In the Matter of Certificate of Service No. E-403581
Issued to: JOHN M. STENNET

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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JOHN M. STENNET

This appeal comes before me by virtue of 46 United States Code 239(g) and 46 Code of Federal Regulations 137.11-1.

On 29 December, 1948, an Examiner of the United States Coast Guard at San Francisco, California, suspended for a period of two months Certificate of Service No. E-403581 held by John M. Stennet upon finding him guilty of misconduct while serving as messman on the American SS CACHE. The four specifications of the charge were:

Specification I: "In that you, while serving as messman on board a merchant vessel of the United States, the SS CACHE, under authority of your duly issued Certificate, did, on or about 16 November, 1948, at Bahrein Island, Persian Gulf, assault the Junior 3rd Assistant Engineer, one Eddie McBride."

Specification II: "In that you while serving as above did on or about 18 October, 1948, use disrespectful language toward an officer of the vessel who was at the time in charge of the 8-12 p.m. watch and was performing his official duties, the

vessel being at sea."

Specification III: "In that you while serving as above did on or about 19 October, 1948, while at sea, use disrespectful language towards the Junior 3rd Assistant Engineer, one Eddie McBride, while serving him breakfast."

Specification IV: "In that you while serving as above, did, on or about 16 November, 1948, at Bahrein Island, Persian Gulf, beat a member of the crew, Eddie McBride."

At the hearing, the Appellant was given a full explanation of the nature of the proceedings and the possible consequences, and he was represented by counsel of his own selection. He pleaded "not guilty" to the charge and specifications. Upon completion of the hearing, the Examiner, having found Specifications I, II, and IV proved, and Specification III not proved because Appellant was provoked into using disrespectful language on this occasion, entered the suspension order referred to above.

On this appeal, it is urged that:

1. The United States Coast Guard had no jurisdiction over the shoreside police in the country where the incident occurred and it should have been left in the hands of local authorities.
2. No witnesses testified that Appellant struck the first blow, while there is testimony the first blow was struck by the Complainant.
3. The penalty is unfair because Complainant holds a license while Appellant has merely a seaman's document.

Based upon a careful study and consideration of the Record in this case, I make the following

FINDINGS OF FACT

At all the times hereinafter mentioned, Appellant was serving as a member of the crew in the capacity of messman on board or in the service of the American SS CACHE, under authority of Certificate of Service No. E-403581. Said vessel was then on a voyage between the United States and foreign ports, and the

incidents occurred beyond the continental limits of the United States. The Complainant was also a member of the crew of the CACHE, serving in the capacity of Junior Third Assistant Engineer.

Between these two men on that voyage arose some personal feeling which was not improved on 17 October, 1948, when Appellant (who was interested in learning the routine duty of a fireman) was in the fireroom of the vessel. He was first requested, and then ordered by Complainant to depart therefrom and did so after a verbal exchange with Complainant. When serving Complainant at breakfast the following morning, Appellant's manner of service aroused Complainant's ire, who, thereupon, rebuked and admonished Appellant, and received an immediate obscene reply. The exchanges on this occasion were verbal only, and although Complainant seemed disposed at the time to carry the matter further, he evidently reconsidered and abstained from action.

Nothing of outstanding importance in the relations between these men occurred until 16 November, 1948, when the SS CACHE was secured to a dock at Bahrein Island, Persian Gulf. About noon of that date, Complainant, carrying a camera, and accompanied by another crew member (a fireman) went onto the dock for a walk. As they were about to return to the vessel, Appellant left the vessel and also went onto the dock where he took a position between Complainant and the vessel's ladder, announcing his intention to settle the differences then existing. Complainant endeavored to pacify Appellant without success, and the parties approached within striking distance of each other - the Complainant urging peace; the Appellant insisting upon a "settlement" of their problems.

Blows were exchanged, and as a result Complainant suffered injury at the hands of Appellant.

The testimony is conflicting with respect to the identity of the person who struck the first blow; but a finding on that detail is unimportant in the light of Appellant's own testimony that he deliberately took a position to intercept the Complainant with the announced intention to "settle this business." (R.65)

OPINION

Appellant had signed articles for a voyage which had not been terminated; for which service it was necessary he hold a mariner's document (in this case E-403581) issued pursuant to law (46 U.S.C. 672(i)); and that document was subject to suspension or revocation on the same grounds and in the same manner, and with like procedure, as is provided for the suspension or revocation of licenses issued to officers (46 U.S.C. 672(h)). Misconduct is specifically mentioned in 46 U.S.C. 239(g) as a ground for action against the holder of a license or certificate of service. I am not satisfied that the Coast Guard, in this field, has jurisdiction over offenses *only* when they are committed on shipboard, or in an American port.

In *United States v. Bowman*, 260 U.S. 94, the Supreme Court had to consider the application of Sec. 35, Criminal Code (presenting false claims to the government) to an offense conceived on the high seas and consummated in Rio de Janeiro, Brazil. A demurrer to an indictment was sustained by the District Court for lack of jurisdiction because the crime was committed beyond the jurisdiction of the United States or of any state thereof. Chief Justice Taft, speaking for a unanimous court reversed the lower court, observing that some offenses can only be committed within the territorial jurisdiction of the government because of the local acts required to constitute them; while others are such that to limit their *locus* to the strictly territorial jurisdiction would greatly curtail the scope and usefulness of the statute and leave open (p.98)

> "* * * * a large immunity for frauds as easily committed by citizens on the high seas and in foreign countries as at home. In such cases, Congress has not thought it necessary to make specific provision in the law that the *locus* shall include the high seas and foreign countries, but allows it to be inferred from the nature of the offense. Many of these occur in c. 4, which bears the title `Offenses against the operations of the Government.' Section 70 of that chapter punishes whoever as consul knowingly certifies a false invoice.
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> Clearly the *locus* of this crime as intended by Congress is in a foreign country and certainly the foreign country in which he discharges his official duty could not object to the

trial in a United States court of a United States consul for crime of this sort committed within its borders. Forging or altering ship's papers is made a crime by 72 of c. 4. It would be going too far to say that because Congress does not fix any *locus* it intended to exclude the high seas in respect of this crime. The natural inference from the character of the offense is that the sea would be a probable place for its commission. Section 42 of c. 4 punishes enticing desertions from the naval service. Is it possible that Congress did not intend by this to include such enticing done aboard ship on the high seas or in a foreign port, where it would be most likely to be done? Section 39 punishes bribing a United States officer of the civil, military or naval service to violate his duty or to aid in committing a fraud on the United States. It is hardly reasonable to construe this not to include such offenses when the bribe is offered to a consul, ambassador, an army or a naval officer in a foreign country or on the high seas, whose duties are being performed there and when his connivance at such fraud must occur there. * * * *

"What is true of these sections in this regard is true of 35, under which this indictment was drawn. * * * *

"Nor can the much quoted rule that criminal statutes are to be strictly construed avail. As said in *United States v. Lacher*, 134 U.S. 624, 629, quoting with approval from Sedgwick, Statutory and Constitutional Law, 2d ed., 282: `penal provisions, like all others, are to be fairly construed according to the legislative intent as expressed in the enactment.' They are not to be strained either way. It needs no forced construction to interpret 35 as we have done."

In this case both men were articled members of the crew of the same ship and would not have been at the same place at the same time under the circumstances and conditions of the disagreement between them except for the fact that they were both members of the crew and serving under the authority of their respective documents. They were then and there in the service of the vessel and acting under the authority of their respective documents.

Parenthetically, it is noted the right of seamen to wages,

maintenance and cure extends to injuries sustained without misconduct while ashore attending their own personal affairs. *Aguilar v. Standard Oil Co. of N.J.*, 318 U.S. 724, 1943 A.M.C. 451, 461; and if no other sufficient reason existed for sustaining the jurisdiction of the Coast Guard in cases of this nature, it could well be held that the benefits of seaman status carry corresponding burdens which should not be divorced.

There is no question involved here of Coast Guard jurisdiction over "shoreside police." This is a proceeding against the document held by Appellant. He was under articles of agreement and required by law to have such a document in order to engage in the employment covered by said agreement. This clearly brings the matter within the statutory jurisdiction of the Coast Guard, and Appellant's misconduct on shore under these circumstances properly falls within that jurisdiction.

For the reasons assigned, Appellant's contention that the United States Coast Guard did not have jurisdiction is overruled.

Appellant's second contention to the effect that the Investigating Officer's evidence does not show that Appellant struck the first blow cannot be sustained because although the Investigating Officer's evidence may be lacking as to this point there is sufficient evidence to prove from the bearing and demeanor of the Appellant that he was the aggressor, and that the Complainant did everything in his power to avoid the encounter. Under these circumstances, I find it immaterial who actually struck the first blow.

Two months' suspension is not considered an unfair penalty. In fact, where a breach of discipline occurs such as the one in this case, two months' suspension is considered to be a lenient order. In the interest of safety of the vessel and crew, strict discipline must be maintained. Anyone who goes to sea as a profession must surrender certain privileges and rights which he otherwise has for the good of all. This suspension order should tend to encourage respect for discipline, and it is not considered too oppressive on the individual under the circumstances of the case. I find nothing to indicate to me that any discrimination was made because Appellant was not a licensed officer.

CONCLUSION AND ORDER

The order dated 29 December, 1948, by the Examiner, Twelfth Coast Guard District, should be, and it is, AFFIRMED.

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

Dated at Washington, D. C., this 11th day of April, 1949.

***** END OF DECISION NO. 315 *****

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