

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 16622
Issued to: Ronald Lee BENSON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2104

Ronald Lee BENSON

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 12 November 1976, an Administrative Law Judge of the United States Coast Guard at St. Louis, Missouri suspended Appellant's license for 2 months on 6 months' probation upon finding him guilty of misconduct. The specifications found proved alleges that while serving as a crewmember on board the M/V Thomas C.L. NUGENT while holding license above captioned, on or about 27 August 1976, Appellant wrongfully discharged oily bilge slops into the navigable waters of the United States, to wit, the Ohio River near Mile 572.0, causing a sheen upon the water's surface, a violation of the Federal Water Pollution Control Act, Public Law 92-500 (86 Stat. 816).

At the hearing, Appellant was represented by professional counsel and entered a plea of guilty to the charge and specification.

No evidence was introduced.

At the end of the hearing, 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 2 months on 6 months' probation.

The entire decision and order was served on 12 November 1976. Appeal was timely filed on 7 December 1976.

FINDINGS OF FACT

On 27 August 1976, Appellant was serving as a crewmember on board the M/V THOMAS C.L. NUGENT, and the holder of an uninspected towing vessel license, on that date Appellant discharged oily bilge slops from the vessel into the Ohio River near Mile 572.0, causing a sheen upon the waters' surface, violation of the Federal Water Pollution Control Act, Public Law 92-500 (86 Stat 816).

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that the Coast Guard lacked jurisdiction over the offense stated in the complaint, and, in the alternative, that the Coast Guard lacks jurisdiction to impose a suspension of Appellant's license for the acts complained of. Appellant also argues that the Administrative Law Judge erred in failing to find *Soriano v. United States, etal*, 494 F. 2d (9th Cir. 1974) as controlling. The latter contentions need not be reached, however, in view of the first basis of appeal discussed *infra*.

APPEARANCE: Grover C. Potts, Wyatt, Grafton and Sloss,
Louisville, Kentucky

OPINION

In the instant case, Appellant was charged with misconduct for allowing a bilge discharge while holding a valid Coast Guard operators license. 46 CFR 5.01-30 provides for the institution of

suspension and revocation proceedings in misconduct case where it appears that the holder of a license, certificate or document issued by the Coast Guard has committed an act of misconduct while *acting under the authority of his license, certificate or documents*(emphasis added). Alleged misconduct while not so acting will not supply the subject matter jurisdiction for suspension proceedings.

46 CFR 5.01-35 provides that:

"A person employed in the service of a vessel is considered to be acting under the authority of a license, certificate or document held by him either when the holding of such license, certificate or document is required by law or regulation or is required in fact as a condition of employment." Hence, it is insufficient to allege misconduct while holding a license, unless that license can be shown to be required by law, regulations or in fact as a condition of employment. Such a showing was not made in this case. Appellant was acting as a crewmember at the time of citation by the Coast Guard (R-7). There is no indication on the record that his employment was conditioned upon the possession of an operator's license. Jurisdiction in the matter was not established.

CONCLUSION

Since jurisdiction in the case has not been established, the findings of the Administrative Law Judge must be reversed and his order vacated.

ORDER

The order of the Administrative Law Judge dated at St. Louis, Missouri, on 12 November 1976, is VACATED.

O.W. SILVER
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D.C., this 20th day of May 1977.

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