

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-762845 AND ALL
OTHER SEAMAN'S DOCUMENTS

Issued to: Sidney A. Corniff

DECISION OF THE COMMANDANT

1629

Sidney A. Corniff

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 September 1966, an Examiner of the United States Coast Guard at New York City, New York revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specifications found proved allege that while serving as a second cook and baker on board the United States SS MORMACRIGEL under authority of the document above described, on or about 21 July 1966, Appellant wrongfully failed to perform his duties by reason of intoxication, and wrongfully assaulted and battered a crew member with a knife.

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

The Investigating Officer introduced in evidence the Shipping Articles and log book entries from the vessel, and the testimony of witnesses.

In defense, Appellant offered in evidence two prior statements of witnesses.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specifications had been proved. The Examiner then served a written order on Appellant revoking all documents issued to him.

The entire decision was timely filed on 21 September 1966.

FINDINGS OF FACT

On 21 July 1966, Appellant was serving as a second cook and baker on board the United States SS MORMACRIGEL and acting under authority of his document while the ship was in the port of Gdynia, Poland.

On the morning of the date in question, Appellant was at work in the galley.

About 0750, crewmember Robert Ellis proceeded through the galley on his way to get some ice for the messroom. Appellant accused Ellis of taking some personal documents of his. Ellis denied the accusation. Appellant then picked up a butcher knife and attacked Ellis. Ellis grabbed the blade and succeeded in getting a hold on Appellant from behind. He wrapped his arms around Appellant, his right hand holding the handle of the knife, which was still firmly in Appellant's grasp, and his left hand holding the blade. Appellant attempted to break Ellis' hold by butting him in the face with his head. During this struggle Ellis suffered a gash on the ring finger of his left hand. The Chief Cook responded to Ellis' cry for aid, and the knife was taken from Appellant.

The Master then came down and ordered Appellant out of the galley because he was "apparently under the influence of intoxicants." The chief cook testified Appellant appear to have been drinking that morning.

Ellis was see bleeding from the nose and mouth, and he later

required some stitches to close the wound on his finger.

BASES OF APPEAL

This appeal has been taken from the order imposed by Examiner. It is contended that there is insufficient evidence to sustain the findings of guilty, and that the order of revocation is excessive.

APPEARANCE: Emanuel Friedman, Esquire, of New York

OPINION

There is reliable and substantial evidence proving the misconduct alleged. Appellant, on the morning of 21 July 1966, attacked fellow crewmember Ellis with a butcher knife. Ellis, reasonably fearing for his own safety, took a defensive position, and during the struggle was cut on the hand suffered injuries to the nose and mouth.

Because he was the aggressor, Appellant is responsible for the natural and probable consequences of his unlawful acts. Thus his unlawful assault can be said to have caused the injury to Ellis' hand. Appellant's butting Ellis in the face was also an unlawful assault and battery.

The log entry pertaining to the specification of failure to perform due to intoxication does not indicated it was read to Appellant, or that Appellant received a copy of it. As such, it does not constitute a prima facie case against Appellant. The testimony of the Chief Cook that Appellant appeared to have been drinking, however, is deemed enough supplementing evidence so as to prove this specification.

An unprovoked attack on a fellow crewmember with a knife must be considered a very serious offense, one directly affecting the safety of life and property aboard the vessel. Appellant's prior clean record notwithstanding, the order of revocation is not deemed excessive under the circumstances of the case.

ORDER

The order of the Examiner dated at New York City, N. Y. on 2

September 1966, is AFFIRMED.

W.J. SMITH
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 31st day of May 1967.

INDEX

Assault (including battery)

Penalty for, appropriateness of
With Knife

Log Entries

As not a prima facie case lacking indication it was read to
person charged or that he received copy

Order of Examiner

Commensurate with offense

Prima facie case

Log entry not establishing

Revocation or suspension

For assault, appropriateness of order
Prior record

***** END OF DECISION NO. 1629 *****

