

IN THE MATTER OF LICENSE NO. 376194 AND ALL OTHER SEAMAN'S
DOCUMENTS

Issued to: Jens S. BUHELT

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1818

Jens S. BUHELT

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 14 March 1969, an Examiner of the United States Coast Guard at Boston, Massachusetts, suspended Appellant's seaman's documents for six months plus three months on eighteen months' probation upon finding him guilty of negligence and violation of a statute. The specifications found proved allege that while serving as master on board F/V CAMBRIDGE under authority of the license above captioned on or about 25 September 1968, Appellant:

- (1) under the Charge of Violation of a Statute allowed the vessel to be navigated without a licensed officer on watch as required by 46 U.S.C. 224a (R.S. 4438A), and
- (2) under the Charge of Negligence,
 - (i) failed to navigate with care, contributing to a grounding in Salem, Mass., and
 - (ii) negligently navigated while under tow, contributing to a collision with CG-30430.

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

The Investigating Officer introduced in evidence the testimony of one witness who had served aboard CAMBRIDGE as a mate, two witnesses who served aboard CG-30430, and the Public Works Officer of the U.S.C.G. Salem Air Station.

In defense, Appellant offered in evidence the testimony of an official of the company which owns CAMBRIDGE and that of three persons who had to do with an overhaul of the vessel.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charges and specifications had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of six months plus three months on eighteen months' probation.

The entire decision was served on 17 March 1969. Appeal was timely filed on 19 March 1969, and was perfected on 17 July 1969.

FINDINGS OF FACT

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

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner.

Because of the disposition to be made of this case the bases of appeal need not be spelled out. The issue discussed below was not raised by Appellant.

APPEARANCE: Kneeland Splane and Kydd, Boston, Massachusetts, by Richard B. Kydd, Esquire.

OPINION

I

To satisfy jurisdictional requirements in this case, generally, it must be shown that CAMBRIDGE was operated on the "high seas" as defined in 46 U.S.C. 224a or that Appellant was serving aboard CAMBRIDGE by virtue of his possession of a license being a condition of employment. To find jurisdiction as to the alleged failure to have licensed officers on watch it must be found specifically that the vessel failed to have licensed officers on watch when the vessel was on the "high seas" as defined in the same section.

II

The evidence shows that the vessel left from Portland, Maine, bound for Boston, Massachusetts, and grounded in Salem harbor.

It is possible for a vessel to make a voyage from Portland, Maine, to Boston, Massachusetts, without going on the "high seas" as defined in 46 U.S.C. 224a.

There is evidence that CAMBRIDGE "made" PORTLAND LIGHTSHIP, but no evidence that it went to seaward beyond it. There is testimony that when the witness Maloney, an unlicensed person, took the watch as mate at 0100 the vessel "was probably to the westward of Moon Island". It is extremely probable, under the circumstances, that the transcript is in error at this point (R-59) and that "Boon Island" was referred to. If the vessel were west of Boon Island it was not on the "high seas" as defined at 46 U.S.C. 224a at that time.

There was no showing on the record that the vessel went on the "high seas" as defined in 46 U.S.C. 224a. There was thus no showing that 46 U.S.C. 224a applied so as to require the use of licensed officers.

III

This omission goes even further than to the single specification as to the use of unlicensed persons "on the high seas".

Since there was no showing that Appellant's possession of a license was required as a condition of employment, there is no showing on this record that Appellant was serving under authority of his license. If the vessel had been shown to have been operating on the "high seas", service "under authority" would be established for all purposes of this case. Alternatively, if there were a showing that Appellant's owner employed him because he was licensed, jurisdiction would attach. In either event proof of the specification alleging violation of 46 U.S.C. 224a would still require proof that the vessel went on the "high seas" at the time an unlicensed person was on watch.

CONCLUSION

Since the issue was not raised by Appellant at the hearing and the Examiner has had no opportunity to consider the matter, the case will be remanded to the Examiner with directions to reopen the record for further proceedings.

ORDER

The decision of the Examiner entered at Boston, Massachusetts, on 14 March 1969, is SET ASIDE, and the case is REMANDED to the Examiner for proceedings consistent with the Conclusion herein. If it is found appropriate, the Examiner may reinstate his initial decision with supplementary findings. Appellant will have the same rights to appeal from the new decision and order as he had to appeal from the one hereby set aside.

T. A. SARGENT
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C., this 10th day of September 1970.

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