

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 146 714
Issued to: John F. Blackwell, III

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2299

John F. Blackwell, III

This appeal has been taken in accordance with Title 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 20 February 1981, an Administrative Law Judge of the United States Coast Guard at Jacksonville, Florida revoked Appellant's license upon finding him guilty of misconduct. Four specifications under a charge of misconduct, Charge II, were found proved. They allege that while serving on board the M/V CAN'T MISS, O.N. 294101, under authority of the Ocean Operator's license above captioned, on or about 12 April 1980, Appellant wrongfully operated the vessel while carrying passengers:

1. By operating beyond the scope of the route authorized on the vessel's Certificate of Inspection, to wit: over 20 miles from shore, in violation of 46 U.S. Code 390(b);
2. By using a portable gasoline stove for cooking in violation of 46 U.S. Code 170 and 46 Code of Federal Regulations 184.05-1;
3. By operating with unserviceable life preservers in violation of 46 U.S. Code 390(b) and 46 Code of Federal

Regulations 180.25; and

4. By operating with improperly secured life saving equipment, to wit: water light attached to buoyant apparatus was tied to the vessel in such a manner as to preclude being readily launched, in violation of 46 U.S. Code 390(b) and 46 Code of Federal Regulations 180.15-1 and 180.20-1.

An additional charge of misconduct, Charge III, contained three specifications which were found proved by the Administrative Law Judge. It alleged that while serving on board the M/V CAN'T MISS, O.N. 294101, under authority of the license above captioned, on or about 1 May 1980 through 4 June 1980, Appellant wrongfully operated the vessel while carrying passengers:

1. By taking a charter party of over six passengers on a trip from Key West, Florida, to Mariel, Cuba, and from Mariel, Cuba to Key West, Florida, without a Certificate of Inspection as required by 46 U.S. Code 390c;

2. By operating beyond the scope of the route authorized on the above captioned license; and

3. By carrying over 12 passengers on an international voyage without a SOLAS Certificate as required by 46 U.S. Code 362 and 46 Code of Federal Regulations Subchapter H.

A charge of negligence, with its one specification, was dismissed by the Administrative Law Judge. He also dismissed one specification under the 12 April 1980 charge of misconduct dealing with inoperable bilge pumps.

The hearing was held at Miami, Florida on 28 July 1980 and 10 October 1980.

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

The Investigating Officer introduced in evidence the testimony

of six witnesses and 12 exhibits.

In defense, Appellant offered in evidence the testimony of six witnesses and 10 exhibits.

After the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the tow charges of misconduct and the specifications listed above had been proved. He then entered an order revoking License No. 146714 and all other valid licenses and/or documents issued to Appellant.

The entire decision was served on 28 February 1981. Appeal was timely filed on 20 March 1981 and perfected on 17 April 1981.

FINDINGS OF FACT

On 12 April 1980, Appellant was serving as Operator on board the 80 gross ton, 64.9 foot M/V CAN'T MISS, O.N. 294101, and was acting under authority of his Ocean Operator's License No. 146714 on a voyage from Key West, Florida, past the Marquesas Keys, to Dry Tortugas, Florida and return. The Certificate of Inspection limits the operation of the vessel to the "Atlantic Ocean between Miami, Florida and Key West, Florida ...and Gulf of Mexico, between Naples, Florida and Key West, Florida not more than 20 miles from a harbor of safe refuge under reasonable operating conditions." The Marquesas Keys and Dry Tortugas, which provide harbors of safe refuge and which are approximately 20 and 60 miles, respectively, west of Key West, are not located between Naples and Key West, nor between Key West and Miami.

The Appellant, by his letter of 13 August 1979, requested an extension of route to include the Dry Tortugas and surrounding waters. An amendment which would have authorized the extension was prepared at the Office of Marine Inspection, Miami, Florida, but was never issued to Appellant.

On 12 April 1980, Appellant operated the M/V CAN'T MISS with a portable gasoline stove in use for cooking, with two unserviceable life preservers, and with water lights attached to buoyant apparatus, which were tied to the vessel with knots which required 35 to 40 seconds to untie. The use of gasoline for cooking is prohibited by 46 CFR 184.05-1(c); life preservers must

be of an approved type, as required by 46 CFR 180.25-1(a); and buoyant apparatus must be stowed so as to be readily launched as required by 46 CFR 180.20-1(a), and may be secured only by using lashings which can be easily slipped, as required by 46 CFR 180.20-1(b).

The Certificate of Inspection of the M/V CAN'T MISS, was withdrawn on 30 April 1980. Thereafter, the vessel was no longer an inspected vessel. Rather, it became an uninspected motorboat. Appellant is the owner of the M/V CAN'T MISS. On 30 April 1980 Appellant, acting under the authority of his Operator's license, departed Key West onboard the M/V CAN'T MISS with 33 passengers. At least two of the passengers had paid between 600 and 700 dollars which they testified was for food, fuel, ice, and water for the trip. The fuel for the round trip cost approximately 558 dollars. The passengers bought their own food in Cuba. The vessel arrived in Mariel, Cuba on 1 May 1980 after a trip of 10 to 12 hours. It returned to Key West on 4 June 1980 with approximately 200 passengers, many of whom were ordered aboard at gunpoint by Cuban authorities.

Appellant steered the M/V CAN'T MISS during the period 1 May 1980 to 4 June 1980. He was the only licensed operator on board. The vessel lacked both a valid Certificate of Inspection, as required by 46 U.S.C. 390c(a), and a "Passenger Vessel Safety Certificate" as required by 46 CFR 176.35-15.

The geographic scope of Appellant's license was limited to "not more than 30 miles offshore," from the coast of Florida. Mariel, Cuba is located more than 30 miles from the Florida coast.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

1. The first specification of Charge II is not proved because the Certificate of Inspection provides that the vessel may operate "not more than 20 miles from a harbor of safe refuge" rather than "20 miles from shore" as alleged in the specification;
2. The second specification of Charge II is not proved

because there is conflicting testimony as to whether the gasoline stove was used during the trip to Dry Tortugas;

3. The third specification of Charge II is not proved because there were a sufficient number of serviceable life preservers on board, in addition to the unserviceable ones;

4. The fourth specification of Charge II is not proved because the life rafts with their attached lights were properly secured and were capable of being readily launched;

5. Charge III is not proved because Appellant was not operating the vessel under the authority of his license during the trip to Mariel since Charles Gates was the "master" and Appellant was simply on board and did some steering; and

6. The attitude of the Administrative Law Judge was prejudicial to the Appellant.

APPEARANCE: Underwood, Gillis, Karcher, Reinert, & Valle, P.A., by David Karcher

OPINION

I

Appellant was authorized to operate "between Naples, Florida and Key West, Florida, not more than 20 miles from a harbor of safe refuge." the evidence shows that he did not operate more than 20 miles from a harbor of safe refuge. However, after reviewing the chart of the area, the Administrative Law Judge noted in his opinion that Dry Tortugas is not between Naples and Key West. Moreover, the Judge stated that although the Certificate could have been more clearly worded, it was his belief that Appellant knew that Dry Tortugas was beyond the scope of the Certificate. I agree. The Certificate of Inspection provides for a continuous operating area extending a maximum distance of 20 miles offshore from Miami in the Atlantic, to Key West, to Naples in the Gulf of

Mexico rather than from Miami to Dry Tortugas to Naples. Appellant knew of the limits contained in the Certificate and attempted to extend the limits by requesting an amended Certificate. At his hearing Appellant presented evidence to show that his vessel had been inspected in response to his request for and extension of route. and that his employee was assured that an amendment would be issued. The amendment was prepared but was never issued. The reason for the non-issuance is not known nor is it material. Without a properly issued amendment, Appellant was precluded from operating more than 20 miles to the west of Key West.

Appellant's vessel was required to possess a valid Certificate of Inspection. The Certificate set forth a limited operating area. Appellant exceeded that limit. While the words "twenty miles from shore," contained in the specification, were not lifted verbatim from the Certificate, they adequately apprised Appellant of the nature of the charge against him. His litigation of the issue of whether the Marguesas Keys and Dry Tortugas provide harbors of safe refuge may have been successful, but it was immaterial since these two harbors are not located within the area addressed in the Certificate.

II

The record contains substantial evidence of a reliable and probative character to support the Administrative Law Judge's findings that while Appellant operated the vessel: a gasoline stove was in use; two unserviceable life preservers were made available to passengers; and several water lights, which were attached to life rafts, were secured to the vessel by knots which could not be easily slipped. The Judge's findings on these issues will not be disturbed.

The Appellant argues that there is conflicting testimony concerning the use of the stove. Two witnesses testified that they saw the stove being used to make coffee. The testimony of two other witnesses does not support a finding that the stove was never used, but rather that if it was used, they did not see it being used.

Appellant argues that there were "many life preservers aboard the vessel far in excess of the number required and that all of the passengers were in fact equipped with serviceable life jackets."

His point is not well taken. It ignores the fact that the requirement that all life preservers be serviceable is intended to protect the passenger who has donned a life preserver with the belief that it will provide him with proper buoyancy in the water. It is of little comfort or protection to a passenger in extremis in the water that he could have chosen a serviceable life jacket.

Appellant also suggests that 34 to 40 seconds to untie the water lights which were attached to the life rafts does not controvert the requirement that such items be stowed in a manner so as to be readily launched and secured by lashings which can be easily slipped. He fails to recognize that when immediate action is required, a 35 to 40 second delay per light could preclude the launching of a life raft. The fact that, in this case, sufficient time was available to untie the knots does not excuse Appellant's failure to comply with the requirement that lashings be capable of being "slipped," rather than "untied."

III

Appellant argues that during the voyage to Mariel, Cuba, from 1 May to 4 June 1980, he was not operating under the authority of his license because Charles Gates was the vessel's "master." The thrust of Appellant's argument is that only one person, Gates, and no others may be viewed as having "operated" the vessel during the trip. Charles Gates was an unlicensed master, a status which has no meaning nor relevance in a situation which requires a license holder. Appellant is confusing the term "operating" with the phrase "acting under the authority of a license." A person may be said to be operating a boat by controlling its movements. Thus, a helmsman may operate a boat by moving the rudder, ie. "steering" the boat. A master may operate a boat by directing others to move the rudder or to change the speed of the vessel. An owner may operate a vessel by authorizing or directing others to use the boat in a particular manner or to accomplish a particular purpose. The term can have many meanings depending upon the use, employment, or navigation of the vessel. Appellant steered his boat. He authorized it to be used to carry passengers for hire. On this basis he could be said to be operating the vessel.

But the true issue under consideration here is whether Appellant was acting under the authority of his operator's license

during the voyage from Key West to Mariel and return. A person is considered to be "acting under the authority of a license" as that term is defined at 46 CFR 5.01-35, when the holding of the license is required by law or regulation. Such a requirement is found at 46 U.S.C. 1461(e) where it is declared to be a violation of law to carry passengers for hire on vessels not subject to the manning requirements of the vessel inspection laws, except in the charge of a person licensed for such service. The term "carrying passengers for hire" is defined at 46 CFR 24.10-3 as :

The carriage of any person or persons by a vessel for a valuable consideration, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person interested in the vessel.

An ocean operator's license, the license held by Appellant, authorizes the holder to serve as an operator of an uninspected motorboat. (See 46 CFR Table 157.30-30(d). There were at least two passengers on board who had paid a valuable consideration for the trip. The vessel was an uninspected motorboat, was engaged in the carriage of passengers for hire, and was required to have a licensed operator aboard. Appellant was the only licensed operator aboard. He was not a passenger. He was the owner and was responsible for assuring that the vessel was in compliance with all applicable laws and regulations. Appellant steered the boat. The Administrative Law Judge's determination that Appellant was operating the vessel while acting under the authority of his license on the trip to Cuba is supported by substantial evidence. Appellant may not avoid responsibility by claiming that besides himself, an unlicensed person was operating the vessel in violation of the law.

IV

Appellant contends that the Administrative Law Judge interjected "an atmosphere of emotionalism" into his opinion by using phrases such as "demonstrates professional inadequacy," "harrowing picture," "blatant disregard," and "insolent contempt for the regulations." This is strong language. The Judge's words are, however, descriptive of events set forth in the record. His opinion does not unfairly characterize the situation or show bias.

CONCLUSION

The evidence proved that Appellant, during his trip to Dry Tortugas, was required to operate not more than 20 miles from shore from Miami to Key West and from Key West to Naples, Florida. The first specification of the second charge should be affirmed.

The evidence presented by the Investigating Officer proved that Appellant operated his vessel with a gasoline stove in use, with unserviceable life preservers, and with improperly secured lifesaving equipment. The second, third, and fourth specifications of the second charge should be affirmed.

The Administrative Law Judge's finding that Appellant was acting under authority of his license from 1 May to 4 June is supported. Charge III and its specifications should be affirmed.

The Administrative Law Judge's finding that Appellant was acting under authority of his license from 1 May to 4 June is supported. Charge III and its specifications should be affirmed.

The sanction of revocation is appropriate.

ORDER

The findings and order of the Administrative Law Judge dated at Jacksonville, Florida on 20 February 1981 are AFFIRMED.

J.S. GRACEY
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D.C., this 7th day of April 1983.

***** END OF DECISION NO. 2299 *****

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