was sick. The master replied that Appellant was drunk, not sick, but that if he were sick he would send for a doctor to examine him. Appellant entered the room, and, reaching over the outstretched arm of Laguna, struck the master alongside his left eye. The blow broke the frame of the glasses the master was wearing. After a struggle which ensued, the master was found to have suffered cuts on his left eyelid and on the left side of the bridge of the nose.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the findings are not supported by the evidence and that the order is excessive.

APPEARANCE: Samuel Segal, Esq., New York, N. Y.

OPINION

I

Although Appellant denied the allegations made against him, the Examiner accepted the testimony of the eyewitness-participants, the master and the chief mate. To say on appeal that the Examiner should not have accepted this evidence as a predicate for findings it would be necessary to hold that the evidence was so inherently unbelievable that it would be arbitrary and capricious for the Examiner to use it.

The evidence against Appellant in this case is substantial evidence and adequately supports the findings.

II

In Appellant's prior record is a suspension imposed for assaulting the chief steward of a passenger vessel.

In the instant case there are two assaults and batteries on licensed officers, one of whom was the master. Assault and battery on a master strikes at the foundation of discipline and safety aboard ship.

The order is not excessive.

III

As a note to this opinion, it is seen that the charges alleged that Appellant was serving as a "messman" aboard EXFORD, and the Examiner so found. Evidence from one witness was that Appellant was a "B.R. steward" and the articles of agreement identify his capacity as "roomsman." In the absence of controversy, it has been found that the term "roomsman," as specified in the articles, describes the fact of status on the ship, but the variance between the terms is seen to be of no consequence. The nature of Appellant's offense did not turn on his capacity on the ship; it is enough that the capacity shows service under authority of his seaman's document.

IV

One emotional argument has been made by Appellant as a matter in mitigation, to show that some especial consideration should be given to his conduct. The appellate record has mentioned language difficulties as a cause of misunderstanding (Appellant assertedly speaking poor English). This was not raised before the Examiner, is not supported by the lengthy record of proceedings, and is not considered. Another statement on appeal was that the Latin-Italian background of the master caused special difficulty in dealing with the Latin-Spanish background of Appellant. There is no support for these arguments. Even if the master had been of Scandinavian background, directly or by descent, his position as master is defined by the custom of the sea and by statute.

Most curious as an argument by Appellant is this:

"What started out as a frolic on the part of a Spanish seaman, away from home and away from a place where his own language was spoken, ended up, a few hours later, as a horrendous crime."

It cannot be accepted that different Latin sources of national origin, without more, can affect the conduct of a seaman in relation to the master of his vessel. Even less can a reason for special consideration of a seaman be found because he was far from home and "away from a place where his own language was spoken." when he claims language difficulty aboard the ship because he was naturally Spanish-speaking and the "place" in which he was, "away from a place where his own language was spoken," was Seville, Spain.

ORDER

The order of the Examiner dated at New York, N. Y., on 25 April 1968, is AFFIRMED.

W. J. SMITH
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 19 day of May 1969.

INDEX (GONZALEZ)

Appeals,

Examiner's findings upheld unless based on evidence so inherently unbelievable that use is arbitrary and capricious

Ground in mitigation not considered when not raised before examiner and not supported by record

Issue raised first time on

Charges and specifications

Variance not fatal

Variance with proof

Defenses

Different sources of national origin as unsatisfactory

Findings of Fact

Altered to conform to evidence

Examiner upheld unless based on evidence so inherently unbelievable that use is arbitrary and capricious

Held unsupported by evidence

Variance with specification not fatal

Master

Assault and battery of

Assault on, seriousness of offense

Position defined by custom of the sea and by statute

Mitigating Circumstances

Raised first time on appeal

Order of Examiner

Assault and battery, appropriate for

Commensurate with offense

Held not excessive

Previous offenses, consideration of

Prior record considered

Prior record

Appropriateness of order

Evidence of prior record

Revocation of suspension

Basis of

For assault, appropriateness of order

Held not excessive

Misconduct as grounds for

Prior record considered

Service of the ship

Capacity held irrelevant

***** END OF DECISION NO. 1763 *****

[Top](#)
