UNITED STATES OF AMERICA
UNITED STATES COAST GUARD VS.
MERCHANT MARINER'S DOCUMENT No. (Redacted)
LICENSE No. R-23426
Issued to: Clement C. GAINES

DECISION OF THE VICE COMMANDANT
UNITED STATES COAST GUARD

2197

Clement C. GAINES

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

By order dated 26 July 1978, an Administrative Law Judge of the United States Coast Guard at Baltimore, Maryland, after a hearing at Baltimore, Maryland, on 12 April and 6 July 1978, suspended Appellant's license and document for a period of four months and further suspended them for a period of two months on twelve months' probation upon finding him guilty of misconduct. The three specifications of the charge of misconduct found proved allege (1) that Appellant while serving as Radio Officer aboard SS JOHN B. WATERMAN, under authority of the captioned document, did, on or about 23 March 1977, while said vessel was in the port of Long Beach, California, wrongfully refuse to obey a lawful command of the master to produce the radio log for an official inspection by the Federal Communication Commission Inspector; (2) that Appellant, while serving as aforesaid, did, on or about 23 March 1977, wrongfully fail to maintain the vessel's radio-telegraph log as required by the 1960 SOLAS Convention, Chapter 4, regulation 16, paragraphs (a) and (b); and (3) that Appellant, while serving as aforesaid, did, on or about 23 March 1977, wrongfully refuse to make the vessel's radio-telegraph log available for inspection as required by the 1960 SOLAS Convention,Chapter 4, regulation 16, paragraph (c). (The third specification was merged with the first, and, as so merged, was found proved.)

At the hearing, Appellant was represented by the Baltimore representative of the American Radio Association. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced into evidence the testimony of three witnesses and eight documents.

In defense, Appellant introduced into evidence one document and made an unsworn statement.

Subsequent to the hearing, the Administrative Law Judge entered a written decision in which he concluded that the charge and specifications as alleged had been proved. He then entered an order of suspension for a period of four months and further suspension for two months on twelve months' probation.

The decision was served on 26 July 1978. Appeal was timely filed on 7 August 1978.

FINDINGS OF FACT

On 23 March 1977, Appellant was serving as licensed radio operator aboard SS JOHN B. WATERMAN, which had moored that date in Long Beach, California, having made its first American port of call on a voyage from the Philippines. Prior to clearance by Customs and Immigration, a Marine Inspector, employed by the Federal Communication Commission (FCC), boarded the vessel to conduct an annual radio-telegraph inspection, in accordance with applicable provisions of the International Convention for the Safety of Life at Sea (SOLAS), 1960. together with a radio-telegraph technician, the FCC Inspector joined Appellant in the vessel's radio room, and requested that Appellant produce the radio log for inspection. Appellant refused to do so, stating essentially that he was going ashore, that the log was not available at that time, that the FCC Inspector and the technician should leave the vessel, and that he had not requested an inspection. Thereafter, upon being advised of Appellant's initial refusal, the Master ordered Appellant to produce the radio log for inspection. Appellant again refused and shortly after that departed the vessel. Subsequently, it was determined that no radio log could be located aboard the vessel.

BASIS OF APPEAL

This appeal has been taken from the decision and order of the Administrative Law Judge. Appellant essentially contends that the Administrative Law Judge should have believed his explanatory statement made near the conclusion of his hearing.

APPEARANCE: *Pro se*.

OPINION

The Administrative Law Judge, in his initial decision, stated specifically that he had rejected Appellant's exculpatory statement, finding it incredible. No reason exists for disturbing this determination of the Administrative Law Judge. Hence, because the case against appellant was proved by substantial evidence of a reliable and probative character, I affirm.

ORDER

The order of the Administrative Law Judge, dated at Baltimore, Maryland, on 26 July 1978, is AFFIRMED.

R.H. SCARBOROUGH
VICE ADMIRAL, U. S. COAST GUARD
VICE COMMANDANT

Signed at Washington, D.C., this 27th day of March 1980.

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***** END OF DECISION NO. 2197 *****

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