

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-401306
AND ALL OTHER SEAMAN'S DOCUMENT
Issued to: CYRIL S. LEWIS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1782

CYRIL S. LEWIS

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 February 1969, an Examiner of the United States Coast Guard at Seattle, Washington admonished Appellant upon finding him guilty of misconduct. The specification found proved alleges that while serving as chief cook on board SS METAPAN under authority of the document above captioned, on or about 26 December 1968, Appellant assaulted another member of the crew, one Delbert E. Kemmerer.

A second specification, alleging that Appellant created a disturbance aboard the vessel on the same occasion, was found not proved.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and each

specification.

The Investigating Officer introduce in evidence the testimony of two witnesses, the testimony of Kemmerer (whose hearing was held in joinder with that of Appellant), and certain voyage records of METAPAN.

In defense, Appellant offered no evidence.

At the end of the hearing, the Examiner rendered an oral decision in which he concluded that the charge and first specification had been proved by plea, with the second specification not proved. The Examiner then entered an order admonishing Appellant.

The entire decision was served on 18 February 1969. Appeal was timely filed on 12 March 1969.

FINDINGS OF FACT

On 26 December 1968, Appellant was serving as chief cook on board SS METAPAN and acting under authority of his document while the ship was in the port of Qui Nhon, R.V.N.

Because of the disposition to be made of this case, no further findings are necessary.

BASES OF APPEAL

Because of the disposition of this case, Appellant's specification grounds for appeal need not be stated.

APPEARANCE: Appellant, *pro se*.

OPINION

The Examiner conducted the hearing on the theory that Appellant had pleaded guilty to the specification alleging assault on Kemmerer. At R-37, near the end of the hearing, the Examiner said: "Now I believe there is a plea of guilty to the First Specification." In his decision, The Examiner refers to the fact that the charge was proved "by the plea of guilty to one specification offered in support thereof. Nothing stated by way of mitigation by the Person Charged has indicated to this Examiner that the plea of guilty should be changed to one of not guilty."

The fact is that while Kemmerer, whose case was heard in joinder, pleaded guilty to assault on Appellant, Appellant, when he was asked how he pleaded to the specification alleging assault on Kemmerer, said, "Well, I'll plead guilty to the fact we had a misunderstanding." R-9.

This is not, explicitly or by fair inference, a plea of guilty to an assault.

II

In his Opinion, in dealing with evidence on the second specification, the Examiner said, "the Person Charged also took the stand and testified on his own behalf." D-2.

The record is clear that at this hearing each of the persons charged was called as a witness by the Investigating Officer to testify against the other person charged with the explicit assurance that his testimony would not be used in consideration of his own case.

A double error appears here. Not only did the Examiner misconstrue Appellant's appearance as being in his own behalf instead of being only to be considered against the other person charged, but Appellant was, effectively, by the procedure followed, denied the opportunity to testify in his own behalf if he had wished to.

III

On the record in open hearing, the Examiner announced, "Under those circumstances, I'm finding the two specifications proved, one by plea and the other is proved by the evidence in the case. R-43. There is no doubt, however, that in his decision the Examiner found Specification TWO "not proved." D-1.

IV

On this state of the record, Appellant was found not guilty of Specification Two and was not given a proper hearing on specification One.

CONCLUSION

Since an admonition was the only product of this hearing, a remand to correct the cumulative errors does not appear warranted.

ORDER

The order of the Examiner dated at Seattle, Washington, on 18 February 1969, is VACATED. The charges are DISMISSED.

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

Signed at Washington, D. C., this 17th day of December 1969.

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