UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S LICENSE NO. 103934
Issued to: Roland Anthony NUNEZ

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2131

Roland Anthony NUNEZ

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 19 August 1977, an Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana, revoked Appellant's license upon finding him guilty of misconduct. The specification found proved alleges that while acting under authority of the license above captioned, Appellant altered the license by changing the date of issue from 22 February 1972 to 22 February 22 1973.

At the hearing, Appellant elected to act as his own counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of one witness and documents relative to the issuance of license no. 103934.

In defense, Appellant offered an unsworn statement.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge

and specification had been proved. He then entered an order revoking all documents issued to Appellant.

The entire decision was served on 22 August 1977. Appeal was timely filed.

FINDINGS OF FACT

On 22 February 1972, license no. 103934 as operator of certain machine propelled vessels carrying six or less passengers for hire was issued to Appellant at New Orleans, Louisiana. On 31 May 1977, Appellant filed application for a renewal of the license at the Marine Inspection Office, New Orleans. It was then noted that the issue date of the license had been altered from the dated issued to "22 February 1973." Appellant had altered the license.

BASES OF APPEAL

This appeal had been taken from the order imposed by the Administrative Law Judge. It is contended that the findings are unsupported by competent evidence, that Appellant was unaware of the seriousness of the offense alleged, with the result that his waiver of counsel was not voluntary, and that the order is too severe.

APPEARANCE: Manual A. Fernandez, Esq., Chalmette, Louisiana.

OPINION

I

An amendment was made to the specification in this case in open hearing. Since it involved potentially a jurisdictional matter it must be mentioned.

In the preparation of the formal notice of hearing the

Investigating Officer had deleted the words on the prepared form, CG-2639, "while serving as....aboard ," language generally used in alleging service aboard some vessel, and had asserted, instead, that Appellant had acted while "being the holder of the captioned license." This was changed by the Administrative Law Judge to allege that at the time of the action specified Appellant was "serving under the authority of the captioned license." A change in the wording may have been desirable, but the change made was not necessarily an improvement.

The concept of "serving" under a license comes easily to mind in connection with ship related activity. Certain offenses of misconduct and the like may be cognizable without ship-related activity and the "holding" of the license may be sufficient predicate. As a matter of fact, this term usually fits the cases cognizable under 46 U.S.C. 239b when, for example, a conviction is the basis for action, although the "holding" of a document at the time of conviction is not essential to that form of jurisdiction.

For matters like the instant case, where the date of the alleged wrongdoing is neither of the essence nor reasonably ascertainable, the language of the statute itself is probably the best for the assertion of the jurisdictional element. It might be subject to a quibble whether Appellant was "serving" under authority of the license when the alleged change was made, but there can be no doubt that when he altered it he was "acting" under authority of the license held within the meaning of R.S. 4450.

Nevertheless, the notice as served and as proceeded on after amendment was sufficient to form a reasonable statement of allegation of jurisdiction and to apprize Appellant what the issue was.

II.

Appellant's contention that the evidence does not support the findings presupposes that no valid inference may be drawn from the facts established. It is plain that the license was altered as alleged. It is a reasonable inference that a license issued to Appellant and found altered in Appellant's possession was altered

by him.

Appellant's unsworn effort to deny knowledge of the change and to place the blame on some unknown, even if accepted as testimony given under oath, would not tend even to raise a suspicion that the inference is invalid. Standing against his flat denial of any knowledge of the alteration, even of the fact that an alteration had been made, until he appeared to have the license renewed and had the change pointed out to him, is the fact that the license had in fact expired three months before he so appeared. A person who holds a license is not likely to forget its period of validity, especially when a means of livelihood depends upon it. Since the license could not lawfully be used for service after 22 February 1977, a motive is well established for an alteration to give the appearance of validity after that date, a motive not attributable to any unknown to whom Appellant would shift the blame.

The fact that Appellant failed the single examination required for a renewal of the license within the grace period allowed simply adds to the plausibility of the motive. Without this, however, it is enough to affirm that the basic inference is a valid one on its face.

III.

As to Appellant's claim at this time that his decision to proceed without professional counsel was not voluntarily arrived at, all that can be said is that there is no contention that any fraud or deceit was practiced to induce him to forego counsel and there are two statements on the record of advice to him about his rights.

IV.

The order of revocation is the only one appropriate for alteration of a license.

ORDER

The order of the Administrative Law Judge dated at New Orleans, Louisiana on 19 August 1977, is AFFIRMED.

R.H. SCARBOROUGH
Vice Admiral, U. S. Coast Guard
ACTING COMMANDANT

Signed at Washington, D.C., this 4th day of August 1978.

INDEX

Amendment of, sufficiency
Reasonable notice
Sufficiency of

***** END OF DECISION NO. 2131 *****

Top