

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-104340-D7 AND  
ALL OTHER SEAMAN'S DOCUMENTS  
Issued to: SAM RIVERA

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1634

SAM RIVERA

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 1 September 1966, an Examiner of the United States Coast Guard at San Francisco, California revoked Appellant's documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as an Able Seaman on board the United States SS AMERICAN ROBIN under authority of the document above described, on or about 3 May 1964, Appellant assaulted and battered the Master of the vessel.

Appellant failed to appear at the hearing, and the Examiner entered for him a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence various documents from the vessel and the American Consulates at Madras and Calcutta, India.

At the end of the hearing, the Examiner rendered an oral

decision in which he concluded that the charge and specification had been proved. The Examiner then served a written order on Appellant revoking all documents issued to him.

The entire order was served on 7 September 1966. Appeal was timely filed on 5 October 1966.

#### *FINDINGS OF FACT*

On 3 May 1964, Appellant was serving as an Able Seaman on board the United States SS AMERICAN ROBIN and acting under authority of his document.

While the vessel was leaving the harbor at Madras, India, with a pilot aboard, Appellant appeared on the bridge and struck the Master with his fists. Appellant then chased the Master off the bridge, informing him in a belligerent manner that he was going to beat him up. Before he could consummate this threat Appellant was subdued by the Chief Mate and the Third Mate, and handcuffed to a rail. The local police were notified and Appellant was soon thereafter removed from the vessel.

#### *BASES OF APPEAL*

This appeal has been taken from the order imposed by the Examiner. It is urged that Appellant be given a rehearing so he can present his side of the case, and that the order of revocation is too severe.

APPEARANCE: L. C. Gay, Esquire, of San Francisco, California

#### *OPINION*

The logbook entries and the reports of the American Consulates at Madras and Calcutta were properly introduced at the hearing and constituted reliable and probative evidence proving the misconduct alleged.

The Investigating Officer made a thorough showing to the effect that Appellant had been properly informed of the time and date of hearing. Nevertheless, Appellant now requests the hearing

be reopened so that he can present his version of the incident in Madras harbor. A petition to reopen a hearing will be granted only on the grounds of newly discovered evidence. There must be a showing that this evidence was not known, or could not have been known by the use of due diligence on the part of the petitioner, at the time of the hearing, and that such evidence would probably produce a more favorable result to the petitioner. 46 CGT \$137.25-5. No such showing of this type has been made. Consequently the petition to reopen Appellant's hearing must be denied.

It is difficult to be sympathetic towards Appellant's plea for a less severe action. The Appellant's act of misconduct is of a most serious nature - - one that directly endangered the lives of everyone aboard. Committing a violent and unprovoked assault upon the Master of the ship while he is on the bridge of his vessel in the pilot waters of a foreign country is a most dangerous act. Further, it is noted that Appellant has a long record of previous misconduct going back to 1945. For these reasons the Examiner's order of revocation must be approved.

*ORDER*

The order of the Examiner dated at San Francisco, California on 1 September 1966, is AFFIRMED.

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

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

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