

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-752130-D1 AND ALL
OTHER SEAMAN'S DOCUMENTS
Issued to: Osvaldo Betancourt

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1559

Osvaldo Betancourt

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 25 October 1965, an Examiner of the United States Coast Guard at New York, New York, suspended Appellant's seaman documents for three months outright on twelve months' probation upon finding him guilty of misconduct. The specifications found proved alleges that while serving as a deck maintenance man on board the United States SS AFRICAN METEOR, under authority of the document above described, on or about 6 July 1965, Appellant wrongfully assaulted a fellow crewmember, Alberto V. Papa, with a knife--two other specifications of wrongful assault were found not proved.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of Alberto V. Papa, and Peter Estabrooks, the second assistant

engineer.

In defense, Appellant testified on his own behalf.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and one specification had been proved. The other two specifications were found not proved. The Examiner then entered an order suspending all documents, issued to the Appellant, for a period of three months outright plus three months on twelve months' probation.

The entire decision was served on 27 October 1965. Appeal was timely filed on 8 November 1965.

FINDINGS OF FACT

On 5 and 6 July 1965, Appellant was serving as deck maintenance man on board the United States SS AFRICAN METEOR, and acting under authority of his document while the ship was in the port of Lourenco Marques, Portuguese East Africa. While ashore the Appellant and Alberto Papa, galley utilityman on the same ship, were in a bar where Papa walked over to the Appellant's table and demanded to know why Appellant wanted him (Papa) beaten up. Papa then struck Appellant several times. After each of them had returned to the ship there was another encounter in a passageway, at which time Papa again struck Appellant several times. A short time after Appellant had returned to his room, Papa entered Appellant's room and, while Appellant was reaching toward an air conditioner, Papa again struck Appellant. Then, as the Appellant was arming himself with a knife, which had a blade approximately four inches long, Papa ran out of the room and up to the boat deck and to the flying bridge in an effort to escape from the Appellant. Still holding the opened knife, the Appellant walked through the passageways shouting obscenities and demanding to know where the galleyman was, and during this time observed by Mr. Peter Estabrooks, the Second Assistant Engineer. The Appellant, while so armed, exceeded the reasonable force necessary for self defense and became the aggressor, as Papa was in fear of bodily harm from the Appellant.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that there is no substantial evidence to support the findings; that there is insufficient evidentiary support for the finding that Papa was placed in fear of bodily harm because of his testimony that he first saw the knife after running from the room and at a time when he was 25 feet down the corridor; and that there is no evidence to show that while the Appellant was in the passageway he had become the aggressor and was searching for Papa, rather than trying to avoid Papa.

APPEARANCE: Rolnick, Ezratty & Huttner, of New York, New York,
ny Bernard Rolnick, Esquire

OPINION

The testimony of Mr. Eastbrooks to the effect that the Appellant was walking through the passageways armed with a knife and demanding to know the whereabouts of the galleyman is uncontroverted, and, together with the testimony of Papa that he had fled to another portion of the ship to escape the Appellant, and the testimony of the Appellant that he was so armed, constitutes substantial evidence as accepted by the Examiner that such assault took place. As to the Appellant's second ground of appeal, the record indicates Papa testified that he saw Appellant reach for something on the air conditioner, but that he ran and did not see what the weapon was until he had run 25 feet or more down the passageway, and that after seeing the knife he continued to run away. Such testimony is not improbable and was accepted by the Examiner who had the opportunity of hearing the witnesses and judging their credibility. Also the appellant disputes the Examiner's finding that he, the Appellant, had become the aggressor and was in the passageway searching for the galleyman. When a fight has been stopped, and one of the parties, even the original victim, seeks to resume the fight, he then becomes the aggressor. The Examiner's finding was based upon substantial evidence including the testimony of Mr. Estabrooks.

ORDER

The order of the Examiner dated at New York, New York, on 25 October 1965, is AFFIRMED.

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

Signed at Washington, D.C., this 2nd day of June 1966.

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