

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO Z-1126218 AND ALL
OTHER SEAMAN DOCUMENTS

Issued to: Luis "R" Rondon

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1563

Luis "R" Rondon

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 January 1966, an Examiner of the United States Coast Guard at New York, N. Y. revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a crew messman on board the USNS TWINN FALLS under authority of the document above described, on or about 6 March 1965, Appellant assaulted and battered another crew member, Asuncion Quinones, by cutting him with a knife.

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 Quinones and two other witnesses.

In defense, Appellant offered in evidence his own testimony

and that of another witness.

At the end of the hearing, the Examiner rendered a decision in which he concluded that the charge and specification had been proved. The examiner then entered an order revoking all documents issued to Appellant.

The record does not reflect when the decision was served, but Appellant's document was surrendered on 1 February 1966. Appeal was timely filed on 23 February 1966.

FINDINGS OF FACT

On 6 March 1965, Appellant was serving as a crew messman on board the USNS TWIN FALLS and acting under authority of his document while the ship was at St. Johns, Antigua.

Appellant and Quinones returned to the vessel from ashore shortly after midnight. They entered the room which they shared with Eckhouse, another messman. Eckhouse was in his bunk, asleep. he had a blanket hanging outside the bunk to shield him from the light.

With the light on, Appellant and Quinones engaged in a loud argument which woke Eckhouse, who could not understand them because they were speaking in Spanish. Eckhouse heard one of them leave the room.

It was Appellant who left the room. HE went to the galley and obtained a butcher knife. Returning to the room he cut Quinonew on the chest and arms.

When Eckhouse heard Quinones pleading with Appellant, in English, not to kill him, Eckhouse came out from behind the blanket and ran out of the room. In doing so he saw Appellant with the knife in his hand, and Quinones covered with blood.

Shortly thereafter Appellant was questioned by the third mate. After describing a loathsome proposal made to him by Quinones, he said, "Then he hit me and knock me down. I am a little man and I could not fight him, ran out of the room, went to the galley, and

got a knife, come back and cut him."

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that, with the testimony of Quinones stricken from the record, the uncontroverted testimony of Appellant that he acted in self-defense must be accepted.

APPEARANCE: Bernard Hubscher, Esquire, of New York City, New York of Counsel

OPINION

This case presents one unusual aspect in that the Investigating Officer moved to have all the testimony of Quinones stricken from the record (except for the physical demonstration of his scares). The motion was granted.

Thus, there is not eyewitness evidence of how the episode began.

Appellant's testimony was to the effect that Quinones had a knife, that he armed himself for self-defense, and that after leaving the galley he was going down the passageway to seek help when Quinones pulled him into the room. Then, he says, he struck in self defense.

The Examiner rejected Appellant's narrative as implausible.

This rejection of Appellant's story does not serve to establish the truth of a different version not in evidence. Appeal Decision No. [894](#).

We must look elsewhere in the record to see whether there is affirmative evidence that Appellant was the aggressor, insofar as the use of the weapon was concerned, and was not acting in self-defense.

The testimony of Eckhouse, although he refers to Appellant as "the man with the knife" and to Quinones as "the man who was cut," is not of itself determinative of a finding that Quinones did not have a knife and was not the aggressor.

The necessary support is found, I think, in the evidence given by the third mate who took Appellant's statement immediately after the encounter. No mention was made in it of self-defense. No reference was made to a weapon in the hands of Quinones. The act described by Appellant was pure retaliation.

CONCLUSION

I conclude that the assault and battery alleged were proved by substantial evidence.

ORDER

The order of the Examiner dated at New York, N. Y. on 25 January 1966, is AFFIRMED.

W. J. Smith
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 15th day of June 1966.

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