

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-233675
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: ANDREW E. HODGES

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1624

ANDREW E. HODGES

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 2 December 1966, an Examiner of the United States Coast Guard at New York suspended Appellant's seaman's documents for 4 months on 12 months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a fireman-watertender on board the United States SS SANTA ROSA under authority of the document above described, on or about 25 September 1966, Appellant wrongfully engaged in a fight while on watch.

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

The Investigating Officer introduced in evidence the logbook of the vessel and the testimony of witnesses.

In defense, Appellant offered in evidence certain documents

and his own testimony.

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 served a written order on Appellant suspending all documents issued to him for a period of 4 months on 12 months' probation.

The entire decision and order was served on 5 December 1966. Appeal was timely filed on 30 December 1966.

FINDINGS OF FACT

On 25 September 1966, among other dates, Appellant was serving as a fireman-watertender on board the United States SS SANTA ROSA and acting under authority of his document while the ship was at sea.

In the early morning hours of 25 September 1966, Appellant and junior engineer Meakens were on watch in the engine room. Appellant approached a ventilator which Meakens was standing under, for the purpose of closing it. Meakens told him to leave it alone, as it was very warm in the room. Appellant grabbed a rod which was used to adjust the vent and Meakens again protested. During the argument Appellant shoved the 4 1/2 foot metal rod at Meakens, catching him under the armpit. In the ensuing struggle both men grabbed at the rod, and Appellant kicked Meakens in the shin. Meakens succeeded in taking the instrument away from Appellant, and as he did Appellant fell backwards onto the deck, injuring his back. The second engineer, responding to a call from another crewmember in the room, came upon the scene at this time and broke up the fray. Both men were then logged and relieved from their watch duties for the night.

BASES FOR APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that there is not substantial evidence proving the charge alleged.

APPEARANCE: George J. Hammerman, Esquire of New York

OPINION

Although one crewmember did see Appellant approach the ventilator, and later saw Appellant lying on the deck, the only eye witnesses to the disturbance itself were the participants. Meakens stated Appellant was the aggressor, while Appellant claimed it was Meakens who struck the first blow. The Examiner accepted the testimony of Meakens. Since he had the opportunity to see and hear the witnesses, the Examiner's decision on their credibility is accepted. Meaken's testimony constitutes reliable and probative evidence proving Appellant's misconduct.

ORDER

The order of the Examiner dated at New York on 2 December 1966, is AFFIRMED.

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

Signed at Washington, D. C., this 24th day of 1967.

INDEX

Assault (including battery)

When parties to a fight are the only witnesses, examiner's findings as to whom to believe not disturbed

Evidence

Credibility of, determined by Examiner

Examiners

Conflicts in testimony resolved by

Testimony

Conflicting, to be weighed by Examiner

Witnesses

Conflicts in testimony resolved by Examiner

When parties to a fight are the only witnesses, Examiner's finding as to which one to believe will not be disturbed

***** END OF DECISION NO. 1624 *****

[Top](#)