

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 417230
Issued to: Louis E. MILLER Z-573051

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2094

Louis E. MILLER

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 8 May, 1975, an Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana, suspended Appellant's license for three months upon finding him guilty of negligence. The specifications found proved alleged that while serving as pilot on board the Norwegian SS BAUNE under authority of the license above captioned, on or about 18 January 1974, Appellant committed several faults which led to a collision at Mile 6 AHP, Mississippi River, with SS KEY TRADER.

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

A voluminous record of testimony, statements and exhibits was compiled by the parties.

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 suspending Appellant's license for a period of three months.

The entire decision and order was served on 12 May 1975. Appeal was timely filed, and perfected on 27 December 1976.

FINDINGS OF FACT

Because of the action to be taken, findings of fact are not necessary to this decision.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that there was no jurisdiction to suspend Appellant's license.

APPEARANCE: Terriberry, Carroll, Yancey and Farrell, New Orleans, LA., by Alfred M. Farrell, Jr., Esq.

OPINION

The charges in this case were laid under R.S.4442 (46 U.S.C. 214) and involved the service of Appellant aboard the Norwegian SS BAUNE in the Mississippi River. A motion to dismiss the charges for lack of jurisdiction was denied by the Administrative Law Judge, who held that the cited statute authorized action to suspend or revoke Appellant's license for negligent acts committed while serving as a Louisiana pilot. The Administrative Law Judge also noted, in his memorandum of law dated 15 January 1975, that the facts might also establish jurisdiction under R.S. 4450 (46 U.S.C. 239) if it were to be found that the holding of a Federal license was a "condition of employment" as perceived in Decision on Appeal No. 1842.

The holding in No. 1842 has been modified by Soriano v United States, CA 9 1974, 494 F. 2nd 681, so that the "condition of employment" test set out in 46 CFR 5.01-35 does not apply to the case of a State pilot acting pursuant to State authority under 46 U.S.C. 211.

The "independent authority" status of R.S. 4442 has been denied in Dietze v Siler, DC ED La. (1976), 414 F. Supp. 1105. A negligence or misconduct action to suspend or revoke must come within the scope of R.S. 4450.

If this were all, it would be necessary to dismiss the charges without more consideration. However in his written decision entered about two weeks after the close of proceedings, the Administrative Law Judge announced a different basis for finding jurisdiction under R.S. 4450. As pertinent here, he found that Appellant's State commission was limited to service only as far up the River as Pilottown, Louisiana, and that the service above this point to the place of collision was not under authority of the State of Louisiana. If this is so, there is the possibility, as he ultimately found, that there is an application of the "condition of employment" rule unaffected by the State considerations in the "Soriano" decision.

Since this theory was not broached at the hearing I do not believe that adequate notice had been given to brief the issue. The question is primarily one of law and law questions can be resolved at the appellant level.

In anticipation of the possibility of a remand of the action for the purpose of obtaining a factual basis for determining the

validity of the Administrative Law Judge's conclusion, Appellant has, in connection with his appeal, satisfactorily demonstrated that beyond the literal reading of the Louisiana statutes the service of Appellant at the time and place material to the issue here was service authorized by his commission under the Louisiana law. Since the State is here functioning under the authority conferred by Congress in R.S. 4235 (46 U.S.C. 211) the service in question is identical, in theory and in fact, with the total pilotage service to SS BAUNE furnished by Appellant.

The distinction made by the Administrative Law Judge fails, and Appellant was at all times herein serving under his State commission. Both by reason of the fact that Louisiana does not in any case require the holding of a Federal license by its Bar Pilots and by reason, additionally, of the holding in the "Soriano" case cited above, there was a lack of jurisdiction over Appellant's Federal license in this case.

ORDER

The order of the Administrative Law Judge dated at New Orleans, Louisiana, on 8 May 1975, is VACATED, the findings are SET ASIDE, and the charges are DISMISSED.

E. L. PERRY
VICE ADMIRAL, U. S. COAST GUARD
ACTING COMMANDANT

Signed at Washington, D. C., this 7th day of Feb. 1977.

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