

In the Matter of Certificate of Service No. 521617
Issued to: JAMES McKINZEY

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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JAMES McKINZEY

This appeal has been taken in accordance with 46 United States Code 239(g) and 46 Code of Federal Regulations 137.11-1.

On 4 April, 1949, Appellant appeared before an Examiner of the United States Coast Guard at Mobile, Alabama, on a charge of misconduct supported by a specification alleging that while Appellant was serving as pantryman on board the American SS JOSEPH N. DINAND, under authority of his duly issued Certificate of Service No. E-521617, he assaulted a crew member, Manuel Herrera, with a dangerous weapon on or about 25 June, 1946.

Appellant voluntarily waived his right to representation by counsel at the hearing and entered a plea of "not guilty" to the charge and specification. The Examiner admitted in evidence certified copies of certain entries in the official log of the SS JOSEPH N. DINAND as well as a report prepared by the American consul at Rio de Janeiro, Brazil. This report included some of the above mentioned log entries of the JOSEPH N. DINAND and also five affidavits by members of the crew who allegedly witnessed the incident in question. Appellant made a statement in his own behalf but this statement was not made under oath. On the basis of this evidence, the Examiner found the charge and specification "proved"

and suspended Appellant's Certificate of Service No. E-521617, and all other licenses or certificates of service which had been issued to him, for a period of twelve months. The last six months of the suspension was made probationary for twelve months from the expiration date of the six months' outright suspension.

The appeal is a request for leniency since Appellant has a mother to support and has been unable to find work ashore. He further states that he "went before the Coast Guard in 1946 in Baltimore Maryland for the same case and they agreed that I acted in self defense"

Appellant's Certificate of Service No. E-521617 had previously been suspended for two months with six months' probation in October, 1945, for failure to obey a lawful order aboard the SS MILFORD VICTORY.

FINDINGS OF FACT

On or about 25 June, 1946, Appellant was serving as a member of the crew in the capacity of pantryman on board the American SS JOSEPH N. DINAND under authority of Certificate of Service No. E-521617. While the ship was at sea on said date, the Appellant and another crew member, Manuel Herrera, engaged in a scuffle during which the Appellant stabbed Herrera in the hip with a six inch boning knife.

The ship altered course for Rio de Janeiro. Upon arrival, Herrera received medical attention and recuperated from the wound which might have been fatal.

OPINION

The certified copies of the log entries are not *per se* sufficient to establish a prima facie case because they do not comply with the requirements of 46 United States Code 702, in that these copies do not show that they were read to Appellant, nor that he was given an opportunity to reply to the offense charged therein.

However, these certified copies were properly admitted in

evidence under 28 United States Code 695 since they are records which were made in the regular course of business. All circumstances of the making of such records, including lack of personal knowledge by the maker, may be shown to affect its weight but not its admissibility.

The copy of the American Consul's report was properly received in evidence and is sufficient to uphold the findings of the Examiner. Title 28 United States Code 677 states that copies of such official documents shall be admitted in evidence. Although this report as prima facie evidence was subject to rebuttal, there is nothing in the record which contradicts it except Appellant's own unsworn statement. Since the latter statement was not made under oath, it cannot be given sufficient weight to refute the positive evidence contained in the official document prepared by the American Consul. The log entries and affidavits which have been made a part of the consular report are admissible as an integral part of the report even though they might have been rebutted. The consideration or weight to be accorded the contents of such a report rests with the discretion of the Examiner. There is nothing in the record to indicate that the Examiner abused the exercise of this discretion in the present case.

I have given consideration to the grounds upon which this appeal is based, but find no sound reason for disturbing the action taken.

CONCLUSION AND ORDER

The order of the Examiner dated 4 April, 1949, should be, and it is, AFFIRMED.

J. F. FARLEY
Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 23rd day of June, 1949.

***** END OF DECISION NO. 346 *****

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