

IN THE MATTER OF LICENSE NO. 378551 AND DOCUMENT NO. Z-785170
AND ALL OTHER LICENSES
Issued to: Walton B. HINDS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1910

Walton B. HINDS

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 9 September 1971, an Administrative Law Judge of the United States Coast Guard at San Diego, California, suspended Appellant's license for six months on 12 months' probation upon finding him guilty of violation of a statute. The specifications found proved alleges that while serving as a master on board the United States fishing vessel CRUSADER under authority of the license above captioned, on or about 2 July 1971 to 25 August 1971, Appellant did wrongfully employ or engage to perform the duties of mate aboard the CRUSADER, a fishing vessel of 217 gross tons, a person or persons not licensed to perform such duties in violation of 46 U.S.C. 224a (R.S. 4438a) for a fishing voyage on the high seas which began at San Diego, California, and terminated upon sinking of the vessel.

At the hearing, Appellant was represented by nonprofessional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence documentary evidence and testimony of witnesses.

In defense, Appellant offered in evidence his own testimony and that of other witnesses.

At the end of the hearing, the Administrative Law Judge rendered a decision in which he concluded that the charge and specification had been proved. He then entered an order suspending all licenses, issued to Appellant for a period of six months on 12 months' probation.

The entire decision was served on 10 September 1971. Appeal was perfected on 9 December 1971.

FINDINGS OF FACT

On all dates in question, Appellant was serving as a master on board the fishing vessel CRUSADER and acting under authority of his license while the ship was on a voyage on the high seas within the meaning of 46 U.S.C. 224a.

Although Appellant was master of the vessel for purposes of the vessel documentation laws and for purposes of R.S. 4438a (46 U.S.C. 224a), which requires all masters and mates aboard vessels subject to this statute to be licensed for the purpose of such service he abdicated, by private agreement with the vessel's owner, all other powers and duties of master. The "fish captain" had complete authority to dictate who would be in the crew and assigned all persons to their duties.

Appellant was treated as a member of the crew and was ordered to duties as the fish captain wished. Appellant primarily performed navigational duties, as called upon by the fish captain to direct the vessel from one place to another. When he wasn't navigating, either the fish captain or some other person appointed by the fish captain was in charge of the navigation of the CRUSADER. Appellant was regarded as a "paper master" by all persons engaged in the operation of the vessel.

Neither the fish captain nor any persons in the crew, other than Appellant held a license of any kind issued by the Coast Guard. When Appellant was not on watch, persons not qualified under 46 U.S.C. 224a served as mate or mates aboard the CRUSADER for the voyage in question.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Although various letters and a brief specify numerous grounds for appeal they are reducible to the argument that there is no substantial evidence to support the findings and that the entire proceedings were held contrary to law. I will deal with specifics in my opinion.

APPEARANCE: John W. Dillinder, CDR USN (Ret.)

OPINION

I

Appellant's primary argument, that the Administrative Law Judge's findings are not based on substantial evidence, is predicated upon undisputed testimony that Appellant was told he had no voice in the hiring of crewmembers and had to accept anyone hired by the "fish captain." Thus, he did not wrongfully or willfully engage or employ any person in the crew of the vessel, but only obeyed orders of the "fish captain." Further, the entire crew was already on board when he reported to the vessel.

At the hearing, evidence was introduced to show that the Appellant was the master for purposes of the documentation laws and master for the purposes of fulfilling the requirement of 46 U.S.C. 224a requiring a master to be licensed. This arrangement is often referred to as a "paper master" arrangement wherein the *de jure* master meets statutory requirements while the fish captain is the *de facto* master, the "true master" for all other purposes. See *Commandant v. Goulart*, NTSB Order EM-25, adopted August 1, 1972 and Commandant's Appeal Decision No. [1858](#). Appellant also testified that he had discussed the requirement of a licensed mate with the owner on prior occasions and was led to

believe the Coast Guard had sanctioned such an operation.

The position of master is clearly established in the body of the law of the sea and statutes of the U.S. Appellant recorded himself as master of the CRUSADER both on the vessels's document and on the crew list which he filed for the voyage. He was in fact the master required by law to be aboard the vessel. If he chose by private agreement to abdicate his authority, so carefully guarded by the courts of the United States, he did so at the peril of loss or suspension of his license. As master, Appellant employed as mate or mates on the vessel persons not qualified for such service under 46 U.S.C. 224a. I find that as a matter of law Appellant "engaged or employed" them and therefore willfully violated the statuted.

II

Appellant also argues that a violation of 46 U.S.C. 224a provides a penalty of \$100 and not for suspension and revocation of his license.

The mandatory provisions in Title 46 U.S. Code, section 239, govern suspension and revocation proceedings for all laws or regulations containing reference to Title 52 of the Revised Statutes, one of which is 46 U.S.C. 224a. Further, section 224a, in itself, provides for suspension and revocation proceedings of licenses of masters of all vessels to which the Officer's Competency Certificate Convention 1936 applies. The regulations at 46 CFR 137.01-30 promulgated pursuant to the statutory authority provide for instituting suspension and revocation proceedings against any holder of a license issued by the Coast Guard for willfully violating any of the provisions of Title 52 of the Revised Statutes.

III

Appellant urges that the CRUSADER was not required by statute to have licensed mates because it was really less than 200 gross tons due to removal of a bait tank.

There is no evidence that the vessel was or could have been less than 200 gross tons. The vessel's Certificate of Enrollment

and License, which was admitted into evidence without objection, clearly states the vessel's gross tonnage as 217.94 gross tons. Further, testimony of Appellant's witness, a U.S. Coast Guard Admeasurement Officer, clearly indicated that the vessel admeasured over 200 gross tons when she sank and that the owners had never accomplished the intended alterations to bring her below 200 gross tons.

IV

Appellant argues that 46 U.S.C. 223 is controlling as to licensed officers and that this statute specifically exempts fishing vessels.

The intent of this statute is to provide adequate manning and division of hours for licensed officers on vessels subject to inspection. Fishing vessels are exempt from the manning requirements of this statute because they are not subject to inspection by the Coast Guard. However, section 223 is not in issue in this case. The violation involves section 224a which specifically requires licensed officers on all vessels 200 gross tons and over, whether or not subject to inspection by the Coast Guard.

V

Appellant claims that the Coast Guard is estopped from enforcing 46 U.S.C. 224a because of a failure to give notice that it was, in fact, strictly enforcing same.

I find no basis for any considerations under the doctrine of equitable estoppel. Simply stated, an administrative agency is not required to give notice that it is enforcing an Act of Congress, an act of which it is charged with enforcement.

VI

Appellant indicates that the hearing was unfair, in that the rules of evidence were dispensed with and that the Administrative Law Judge was prejudiced, overbearing, and exceedingly rude.

A very close review of the record indicates that quite the opposite is true. There was substantial evidence of a reliable and probative character to support the findings as required by regulation. All of the evidentiary material was admitted into evidence without objection and there was ample cross-examination of the government's witness. There was ample opportunity to present witnesses for the Appellant and there was even a reasonable delay granted to permit obtaining same. The transcript of the proceedings does not indicate a prejudicial attitude and is rather clear that the Administrative Law Judge used considerable forbearance and patience. I do agree that the Administrative Law Judge in his zeal to explain the statutes involved did offer explanations beyond those normally required; however, none of it was prejudicial nor did it deny Appellant due process.

ORDER

The order of the Administrative Law Judge dated at San Diego, California, on 9 September 1971, is AFFIRMED.

C.R. BENDER
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D.C., this 16th day of March 1973.

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