

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-446083-D1 AND
ALL OTHER SEAMAN DOCUMENTS

Issued to: Lawrence J. Kearney

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1564

Lawrence J. Kearney

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 13 October 1965, an Examiner of the United States Coast Guard at San Francisco, California suspended Appellant's seaman documents for 3 months outright upon finding him guilty of misconduct. The specifications found proved allege that while serving as a third refrigeration engineer on board the United States SS PRESIDENT MADISON under authority, of the document above described, Appellant, during a voyage from 14 April 1965 to 13 August 1965, on 28 May 1965 wrongfully threatened the chief engineer with bodily harm; that Appellant on 25 June 1965 wrongfully failed to perform his assigned duties during part of his watch; that Appellant on 11 July 1965 operated a distillery for alcoholic beverages in the reefer machine shop on board said vessel; that on 12 August 1965 Appellant wrongfully assaulted the chief officer; and that on 13 August 1965 Appellant wrongfully assaulted the chief refrigeration engineer.

At the hearing, Appellant was represented by professional

counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the testimony of Marvin L. Zettel, Chief Engineer, Peashing F. Wong, Chief Mate, Jeff W. Barrett, Inspector of Customs, certified copies of pages from the Official Log Book and the sworn statement of Kam Yim Law, Chief Refrigerator Engineer.

In defense, Appellant offered in evidence the testimony of Pasquale Carbone, ordinary seaman, who stated that he had seen the Appellant and the chief refrigeration engineer fighting, but he did not see the fight begin.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and five specifications had been proved. The Examiner then served a written order on Appellant suspending all documents, issued to Appellant, for a period of 3 months outright.

The entire decision was served on 13 October 1965. Notice of intention to appeal was timely filed on 1 November 1965.

FINDINGS OF FACT

During the period from 14 April 1965 to 13 August 1965, Appellant was serving as a third refrigerator engineer on board the United States SS PRESIDENT MADISON and acting under authority of his document. On 28 May 1965, while the vessel was at sea, Appellant wrongfully threatened the chief engineer with bodily harm by stating "I will fix you when we get back and I will take you out on the dock." On 25 June 1965 while the vessel was at sea, Appellant failed to perform his assigned duties in that he returned to his room and remained there during a portion of his watch. On 11 July 1965 while the vessel was at sea, the Appellant and another seaman were found by the master and the chief mate and the chief engineer to be straining liquid into a container, and when the officers were admitted to the room, they observed a strong odor of mash working and found some of the fermented material containing raisins. On 12 August 1965, while the vessel was in the port of Alameda, while the chief mate was working with Customs officers in

the saloon, the Appellant appeared in the saloon in an intoxicated condition; the chief mate asked Appellant if he had any business with Customs, and, if not, to leave the saloon. Appellant refused to leave and struck the chief mate on his left jaw. On 13 August 1965, the Appellant attacked Kam Yin Lau, the chief refrigeration engineer.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. In the appeal reference was made to "a sworn statement admitted in evidence over objection. . .", but additional material in support of his appeal was not submitted.

APPEARANCE: Robert N. Finnie, Esquire of San Francisco,
 California of Counsel

The finding of guilty as to each of the specification is supported by substantial evidence. If the statement of the chief refrigeration engineer is excluded as inadmissible, the finding as to the fifth specification is supported by the log entry of 13 August 1965, which states: "At approx. 0000 hours Lawrence J. Kearney, attached Kam Yin Lau, Chief Reefer, main deck stbd side by water fountain . . ."

ORDER

The order of the Examiner dated at San Francisco, California on 13 October 1965, is AFFIRMED.

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

Signed at Washington, D.C., this 23rd day of June 1966.

***** END OF DECISION NO. 1564 *****

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