

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-96178-D2 AND ALL  
OTHER SEAMAN'S DOCUMENTS  
Issued to: James W. DUFFY

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1633

James W. DUFFY

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 8 July 1966, an Examiner of the United States Coast Guard at New York, N.Y. suspended Appellant's seaman's documents for 3 months outright plus 3 months on 12 months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as an electrician on board the United States SS SAPHIRE GLADYS under authority of the document above described, on or about 14 June 1966, Appellant wrongfully assaulted and battered a fellow crewmember, one Henry E. Schultz, on board the vessel at Bremerhaven, Germany.

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

The Investigating Officer introduced in evidence the testimony of several witnesses.

Appellant offered no defense.

at the end of the hearing, the Examiner rendered 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 3 months outright plus 3 months on 12 months' probation.

The entire decision was served on 12 July 1966. Appeal was timely filed on 18 July 1966.

#### *FINDINGS OF FACT*

On 14 June 1966, Appellant was serving as an electrician on board the United States SS SAPHIRE GLADYS and acting under authority of his document while the ship was in the port of Bremerhaven, Germany.

At about 0200 on that date, in the presence of witnesses in the crew messroom, Appellant engaged in a verbal argument with Henry A. Schultz. Appellant then struck Schultz several times. In return Appellant was hit with a milk can and a coffee cup, sustaining injury to his face.

#### *OPINION*

The testimony of eyewitnesses is sufficient predicate for the Examiner's finding that Appellant was the aggressor in the use of physical force in this case.

The Examiner also found that Appellant had a prior record of suspension on probation in 1957 and an admonition in 1960. There is no support for such finding in the record of this case. Appellant contests this finding as erroneous. Since the matter was not raised on the record, I may not resort to official notice of Appellant's true record and must accept his statement.

This necessitates a modification of the Examiner's order.

#### *ORDER*

The order of the Examiner dated at New York, N. Y., on 8 July 1966, is MODIFIED to provide for a suspension of one month, plus one month on twelve months' probation, and, as MODIFIED, is AFFIRMED.

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

Signed at Washington, D. C., this 5th day of June 1967.

*INDEX*

Assault (including battery)

self defense, not shown

Prior Record

not ascertained on the record, error

\*\*\*\*\* END OF DECISION NO. 1633 \*\*\*\*\*

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