

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 387 428
Issued to: John B. ZOLEZZI, Jr.

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2044

John B. ZOLEZZI, Jr.

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 and decision dated 27 June 1975, an Administrative Law Judge of the United States Coast Guard at Long Beach, California, suspended Appellant's license and all other merchant mariner's documents for three months on 12 months' probation upon finding him guilty of the charge of "violation of a statute." The specification found proved alleges that while serving as Master on board the F/V MARY ANTOINETTE, O/N 523763, a vessel of over 200 gross tons, under authority of the license above captioned, from 15 April 1975 to 16 May 1975, Appellant did willfully employ or engage to perform the duties of mate aboard that vessel, a person or persons not licensed to perform such duties in violation of 46 U.S.C. 224a, for a fishing voyage on the high seas which began in Acajutla, El Salvador on 15 April 1975 and terminated on 16 May 1975 in San Diego, California.

At commencement of the hearing, Appellant elected to act as his own counsel and entered a plea of not guilty to the charge and specification. After the Investigating Officer had completed his opening statement and submitted certain documents into evidence, Appellant changed his plea to guilty. Thereupon, the Investigating Officer rested his case and the Appellant gave a statement in explanation and rested his case.

After both sides had waived arguments and proposed written findings and conclusions, the Judge rendered an oral decision in which he concluded that the charge and specification had been proved by plea. He then served a written order on Appellant, suspending all documents issued to Appellant, for a period of three months on 12 months' probation.

The entire decision and order was served on 30 June 1975. Appeal was timely filed on 21 July 1975.

FINDINGS OF FACT

Appellant, under his above captioned license, served as Master aboard the M/V MARY ANTOINETTE, a fishing vessel of 863 gross tons, during a voyage on the high seas, which commenced in San Diego, California, on 12 March 1975 and terminated in San Diego on 16 May

1975.

On 16 April 1975, the Appellant ported the vessel in Acajutla, El Salvador to acquire medical attention for the vessel's licensed mate, Tony Myrseth, who was suffering from a heart attack. The licensed mate was removed from the vessel and hospitalized.

On the same day, approximately eight hours after arrival, Appellant, without making any attempt to obtain the services of another licensed mate, ordered the vessel to depart for the high seas. The vessel completed this voyage at San Diego on 16 May 1975.

During the period of 15 April 1975 to 16 May 1975, Appellant was the only licensed deck officer aboard and an unlicensed person or persons performed the duties of mate during that period.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Since there is no dispute with respect to the facts of the matter, Appellant contends as a matter of law that:

- (1) the decision of this U. S. District Court in United States v. Silva, S.D. Cal. (1967), 272 F. Supp. 46, takes away any grounds for proceeding against Appellant's license for violation of 46 U.S.C. 224a; and
- (2) the decision of the Court of Appeals in Bugler v. Benson, CA 9 (1920), 262 F. 929, rules out the possibility of action under R.S. 4450 for violation of 46 U.S.C. 224a.

APPEARANCE: Appellant, pro se.

OPINION

I

United States v. Silva, S.D. Cal. (1967), 272 F. Supp. 46, is distinguished from the present case. The Silva case dealt with the imposition of a monetary penalty for violation of 46 U.S.C. 224a, while the instant case deals with suspension of a Master's license. The decision in Silva is predicted upon a limited holding that 46 CFR 157.30-10 is invalid to the extent that it sets manning standards for certain uninspected vessels because 46 U.S.C. 223, authorizing the setting of manning standards aboard certain vessels, does not apply to fishing vessels. The precedential holding of the Silva case is difficult to formulate due to its attendant confusion. The penalty in that case was assessed for violation of the regulation, not for violation of a statute, and that was the fact situation presented to the court. Dismissal was warranted on the grounds that violation of 46 CFR 157.30-10 cannot be the basis for assessment of any civil penalty. Thus, the court never reached the Coast Guard's fundamental position that violation of 46 U.S.C. 224a itself, and not some regulation, subjects a person to a civil penalty.

46 CFR 157.30-10 is not involved in the instant case. Insofar as the court appears to rely on 46 U.S.C. 223 as applicable and somehow controlling, I must reject its dictum. (See Decisions on Appeal No. 1979 and 2033).

II

Appellant urges that 46 U.S.C. 223 is a more specific statute than 46 U.S.C 224a and therefore controls in this case. This is incorrect. Section 224a is applicable and controlling in this case.

Section 223 applies only to inspected vessels. M/V MARY ANTOINETTE is not an inspected vessel. Assuming that M/V MAY ANTOINETTE were an inspected vessel, the fact that a minimum number of officers, plus others judged desirable for the safe navigation of the vessel, could not be entered in its certificate of inspection, would not exclude it from the requirement that any persons employed as deck officers be licensed pursuant to section 224a and the Convention it implements.

III

Appellant relies on Bugler v. Benson, Ca 9 (1920), 262 Fed. 929 to support his contention that a violation of 46 U.S.C. 224a is not a "violation of a statute" as contemplated by R.S. 4450 (46 U.S.C. 239). Appellant states that this decision holds that a violation of R.S. 4442 (46 U.S.C. 214) was not grounds for suspension or revocation of a license, even though the section is part of Title 52, Revised Statutes. I will not re-analyze Bulger v. Benson here. (See Decision on Appeal No. 1574). It will suffice to say that reference to a "violation" of R.S. 4442 in the notice of hearing and charges in that case was surplusage. Further, R.S. 4442 is not a substantive statute. It cannot be "Violated," since all it does is state the conditions under which a pilot's license may be issued and suspended or revoked.

The statute violated by Appellant in this case was a substantive one and a part of Title 52, Revised Statutes. Thus, the violation was properly stated as a basis for action under the charge, "Violation of a Statute." 46 CFR 137.05-20(b), now 46 CFR 5.02-20(b).

ORDER

The order of the Administrative Law Judge dated at Long Beach, California, on 27 June 1975, is AFFIRMED.

E. L. PERRY
Vice Admiral, U. S. Coast Guard

Vice Commandant

Signed at Washington, D. C., this 22nd day of Dec. 1975.

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