

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-939547 AND ALL
OTHER SEAMAN DOCUMENTS

Issued to: Henry Joseph Saurez

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1639

Henry Joseph Saurez

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 9 December 1966, an Examiner of United States Coast Guard at San Francisco, California, suspended Appellant's seaman documents for three months outright. The specifications found proved allege that while serving as an ordinary seaman on board the United States SS SANTA RITA under authority of the document above described, on or about 24 October 1966, Appellant wrongfully assaulted and battered with his fists another member of the crew, Frank Trapp, the vessel's Bosun, and on 7 November, 9 November, and between 0800 and 1200 on 10 November 1966, Appellant wrongfully failed to perform his assigned duties.

Appellant was not present or represented at the hearing. The Examiner entered a plea of not guilty to the charge and each specification on behalf of Appellant.

The Investigating Officer introduced in evidence the Shipping Articles showing Appellant to be a member of the crew at the times

alleged in the specifications. The Investigating Officer also introduced the Official Log Book containing entries concerning the allegations of the two specifications.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and two specifications had been proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of three months outright.

The entire decision was served on 29 December 1966. Appeal was timely filed on 2 January 1967.

FINDINGS OF FACTS

Appellant was serving as an ordinary seaman on board the United States SS SANTA RITA and acting under authority of his document from 31 August 1966 to 5 December 1966 while the ship was on a voyage from New York to the Orient and return to San Francisco. On 24 October 1966 while said vessel was at Qui Nhon, Vietnam, Appellant assaulted and battered with his fists another member of the crew, Frank Trapp. While the vessel was at Saigon, Appellant failed to perform his assigned duties on 7 November, 9 November, and between 0800 and 1200 on 10 November 1966.

Appellant has no prior record of misconduct.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that Appellant was misinformed as to the procedure of the hearing and he was under the impression he could send a registered letter asking for a change in venue to New York. This letter was postmarked on 6 December 1966. In addition, Appellant states that he has affidavits from members of the crew which are pertinent to the case.

OPINION

The entries in the Official Log Book of the SS SANTA RITA describing the offenses, being made in compliance with 46 USC 702,

make out a prima facie case. The first entry with respect to the assault is dated 24 October 1966, 1530 hours, and relates that Bosun Frank Trapp reported that about 1500 Appellant punched him in the face several times and also threatened his life. This entry, signed by the master and the chief mate, also states that the crew members involved, together with the Ship's Chairman and the Deck Delegate, were called to the master's office. At the time, Appellant stated that he would kill the Bosun if he got him ashore and that he "would do the same thing over again under the same circumstances." The next entry dated 24 October 1966, 1500 hours, reads as follows: "Joseph Suarez, O.S. Z 939547 Article #19, this day and date assaulted Bosun Frank Trapp by punching him in the face several times. He is hereby logged." Appellant's reply to the reading of the log entries in each instance of failure to perform duties was "No comment." In response to the entry concerning the assault and battery, his reply was, "No comment, I protest the log."

The Investigating Officer states that the SANTA RITA paid off on 5 December 1966 and on that date Appellant was given notice of the charge and specifications. He was advised that the hearing would be held on 8 December 1966 and would proceed in his absence if he did not appear. Despite this timely notice, on 6 December 1966 Appellant sent a registered letter to the Coast Guard office in San Francisco requesting that the hearing be conducted in New York City because he had a reservation on a flight to New York on the 5th. This letter was not received by the Investigating Officer until sometime on 8 December 1966 after the hearing was adjourned at 11:45 a.m.

I agree with the Hearing Examiner that when possible a hearing should be held promptly in the port of arrival, in order that witnesses may be obtained if desired while recollections are fresh. Appellant did not request any witnesses and has not forwarded the affidavits referred to in his appeal.

CONCLUSION

Since Appellant's request for a change of venue was not timely received, it is not necessary to make a conclusion as to the probability of granting such request. Nevertheless, it seems appropriate to comment on the merits. The Examiner may in his

discretion grant such a request for good cause. However, as discussed in Commandant's Appeal Decision No. [982](#), the burden of establishing a basis for such a change is on the moving party. To warrant reversal on appeal, there must be a denial of transfer which is so clearly erroneous as to constitute an abuse of discretion. It is my opinion that Appellant did not sustain the burden of showing a justification for a change of venue.

Appellant was properly informed of the complaint, the possible consequences of the proceeding, and his rights with respect thereto. On the same day that Appellant was notified of the scheduled hearing, he made plans to leave for New York City and, sending his request by registered mail, did leave San Francisco without waiting for a reply. By his actions, Appellant waived his right to submit a defense to the allegations contained in the charge and specifications. In the absence of any evidence to the contrary, it is concluded that the log book entries are sufficient to support the Examiner's findings.

ORDER

The order of the Examiner dated at San Francisco, California on 9 December 1966 is AFFIRMED.

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

Signed at Washington, D. C., this 22nd day of June 1967.

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