

**RULING 5 OF 2016 OF THE MARITIME DISCIPLINARY COURT OF THE
NETHERLANDS IN CASE NUMBER 2016.V1 – CFL PROSPECT**

As petitioned by:

the Minister of Infrastructure and the Environment,
seated in The Hague,

petitioner,

authorised representative: M. Schipper,
inspector at the Human Environment and Transport Inspectorate
(ILT)/Shipping in Rotterdam,

versus

V.R. G.,

**the person concerned,
did not appear.**

1. The course of the proceedings

On 15 February 2016 the Disciplinary court received from M. Schipper, Inspector ILT/Shipping in Rotterdam a written petition for a disciplinary hearing against the person concerned as the second officer of the Dutch seagoing vessel CFL Prospect. Two appendices were attached to the petition.

The Disciplinary Court sent the person concerned a letter in the English language (both by registered and ordinary mail) dated 23 May 2016 informing him of the petition, enclosing a translation of the petition and its appendices in English. The person concerned was informed of his right to file a statement of defence

On 7 July 2016 a statement of defence was received (by email) from the person concerned. The inspector has not filed a reply to this.



The presiding judge stipulated that the oral hearing of the case would be held at 11.00 hours on 30 September 2016 at the offices of the Disciplinary Court in Amsterdam. The inspector and the person concerned – in the English language, both by ordinary and registered mail – were summoned to appear at the hearing of the Disciplinary Court.

The court hearing was held on 30 September 2016. The aforementioned inspector appeared at the hearing. The person concerned did not appear. Leave was granted to proceed in default of appearance by the person concerned.

2. The petition

In summarised form, the following forms the basis for the petition.

On 25 January 2015 at around 01:02 hours a collision took place about 29 nautical miles north of the German island of Rügen between the Dutch seagoing vessel CFL Prospect and the tanker sailing under the Swiss flag Monte Rosa. At that time the person concerned was the second officer and the officer of the watch on the CFL Prospect. The person concerned is charged with not doing enough to prevent the collision and thus acting contrary to the care expected of a good seaman in respect of the persons on board, the vessel, the cargo, the environment and shipping, as further described in the following regulations and provisions:

- Section 4.4 of the Dutch Seafarers Act;
- Chapter VIII, Section A–VIII/2, Part 3 en Part 4–1 van the Seafarers' Training, Certification and Watchkeeping Code (STCW);
- Section 1 of the Decree declaring the International Regulations for the Prevention of Collisions at Sea (Colregs) to be applicable, 1972, in conjunction with:
- Regulation 2 and Regulation 5 of the Convention on International Provisions for the prevention of collisions at sea, 1972 (Treaty Series 1974, 51).



3. The position of the person concerned

In summarised form, the person concerned has pleaded as follows in his statement of defence: (i) that the inspector's petition is inadmissible and that the Disciplinary Court lacks jurisdiction because the person concerned does not have Dutch nationality and did not have a Dutch navigation licence at the time of the collision; (ii) that the demand formulated in the inspector's petition is too severe in the light of the penalty imposed in other cases; (iii) that although it may be true that he failed to notice the Monte Rosa, this was caused by the faulty operation of the ECDIS monitor, which makes it difficult to see which label belongs to which ship; (iv) that he attempted to avoid the collision by turning hard to starboard and (v) that he has learned enough from the incident and has also lost his job.

4. Assessment of the petition

A. The petition contains the following information regarding the collision:

At 01:05 hours ship's time (UTC + 1) on 25 January 2015 the Dutch cargo vessel CFL Prospect with a cargo of 6015 MT of copper cathodes was heading from Pori in Finland to Antwerp in Belgium when she was struck on the starboard side by the tanker sailing under the Swiss flag Monte Rosa, which had approached the CFL Prospect astern. At that time the person concerned was the second officer and the officer of the watch on the CFL Prospect. Both vessels were sailing to the north of Rügen towards the Kiel Canal. The collision, which took place in calm and clear weather conditions, was reported to the inspectorate by CFL Shipmanagement B.V. on 26 January 2015.

B. The following information is derived from the captain's statement (appendices 5 and 15 to the petition).

On 24 January 2015 the captain was on watch from 20.00 to 24.00 hours. During his watch the S-band radar was on; the X-band radar was set to



standby. The radar screen in use is located in the middle of the bridge by the captain's chair. The CFL Prospect also has an ECDIS (Electronic Chart Display Information System). According to the captain a downside of this system is that the ship's names are poorly legible and it is difficult to see which AIS signal belongs to which ship; to follow a ship properly it is necessary to keep clicking on it. When handing over the watch at 24.00 hours he drew the notice of the person concerned to the fact that there were several approaching vessels, all but a few of which would be overtaking/passing the CFL Prospect; these were the seagoing vessel Calypso and the Monte Rosa, which were at that time still a good distance astern of the CFL Prospect (port side and straight astern respectively). After retiring at about 00.30 hours he was awoken by a loud noise at approximately 01.00 hours. Arriving back on the bridge at approx. 01.03 hours he saw that the bow of a tanker had collided with the starboard side of the CFL Prospect, roughly at the level of the middle of hold 2. He was unable to see the name of the tanker, but the person concerned told him that it was the Calypso. When he sought contact with the Calypso – which succeeded once Lyngby Radio had made a request to use channel 64 instead of channel 16 – he was told that it was not the Calypso that had collided with the CFL Calypso but the Monte Rosa. The Monte Rosa denied this at first, but later confirmed the collision, claiming however that the Monte Rosa had only sustained a few scratches to its bow. The CFL Prospect had however sustained serious damage, but no leaks. The person concerned informed the captain that he had tried in vain on several occasions to contact the Calypso, which was approaching from astern, using VHF channel 16, and that he had seen the Calypso take evasive action to port prior to the collision. Shortly after that the Monte Rosa collided with the CFL Prospect, just after the person concerned had turned hard to starboard. The captain believes that he saw that the rudder of the CFL Prospect was (indeed) turned fully to starboard and that the engine was full ahead. Prior to the collision the CFL Prospect was sailing at a speed of 9.6 knots on a course of 251 degrees.



C. The following information is attested to in the statements of the two crew members who had lookout duty before and at the time of the collision (appendices 16 and 17 of the petition).

The crew member with lookout duty on the bridge at 22:00 hours on 24 January 2015 to 01:00 hours on 25 January 2015 has stated that he heard the captain say to the second officer during the handover of the watch that there were several ships behind the CFL Prospect, some of which would be passing the CFL Prospect. During his lookout duty this lookout was watching the ECDIS screen on the port side of the bridge and also, occasionally, the radar screen in the middle of the bridge. He did not see a vessel on the starboard side astern of the CFL Prospect. At the end of his watch he drew the attention of the following lookout to the ship that was about to pass the CFL Prospect on the port side. The lookout whose watch began at 01:00 hours on 25 January 2015 has stated that he had seen the Calypso on the port side of the CFL Prospect but not the Monte Rosa on the starboard side.

D. The following information is attested to in the written statement of the person concerned and his statement of defence.

This voyage was his first on board the CFL Prospect. He had been taken on by Global Crew Shipping B.V. He did however have approximately three years' experience as an officer of the watch. On 25 January 2015 his watch began at 00:00 hours. When handing over the watch the captain had indeed told him that there were several ships astern of the CFL Prospect, some of which would be passing the CFL Prospect. He judged that a ship called Calypso would pass the CFL Prospect first, on the port side. The radar screen in the middle of the bridge was switched on; the radar screen on the port side was set to standby. There was an ECDIS screen in the middle of the bridge and on the port side. The lookout spent most of the time on the port side of the CFL Prospect. Visibility was good (approximately 10 NM) and so was the weather (westerly wind force 3 Bft). The CFL Prospect was sailing at a speed between 9 and 10 knots and a course of 250 degrees. At around 01:00 hours the



person concerned saw on the radar that there was a ship sailing very close to the CFL Prospect. When he looked over his shoulder he saw a ship at a distance of 10–15 metres from the CFL Prospect. He responded by switch to manual steering and attempted to avoid a collision by turning hard to starboard, after which the CFL Prospect was struck on the starboard side by the Monte Rosa, which ship he had not seen before. He attributes this and, accordingly, the collision, to the poor functioning of the EDCIS monitor. He describes the display as ‘faulty, difficult to read and confusing’.

E. AIS datasheets are attached to the petition, showing information including the courses of the CFL Prospect, the Calypso and the Monte Rosa. This shows that the Monte Rosa, when approaching the CFL Prospect, was initially sailing virtually straight astern of the CFL Prospect (slightly to port) and then slightly more to the starboard side of the CFL Prospect.

F. A letter of the Minister of Infrastructure and the Environment to Global Crew Shipping B.V. dated 9 December 2014 and attached as appendix 22 to the petition shows that on that date, in anticipation of the issue of a navigation licence that had been applied for, a CRA (Certificate of Receipt of Application) was issued for the person concerned. This document made it possible for the person concerned to work on board a Dutch vessel for a maximum of 3 (three) months.

G. Regulation 5 of the Convention on International Provisions for the prevention of collisions at sea, 1972 (Treaty Series 1974.51) stipulates that all vessels must at all times keep a proper lookout by looking and listening and by making use of all available resources appropriate to the prevailing circumstances and conditions in order to fully assess the situation and the danger of collision.

Chapter VIII (Standards regarding watchkeeping), Section A–VIII/2 (Watchkeeping arrangements and principles to be observed) – Part 3 (Watchkeeping principles in general) and Part 4–1 (Principles to be observed



in keeping a navigational watch) – of the STCW Code also provides instructions for the proper keeping of a lookout.

5. The ruling of the Disciplinary Court

A. Since the person concerned was acting as second officer on board a Dutch vessel – and is therefore a ship's officer within the meaning of the Seafarers Act – the Disciplinary Court has jurisdiction under that Act to rule on the acts and/or omissions of the person concerned in that capacity.

B. The findings based on the content of the documents referred to above are as follows.

At around 01.02 hours ship's time on 25 January 2015 the tanker sailing under the Swiss flag Monte Rosa collided with the Dutch seagoing vessel CFL Prospect. This collision took place approximately 29 NM to the north of the German island of Rügen. The Monte Rosa was approaching the CFL Prospect on an approaching course and was therefore obliged to take evasive action; it was only by taking evasive action that it could pass the slower-moving CFL Prospect without colliding with this vessel. However it must be assumed that the CFL Prospect had not been noticed on board the Monte Rosa. That is the direct cause of the collision. The reason why the CFL Prospect went unnoticed is not known; visibility was good and the other weather conditions were favourable as well.

Although the cause of the collision can therefore be attributed first and foremost to the Monte Rosa, the person concerned, who was the officer of the watch on board the CFL Prospect at the time of the collision, can also be held accountable for the fact that he did not do enough to avoid the collision. His claim that the ECDIS monitor was not functioning properly does not offer sufficient excuse in this case. Fully and correctly assessing the situation of the CFL Prospect amounted to more than merely viewing the ECDIS display. This is all the more so given the fact that the person concerned had been



informed during the handover of the watch of the presence of various ships approaching astern of the CFL Prospect and should have carefully monitored their positions. With that aim in mind he should also have instructed the lookout to look carefully all around, i.e. not only at the screen, and also to include the starboard side. It now appears that only the vessel approaching on the port side – the Calypso – was being monitored, so that the vessel approaching virtually straight astern of the CFL Prospect, the Monte Rosa, was not fully in the picture. That is the cause of the situation in which the person concerned, possibly shocked by the presence of the Calypso on the port side, turned hard to starboard whilst the Monte Rosa was at that time (on a collision course) to starboard of the CFL Prospect; this manoeuvre was not sufficient to avoid a collision.

It is therefore clear that a good lookout was not being kept within the meaning of 2 and 4G in this case. As a result of this the person concerned did not have a clear view of the approaching ships in the vicinity of the CFL Prospect and was not in command of the situation as a whole. He thus deprived himself of the chance of noticing the danger of a collision and taking measures to prevent it. He has thus acted – culpably – contrary to the standards of good seamanship, an important part of which entails keeping a proper lookout.

C. The thus established negligent conduct of the person concerned constitutes a violation of the regulation of Section 55a of the Dutch Seafarers Act in conjunction with Section 4.4 of that Act: acting or failing to act on board as a ship's officer contrary to the duty of care expected of a good seaman in relation to the persons on board, the vessel, the cargo, the environment and shipping.

6. The disciplinary measure

The Disciplinary Court judges that the person concerned has seriously failed in his duty as a ship's officer. The person concerned did not act as befits a

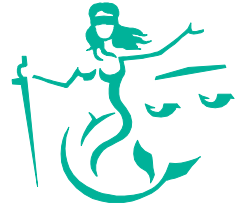


responsible officer of the watch, which meant that the safety of the persons on board, the vessel, its cargo, and the environment were jeopardised. In view of the seriousness of the evident conduct a suspension of the navigation licence for the duration mentioned below is appropriate. In determining the suspension allowance has been made in the favour of the person concerned for the personal circumstances raised by the person concerned and the fact that the damage caused by the collision was limited (to material damage sustained by the two vessels). The Disciplinary Court therefore sees good cause to stipulate that the suspension of the navigation licence will be imposed partially conditionally. The Disciplinary Court is thus acting in accordance with the inspector's demand. The position taken by the person concerned that the demand is too severe in proportion to the lighter penalty imposed in similar cases is rejected since it has not been sufficiently demonstrated that this disciplinary case is comparable with others in which lighter penalties were imposed.

7. The decision

The Disciplinary Court:

- declares the objections against the person concerned as stated under point 5 to be well-founded;
- suspends the navigation licence of the person concerned for a period of 4 (four) months;
- stipulates that of this suspension, a period of 2 (two) months will not be imposed unless the Disciplinary Court stipulates otherwise in a subsequent ruling based on the fact that the person concerned has once again behaved contrary to his duty of care as a good seaman in respect of the persons on board, the vessel, its cargo, the environment or shipping prior to the end of a probationary period, which the Disciplinary Court hereby sets at two years;
- stipulates that the probationary period of the suspension shall commence on the date six weeks following the date of this ruling being forwarded.



Duly delivered by J.M. van der Klooster, deputy presiding judge, E.R. Ballieux and C.R. Tromp, members, in the presence of E.H.G. Kleingeld, LL.M., as secretary and pronounced by A.N. van Zelm van Eldik in public session on 09 November 2016.

J.M. van der Klooster
deputy presiding judge

E.G.H. Kleingeld, LL.M
secretary

A.N. van Zelm van Eldik
presiding judge

E.G.H. Kleingeld, LL.M
secretary

An appeal against this ruling can be lodged within six weeks of the date of forwarding with the Dutch Trade and Industry Appeals Tribunal ('College van Beroep voor het Bedrijfsleven'), Prins Clauslaan 60, 2595 AJ The Hague, P.O. Box 20021, 2500 EA The Hague, the Netherlands.