

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 424124
Issued to: James T. HOPKINS, JR.

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2072

James T. HOPKINS, JR.

This appeal has been taken in accordance with Title 46 Code of Federal Regulations, Section 5.31-1.

By order dated 21 October 1975 and amended on 7 November 1975, an Administrative Law Judge of the United States Coast Guard, at New York, New York, suspended Appellant's license for a period of twelve months, after hearing held at Baltimore, Maryland, over a period from 8 October 1974 to 21 July 1975. The specifications found proved alleged as follows:

FIRST SPECIFICATION: In that you, being the holder of the captioned document did on or about 3 August 1973, at Baltimore, Maryland, knowingly and wrongfully, while occupying the position of Dean of Administration of the Maritime Institute of Technology and Graduate Studies, provide Captain Thomas F. O'Callaghan with a false document, which document as you well knew, falsely stated that Captain O'Callaghan has successfully completed the course of instruction indicated on the face

thereof; to wit, a Maritime Institute of Technology and Graduate Studies' Certificate of Advanced Training Collision Avoidance Radar, dated 26 January 1973; with knowledge that the said document could be used by Captain O'Callaghan to obtain, from the United States Coast Guard, a radar endorsement to his master's license.

SECOND SPECIFICATION: In that you, being the holder of the captioned document, did, on or about 13 August 1973, at Linthicum Heights, Maryland, knowingly and wrongfully, while occupying the position of Dean of Administration of the Maritime Institute of Technology and Graduate Studies, provide Captain Robert J. Lowen with a false document, which document as you well knew, falsely stated that Captain Lowen had successfully completed the course of instruction indicated on the face thereof; to wit, a Maritime Institute of Technology and Graduate Studies' Certificate of Advanced Training Collision Avoidance Radar, dated 26 January 1973; with knowledge that said document could be used by Captain Lowen to obtain, from the United States Coast Guard, a radar endorsement to his master's license.

THIRD SPECIFICATION: In that you, being the holder of the captioned document, did, at Linthicum Heights, Maryland, at or about 11:55 a.m. 9 May 1974, knowing that Captains O'Callaghan and Lowen had acquired the false documents referred to in specifications one and two of this charge, contact by telephone Mr. Stephen P. Maher, Administrator of the Master, Mates and Pilots Plans, and knowingly and wrongfully then and there bargain to withhold the foregoing information by stating that you would make public the fact that

Captains O'Callaghan and Lowen had been issued said documents unless they agreed to take, or refrain from taking, certain specified actions, to wit, withdraw from all associations with the Maritime Institute of Technology and Graduate Studies; not run again for international or any other union office; not back any other candidates; and take their pensions as of 1 January 1975.

The three specifications here set forth were originally preferred on 26 July 1974 under two separate cited authorities. Under authority of R.S. 4450, they were laid under a charge of "MISCONDUCT;" under R.S. 4440, they were laid under a charge of "BAD CONDUCT."

Appellant was represented throughout by professional counsel. Several motions were argued extensively and, finally, much evidentiary matter, including both oral testimony and documents, was submitted by the Investigating Officer. No evidence was offered by Appellant after the Investigating Officer's case had been closed.

Before proceeding to hearing on the merits, the Administrative Law Judge ruled that evidence that Appellant had been required to hold deck officer's license in order to hold his position on the staff of the Maritime Institute of Technology and Graduate Studies did not meet the test of "condition of employment" as set forth in 46 CFR 5.01-35 such as to be within the "acting under authority of his license" provision of R.S. 4450, since the regulation clearly speaks of a person "employed in the service of a vessel." Since Appellant was not otherwise acting "under authority of his license" and was not using the license as a condition of employment for service aboard a vessel, jurisdiction to suspend or revoke the license under R.S. 4450 was not found.

Separately holding, after attack on the jurisdiction, that authority to proceed toward suspension or revocation existed under R.S. 4440, since there is no "acting under authority" provision in that statute, which applies only to mates' licenses, the Administrative Law Judge did not dismiss the charges under R.S. 4450 but, rather, "deem[ed] the charge under R.S. 4450 to be merged

with the charge under R.S. 4440, so that the hearing of this case although resting on R.S. 4440 is to be controlled procedurally by the provisions of R.S. 4450."

Appeal was filed from the decision and order of 7 November 1975 and was perfected on 5 March 1976.

FINDINGS OF FACT

Because of the disposition to be made of this case, no findings of fact are necessary.

BASES OF APPEAL

The sole basis of appeal that must be considered is that R.S. 4440, 46 U.S.C. 228, does not alone authorize action to suspend or revoke a license.

APPEARANCE: Charles Edward Mentzer, Esq., Baltimore, Maryland.

OPINION

In *Dietze v. Siler*, Civ. 75-3501, D.C.E.D.La., June 14, 1976, it was held that R.S. 4442, 46 U.S.C. 214, did not independently provide a basis for action to suspend or revoke a license as pilot issued by the Coast Guard, but that R.S. 4450, 46 U.S.C. 239, was controlling and authorizing statute for such actions. The rationale of the holding is equally applicable to R.S. 4440, and with regard to an attempt to proceed under that statute alone the holding must be the same.

Since the Administrative Law Judge was correct in his understanding of the "condition of employment" rule, leading to his refusal to proceed on the asserted authority of R.S. 4450 alone, and since there is no jurisdiction under R.S. 4440 alone, the charges in this case must be dismissed.

ORDER

The findings and the order of the Administrative Law Judge

entered at New York, New York, on 21 October 1975, as amended on 1 November 1975, are SET ASIDE, and the charges are DISMISSED.

O. W. SILER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 15th day of Sep. 1976.

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