



WHO'S IN COMMAND?

The "Paper Captain" and the elements of 46 U.S.C § 12131 violations

Written By CDR Mark Hammond

This article briefly discusses violations of section 12131 of title 46 of the United States Code, often referred to as "paper captain" violations. This law requires that a documented vessel be placed under the command of a U.S. citizen.

The Hearing Officer must find *prima facie* (Latin for "at first sight" or "on first appearance") evidence that a violation occurred in order to proceed with a preliminary assessment and adjudication of a civil penalty case. In other words, the evidence in the case file is, on its face or at first appearance, sufficient to support each element of the charge/charges. As with any case, a clear understanding of the essential elements of the particular statutory or regulatory cite alleged to have been violated will help in determining what constitutes sufficient supporting evidence.

Consider this hypothetical scenario: A documented commercial fishing vessel is boarded at sea by the Coast Guard. During the boarding, the person observed at the helm operating the vessel is identified as a non-U.S. citizen/permanent resident. Another person on board (a U.S. citizen) identifies himself to the Coast Guard boarding team as the vessel's "captain." He also presents a crew list which lists him as the "captain." Looks good on paper, right?

During the course of the boarding, however, the vessel's "captain" displays little knowledge of the operation of the vessel and the location of important documents and required safety equipment on board. Additionally, he appears to rely exclusively on the experienced "deckhand" (the person previously observed at the helm)

to answer the boarding team's questions as well as operate the vessel. In contrast to the clueless "captain," the experienced "deckhand" demonstrates a thorough working knowledge of all aspects of the vessel's operation, and other crewmen aboard the vessel tell the boarding team that he "gives all the orders." The boarding team notes that the "deckhand" maintains his personal effects in the captain's quarters while the "captain" shares a berthing space with the rest of the crew. The Boarding team concludes that the vessel is actually under the command of the non-U.S. citizen and, consequently, the vessel owner is charged under 46 U.S.C. § 12131 for failing to comply with the U.S. citizen in command requirement.

According to 46 U.S.C. § 12131(a), a documented vessel may be placed under the command only of a citizen of the United States (*exceptions to this requirement are documented vessels with only a recreational endorsement, and unmanned barges operating outside of the territorial waters of the United States*). Obviously, in order for a violation to occur under this cite, the vessel involved must be a documented vessel and the person in command of the vessel must not be a U.S. citizen. Evidence of vessel documentation and crew citizenship status is fairly straightforward.

In the typical "paper captain" case described in the scenario above, however, presenting persuasive evidence of who was in command of the vessel can sometimes present a bit of a challenge.

We often see cases where vessel owners, in an apparent attempt to circumvent the requirements of 46 U.S.C. § 12131, establish different positions on board their vessels in writing such as a "fish captain," or they'll have a "master" and a "captain" on board, each with separate and distinct duties.

For example, in some cases the U.S. citizen "master" will be designated in writing as having overall responsibility for the general care of vessel and cargo, but the non-U.S. citizen "captain" or "fish captain" will be the designated person having responsibility for the operation and safe navigation of the vessel, and the care/conduct of the crew. The documentation laws contained in 46 U.S.C. Chapter 121 and 46 C.F.R. Part 67 generally require that U.S. documented

vessels must be owned and under the control of U.S. citizens. Among other things, control refers to the right to direct the operation of the vessel. Actual control as a matter of fact is more important than a person's title. Accordingly, the law refers to the person in command of the vessel and not to the "master" or "captain." If command of a vessel is split between two or more persons and one of the persons in command is not a U.S. citizen, then the vessel is not only under the command of a U.S. citizen.

Whether the evidence is submitted by the Coast Guard in support of a violation, or by a charged party to show that there was no violation, what will be most persuasive to a Hearing Officer is detailed documentation of crew responsibilities, knowledge and experience, as well as witness statements from other crewmembers regarding who controls the operation of the vessel. That kind of evidence is likely to carry more weight than a bare assertion that a U.S. citizen was the "master" or "captain."