

**RULING OF THE MARITIME DISCIPLINARY COURT OF THE  
NETHERLANDS  
OF 12 JULY 2017 (NO. 8 OF 2017)  
IN CASE 2016.V10–STELLA POLARIS UK 22**

As petitioned by:

the Minister of Infrastructure and the Environment in The Hague,  
**petitioner,**  
authorised representative: M. Schipper,  
ILT/Shipping inspector,

versus

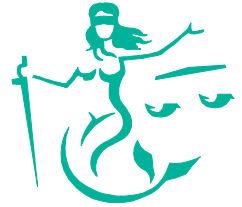
P. R.,  
**the person concerned.**

**1. The course of the proceedings**

On 22 December 2016, the Maritime Disciplinary Court received a written petition for a disciplinary hearing of the case against the person concerned as the Skipper of the Dutch sea fishing vessel Stella Polaris UK 22 from M. Schipper, inspector ILT/Shipping. Eleven appendices were attached to the petition.

The Disciplinary Court has notified the person concerned of the petition by letter (sent both by registered and ordinary mail), enclosing a copy of the petition with appendices, and has informed the person concerned of the right of appeal.

On 20 February 2017 a statement of defence was received from the person concerned.



The presiding judge stipulated that the oral hearing of the case would be held at 14.00 hours on 16 June 2017 at the offices of the Disciplinary Court in Amsterdam.

The Human Environment and Transport Inspectorate and the person concerned were summoned – the latter both by ordinary and registered mail – to appear at the hearing of the Disciplinary Court.

The court hearing was held on 16 June 2017. M. Schipper, inspector at the ILT/Shipping appeared at the hearing for the petitioner. The person concerned also appeared at the hearing.

## **2. The petition**

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

On Wednesday 9 November 2016 ILT/Shipping – Shipping Enforcement was informed by telephone that the Dutch sea fishing vessel Stella Polaris UK 22 had collided with the shore on arrival in IJmuiden on Thursday 3 November 2016. According to the report, it was not initially thought that any damage had been sustained, but it turned out when the vessel was about to go to sea during the night of Sunday 6 Monday 7 November that the forepeak and the net hold were full of water.

Efforts were made to land the vessel in IJmuiden, but this was not successful. The vessel finally set out for Stellendam on Wednesday 9 November 2016. Shortly after arriving there the vessel was dry-docked and the person concerned informed the ILT of this.

During the voyage from IJmuiden to Stellendam the person concerned was the skipper of the Stella Polaris UK 22.

The first charge against the person concerned is that he undertook a voyage with the vessel despite having reason to believe that it was no longer safe to assume that the vessel was seaworthy. It seems that he failed to make allowance for the fact that the vessel could have been seriously damaged in



various places. This damage would not necessarily have led to new leakages, but could have been so critical that new leakages may have been caused by the movement of the vessel. Nor was it possible to determine the impact on the structural integrity without a comprehensive inspection.

The second charge against the person concerned is that he failed to inform the ILT of the damage as soon as possible, thus acting contrary to Article 17.1 of the Fishing Vessels Decree. The vessel was thus withdrawn from the competent authority and the authorities were prevented from intervening. The person concerned thus acted contrary to the principles of good seamanship within the meaning 55a of the Dutch Seafarer's Act.

### **3. The position of the person concerned**

Rendered in summarised and concise form – the person concerned has advanced the following arguments in his statement of defence.

The skipper who was on the bridge at the time of the accident (the collision of the UK 22 with the shore) stated that he grazed a steel sheet pile whilst moving slowly. The roughly finished sheet pile ripped open the forepeak and the net hold. The damage to the vessel was caused only by the top of the sheet pile, which was protruding 30 cm straight above the water. Sheet piles do not usually have protruding parts on the outside.

There was amply sufficiently deep water for the UK 22 immediately off the shore.

There was no obvious damage below the waterline.

The construction drawings of the vessel – various cross sections and the side view showing the fish hold, the net hold and the forepeak – show where the waterline ran, where the sheet pile struck the vessel, where the tear was located and where there was a dent. The actual tear in the net hold stopped about one metre in front of the bulkhead between the fish hold and the net hold.



The vessel was not holed below the waterline. Once we were in the harbour we were able to pump out the forepeak and the net hold, which did not fill up again afterwards. It was not until a bow wave formed and/or there was a swell that water entered both compartments.

The net hold is a small compartment of 9 m<sup>2</sup>, the bottom of which is 55 cm under the waterline. If the net hold completely filled up with water, the floating capacity would decrease by 9 m<sup>2</sup> at the most.

The forepeak is even smaller. This compartment is always filled with water. We use this as a trim tank to trim the forward part of the vessel.

When we found out on the Monday evening in question that the vessel was holed and had returned to our mooring in IJmuiden, my intention was to inform the ILT as soon as we had dry-docked the vessel in IJmuiden. But that's not how it went. First of all, another ship was to be dry-docked. We would be able to dry-dock the vessel on Monday evening. However it became clear to me on Tuesday that this was being put back for another two days.

On Monday I carried out an inspection of the outside of the vessel together with the wharf master with the aid of a punt. On Tuesday, to dispel all possible doubt, I put on my diving suit and inspected the underwater hull for damage. As far as I could see, there was no further damage under the waterline.

I do not feel that I acted irresponsibly. I did my best to establish whether there was any damage other than what was visible above the waterline. The flooded net hold was so small that it had no effect on the vessel or safety, and the forepeak was usually filled with water anyway. I knew what had caused the damage and that there was unlikely to be any further damage under the waterline. The small dent in the fish hold (above the waterline) did not give me any cause for doubt about safety either.

The weather was very good during the voyage from IJmuiden to Stellendam, which was entirely in keeping with the forecasts. The chart enclosed with the



petition showing the route taken by the UK 22 shows that if something had gone wrong we could have considered a forced grounding.

I did not feel it was even necessary for me to report this damage to the ILT. Article 17 of the Fishing Vessels Decree does not state when damage is to be reported. There is a grey area in which the skipper has responsibility. I am aware that the accident had to be reported. I did report it, albeit late, but it was almost four days before I was aware of the damage myself. I would certainly inform the ILT sooner if something like this happened again.

#### **4. The assessment of the petition**

A. An email enclosed with the petition (appendix 3 to the petition, p. 15) dated Wednesday 9 November 2016, 13:08 hours, from the person concerned as skipper/owner of the Stella Polaris UK 22 to Port State Control contains the following information.

This is a concise statement concerning the damage to the fishing vessel UK 22.

The reserve skipper, J.S.M. R., entered the port of IJmuiden last Thursday morning. On reaching the new yacht harbour, the vessel turned suddenly hard to starboard. The skipper tried to go hard astern but was unable to avoid hitting the shore.

At first it seemed that there was no damage, but when we were about to put to sea during the night of Sunday/Monday, it turned out that there was water in the net hold and the forepeak.

The original plan was to take the vessel to the slips at Van Laar for inspection and repairs, but that was postponed twice, which is why I contacted Maaskant Stellendam, where we were able to put the vessel straight into the dock.

We departed from IJmuiden at 2.00 AM on Wednesday morning and arrived in Stellendam at around 10.00 AM.



When the ship was docked it could clearly be seen that apart from a tear, there was also a long, fairly deep dent in the vessel, running up to the fish hold. The torn part was therefore in the net hold and the forepeak. I believe that the damage was caused by a burnt-out relay in the steering mechanism. The skipper steered the vessel manually.

B. An email from the person concerned to M. Schipper – ILT (appendix 4 to the petition, p. 21 /22) of 28 November 2016, 13:14 hours) contains the following information.

The damage was not reported at first because the crew believed that only the vessel's paintwork had been damaged. The damage was initially reported to the ILT on 9 November, when the extent of the damage had become apparent. I reported this by telephone first and then by email. I do not know who I spoke to on the telephone because the young lady who took the call was hard to understand.

As far as I know, it was not prohibited to make the voyage to Stellendam. The vessel was a bit deep to the fore, but the vessel is much deeper with a full fish hold. There was no leakage in the fish hold. Nor were there any free water surfaces because both leaking compartments were completely full up with seawater. The weather during the trip from IJmuiden to Stellendam was very good, which was in keeping with the weather forecast.

C. An email (appendix 4 to the petition, p. 20) of 28 November 2016, 14:56 hours) from the person concerned to M. Shipper – ILT, contains information including the following.

On arrival in Stellendam the vessel was immediately taken out of the water. I called the fishery division of the ILT immediately after this. The young lady I spoke to asked me to describe the cause in an email, which I did about half an hour later.

D. At the hearing of 16 June 2017 – rendered in summarised and concise form – the following statement was made as a supplement to the statement of defence and the emails referred to above.



I was not on board the Stella Polaris when the collision took place on Thursday 3 November 2016 in IJmuiden. My son, J.S.M. R., was on board as skipper at the time.

It was not until the Sunday evening of 6 November 2016 that I heard about the collision. My son had not told me about it. We put out to sea at about 1.00 – 1.30 AM on the Monday morning of 7 November 2016. When we were between the jetties at IJmuiden somebody came to the bridge and reported that there was a leak. The bilge alarm sounded (the alarm of the net hold). We saw water rising in the net hold.

At that time we had travelled about one mile from our mooring. We immediately turned back and re-entered the harbour.

I inspected the damage to the vessel that Monday. There was a horizontal tear in the forepeak and the net hold, above the waterline. Further aft, following the tear, there was a dent. The tear ran into the dent, 30 cm above the waterline.

My son was back on board that Monday. My son told me that the ship had collided with a sheet pile. I went to look at the sheet pile in question together with my son. The top of this sheet pile was not finished but was sharp and rough. The sheet pile was protruding about 30 centimetres above the water. This corresponds to the position of the tear and the dent in the ship. It also corresponds to the tide at the time of the collision. My son told me this. I went around the ship (whilst it was moored) with the wharf master. I also put on a diving suit and inspected the underwater hull. Other than the tear and dent above the waterline, there was no other visible damage to the vessel.

We pumped out the net hold and the forepeak on Monday. No water came back in.

We had already unloaded fish in Thyborøn (Denmark). The fish hold was empty when my son entered the port of IJmuiden. That is how it stayed. All that was loaded was 15 tons of diesel, in the diesel tank under the fish hold. Despite that, the net hold did not flood in the harbour after we had pumped it out.



I have shown in the original drawings of the ship that I sent to the Disciplinary Court the positions of the tear and the dent, the waterline and the place where the sheet pile hit the ship.

My statement of defence gives 9m<sup>2</sup> as the size of the net hold, but I meant 9 m<sup>3</sup>. The forepeak is often full of water. The ship was slightly lower to the fore because of the water in the forecabin, but with a hold full of fish it is much lower.

The bulkhead behind the net hold to separate it from the fish hold was closed. A thick diesel pipe and a pump pipe run through it. The electricity cable from the net hold goes above via the deck. The bow thruster is underneath the net hold. The cables to this come from the deck. There is a light in the net hold, but it was broken. Water had got in and the fuse had blown. The electricity cable for this ran over the deck. This connection can also be turned off.

The steering mechanism runs on 24 volts. The hydraulic valves for this are not on the normal on-board power circuit. They have their own power supply. The anchor winch is hydraulic. We would be able to use this if necessary. The pump for emptying the holds in the forecabin is electric and also runs to the engine room. The pump pipeline goes through the bulkhead.

It is true that I did not immediately report the accident to the ILT. I knew that I had to report it, but I didn't feel that reporting it a couple of days later would make any difference. Not much could be seen while the ship was still in the water in IJmuiden. I was not worried that the ILT or the insurance company would tell me that I was not allowed to put to sea. I would inform the ILT sooner if a similar situation arose in the future.

The two damaged holds in the forecabin were empty when we set out on Wednesday. They filled up again during the voyage; I think this was caused by the bow wave. This makes no difference to the vessel's stability or floating





capacity, because they are very small holds. At that time the water was just under the hatch of these holds in the forecastle.

I do not feel that it was dangerous to put to sea in this condition. I had also put on a diving suit to check whether there was any damage to the underwater hull: there was not. I do not feel that I acted irresponsibly by putting to sea in good weather. I do not believe that the tear could have increased in size during the voyage.

No other damage was established at the shipyard in Stellendam. About six new trusses had to be fitted. This was done. There was no other damage.

E. The construction drawings of the vessel enclosed with the statement of defence of the person concerned show the horizontal tear and connected dent in the ship's hull, as well as the waterline and the place where the sheet pile was struck. The tear of about 1.5 m is at the level of the forepeak and the net hold and runs to about 1 m in front of the bulkhead between the net hold and the fish hold.

F. A list of AIS positions and a chart in which these positions have been drawn (appendices 6 and 7 to the petition, pp. 27/28) shows that on 9 November 2016 (between approx. 4.00 AM UTC + 1 and approx. 9.30 AM UTC + 1) the Stella Polaris was sailing from IJmuiden by sea to Stellendam and stayed under the coast at that time.

G. Pursuant to Section 4.1 of the Ships Act the captain (i.e. the person in command of a ship) is obliged, before undertaking a voyage (at sea) with his vessel, to ensure that the vessel is completely seaworthy and that all the relevant openings, both inside and out, are properly closed.

H. The first subsection of Section 17 of the Fishing Vessels Decree (Procedure in the event of damage) contains the following stipulation: If a vessel has sustained damage or something has occurred that gives rise to a suspicion that damage or a defect has come about and could affect the



safety of the vessel or the suitability or completeness of the life saving equipment or other equipment, the captain must inform the shipping inspectorate of this as soon as possible.

## **5. The ruling of the Disciplinary Court**

A. The content of the documents referred to above and the statement of the person concerned have led to the following conclusions being drawn in this case with an adequate measure of certainty.

On Thursday 3 November 2016 the Dutch fishing vessel Stella Polaris UK 22 collided with the shore in the port of IJmuiden. The person concerned was not on board at the time.

During the night of Sunday 5/Monday 6 November 2016 it was discovered that the net hold and the forepeak of the vessel were full of water. The person concerned was on board as the skipper at that time. An investigation revealed that there was a tear in the hull of the forecastle, followed by a dent. Without the damage being repaired and without this having been reported to the ILT, the ship put to sea from IJmuiden to Stellendam under the command of the person concerned on Wednesday 9 November 2016. On arrival there, the person concerned – for the first time around noon – contacted Port State Control/ILT and informed it of the damage and the leakage, first by telephone and then by email.

B. On Monday 6 November 2016 the person concerned carried out a further investigation into the damage to the vessel in IJmuiden.

There was a large horizontal tear of approximately 1.5 metres in the forecastle at the level of the forepeak and the net hold. The tear ended about 1 metre in front of the position of the bulkhead between the net hold and the fish hold. Following on from the tear, towards the stern, there was a deep dent, partly at the level of the fish hold. The tear and the dent were located about 30 cm above the waterline. Other than the tear and the dent, there was



no other visible damage in the ship's hull. The person concerned did not see any damage when he investigated the hull in a diving suit.

The visible damage could be explained by the collision on Thursday 3 November 2016, when the top of the vessel struck a sheet pile that was protruding from the water in the port of IJmuiden.

Once the net hold and the forepeak of the moored ship had been pumped out on Monday 6 November 2016, these holds did not fill up again.

It has not been demonstrated, and nor has a plausible case been made, that the collision caused any damage to the ship's structure other than the tear and the dent in the ship's hull above the waterline and some damaged trusses.

This is confirmed by the fact that no further damage was subsequently established at the shipyard in Stellendam.

C. The integrity of the ship's structure, especially that of the holds that were partly under the waterline and which provided the ship's floating capacity, was compromised by the damage. The person concerned was apparently aware that if the ship put back to sea, the big tear would cause the net hold and the forepeak to quickly (mostly) fill up with water again, as a result of the bow wave and the swell. Initially there was also a certain amount of free water surface, which would not improve the ship's stability.

However, the net hold and the forepeak were relatively small compartments: the net hold measuring approx. 9 m<sup>3</sup> and the forepeak even smaller. The Stella Polaris UK 22 is (according to public information) a cutter of 224 BRT, overall length 29.80 m, breadth 7.90 m and draught 6.25 m.

If the two compartments in question were full of water, there was an estimated 13 tons of extra weight. Fifteen tons of diesel had been loaded into a tank in the forecastle.

D. For the seaworthiness of the ship it was crucial that the bulkhead between the net hold and the fish hold did not fail. The construction drawing shows that this bulkhead was 7 mm thick and was fixed to a truss on the



sides (43). There are no concrete indications that there was a danger of the bulkhead failing.

There are a number of conduits in this bulkhead (fuel pipe, pump pipe), which are normally watertight. There is nothing to show that this was no longer the case following the collision in IJmuiden, and it can therefore be assumed that there was no danger of water entering the fish hold through these conduits.

Nor does the Disciplinary Court consider it plausible that the tear/dent would increase in size sailing, whether or not at sea.

It appears that the weather was calm on Wednesday 9 November 2016.

E. It can be assumed that it was not possible to use the automatic pilot, but the ship could be steered manually.

The electricity in the forecastle was cut off from that of the rest of the ship. It can therefore be assumed that there was no risk that short-circuiting might occur elsewhere on the ship owing to the damage to the forecastle.

The vital functions were apparently not in danger: the use of the propulsion, steering, and anchoring (by letting out the anchor chain). It appears that the ship was fully manoeuvrable using the manual controls. The bow thruster is not used when sailing at sea.

F. The Disciplinary Court concludes that it has not been plausibly demonstrated that from the viewpoint of seaworthiness and safety it was not safe to put to sea with the ship from IJmuiden to Stellendam on Wednesday 9 November 2019, especially since the vessel was sailing close to the coast in calm weather – in keeping with the weather forecasts – on a route with a duration of 5 – 6 hours.

Accordingly, it has not been demonstrated that making this voyage under the command of the person concerned was contrary to his obligations as a skipper by virtue of the principles of good seamanship in relation to the people on board, the ship, the environment and other shipping traffic. The first charge of the petitioner is therefore dismissed.



G. The Disciplinary Court does however see good cause to note that the person concerned should have had an emergency repair carried out in IJmuiden by fixing a plate to the tear and the dent, after which the ship could have made the voyage with an empty (dry) net hold and an empty forepeak.

H. The second charge is well-founded: This was a case in which the vessel had obviously sustained damage leading to a suspicion that this could affect the vessel's safety.

Pursuant to Article 17.1 of the Fishing Vessels Decree, the person concerned, as the skipper, was obliged to report this damage to the ILT as soon as possible. He had ample opportunity to do this whilst in the port of IJmuiden. It can be assumed that the person concerned deliberately acted contrary to this rule. This rule is not for nothing: once a report has been made the ILT is able to investigate the damage and the ship's seaworthiness before it puts back to sea. This concerns the primary importance of safety when sailing at sea, not least the safety of the people on board.

Violation of this rule therefore constitutes an act of the person concerned that was contrary to his obligations as the skipper according to the principles of good seamanship as provided for in Section 55a of the Dutch Seafarer's Act.

I. The foregoing does not however alter the fact that in this specific case it has not been demonstrated that the ship was unseaworthy for the voyage from IJmuiden to Stellendam. That circumstance did not in any way exempt the person concerned from complying with this rule. As the Disciplinary Court has found in previous rulings, it is not a matter for the individual skipper of a fishing vessel to decide when he keeps to the rules and when he does not.

## **6. The disciplinary measure**

The Disciplinary Court judges that the person concerned failed in his responsibilities as skipper as set out above.



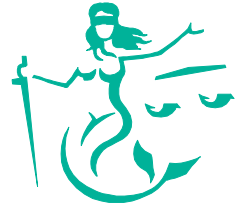
The person concerned has acknowledged at the hearing that he should have notified the ILT in IJmuiden and has stated that he would do this straight away if it happened again.

In view of this and the fact that this negligence on the part of the person concerned has led to a disciplinary hearing, the Disciplinary Court will confine itself to imposing a disciplinary measure in the form of a wholly conditional fine as stipulated below on the assumption that the person concerned has learned his lesson.

## **7. The decision**

The Disciplinary Court:

- dismisses the first charge against the person concerned;
- rules that the second charge against the person concerned is well-founded as indicated above under 5;
- orders the person concerned to pay a fine of € 2,500.00;
- stipulates that this fine 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 people 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 shall commence on the date six weeks following the date of this ruling being forwarded.



Duly delivered by A.N. van Zelm van Eldik, LL.M., presiding judge W. Toering and J.L. Schot, members, in the presence of D.P.M. Bos as secretary,

A.N. van Zelm van Eldik  
presiding judge

D.P.M. Bos  
secretary

and pronounced by the presiding judge in public session on 12 July 2017 in the presence of E.H.G. Kleingeld as secretary.

A.N. van Zelm van Eldik  
presiding judge

E.H.G. 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.