

**RULING OF THE MARITIME DISCIPLINARY COURT OF THE
NETHERLANDS 3 NOVEMBER 2017 (No. 10 OF 2017)
IN THE CASE 2017.V2 NOORDERLICHT**

As petitioned by:

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

versus

G.A. R.,
the person concerned.

1. The course of the proceedings

On 5 April 2017, the Maritime Disciplinary Court received a written petition for a disciplinary hearing of the case against the person concerned as the captain of the Dutch sailing passenger vessel from M. Schipper, senior inspector at the Human Environment and Transport Inspectorate (ILT/Shipping) in Zwijndrecht. Ten appendices were attached to the petition.

The Disciplinary Court sent the person concerned a letter dated 5 April 2017 (sent by both registered and ordinary mail) notifying him of the petition, and informing him of the opportunity to file a statement of defence.

On 27 April 2017 a statement of defence was received from the person concerned.

The inspector has not filed a reply to this.

The presiding judge stipulated that the oral hearing of the case will be held at 10.30 hours on 22 September 2017 at the offices of the Disciplinary Court in Amsterdam.



The inspector and the person concerned were summoned to appear at the hearing of the Disciplinary Court.

The hearing was held at the time referred to above. The aforementioned M. Schipper appeared on behalf of 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 Monday 19 September 2016 the ILT received notification from the Sjøfartsdirektoratet of the Norwegian Maritime Authority that the sail passenger vessel Noorderlicht had grounded on Sunday 18 September 2016 in Trygghamna in Svalbard, and continued its voyage after being refloated. According to the message the vessel had continued its voyage with the approval of the Dutch authorities (ILT), and confirmation of this was requested. However, ILT was not aware of the grounding at that time.

The person concerned was the captain and officer of the watch of the Noorderlicht at the time of the grounding and during the subsequent voyage.

The charges against the person concerned are that he (i) did not prevent the grounding (ii) continued the voyage (cruise) after the grounding, without thoroughly inspecting the outside of the underwater hull and (iii) did not inform ILT of the incident as soon as possible, and thus acted contrary to the following regulations:

- Seafarers Act, Sections 4.4 and 55a.
- Ships Decree 2004, Section 67.1.

3. The position of the person concerned

The person concerned has stated – in summarised form – that (i) he admits to the navigating error that led to the grounding (ii) he was fairly sure that



only the reinforced bottom of the keel had struck a reef, which is why – after repeated internal inspections of the ship, which did not reveal any leaks – he felt that he could continue the voyage safely and responsibly and (iii) that he was not aware that the ILT had to be informed and believed that the captain of the government vessel Polarsysssel, who he regarded as the authority and the representative of the governor of Svalbard, had approved the continuation of the voyage.

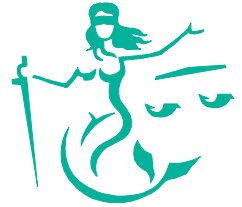
4. The assessment of the petition

A. The following information is based on the vessel information attached to the petition.

The sailing passenger vessel Noorderlicht is registered in the Netherlands in the register of shipping under number 5713 Z G 1989. It belonged to Ribro Boot B.V. The hull of the ship, which was built in 1910, was made of steel. The ship has a deckhouse, two steel masts with two aluminium topmasts and a hold for passengers. The ship's capacity is 250 kW. The gross tonnage is 140.

B.1 An email dated 19 September 2016 (15:20 hours) is attached to the petition, originating from the Sjøfartsdirektoratet and addressed to ribro@telfort.nl, with a cc to parties including the ILT, with the subject line: 'Ship accident (grounding) – Noorderlicht [...]', which contains: 'The Norwegian Maritime Authority has been trying to get in contact with the vessel master regarding the vessel grounding 18.09.2016 at Svalbard, Norway. Please contact the undersigned immediately. [...] The NMA was in contact with the vessel master, and according to him he had been advised by the Netherland Authority that they could continue their voyage (cruise). Please forward the confirmation from the Netherland Authority to the Norwegian Maritime Authority as soon as possible.'

B.2 Also enclosed with the petition was an email from the person concerned dated 20 September 2016 (12:57 hours) to the Classification Society/Register Holland B.V., in which he writes:



'On Sunday 18 September I grounded with the Noorderlicht. This took place at 21.30 hours. In view of the poor weather forecast, I sought contact with the Sysseleman (Spitsbergen authorities). By chance, the vessel Polarsyssele of those authorities was in my area, at a distance of 7 miles. They came to us and pulled us afloat with a small 'sloop'. This took place at 23.30 hours. This took about 1 minute, which was helped by the rising water. Following consultations he gave me permission to continue my voyage. [..].'

C. In an email of 24 September 2016 enclosed with the petition, addressed to the ILT, the person concerned wrote: '[..] When entering [..] there was a fairly strong wind outside the fjord (ZW 6–7 Bft) and waves of 2 to 3 metres. It was much calmer in Trygghamna and there were no longer any waves. For that reason I waited until I had entered the fjord before lowering the two sails that had been raised, the fore trysail and the jib. Unfortunately, lowering the fore trysail did not go smoothly because there was a lazyjack behind the spreader. Because I was concentrating so much on this, I failed to notice that the ship had changed course slightly, as a result of which we grounded in the shallows. [..] This took place between 21.30 and 21.45 hours, in twilight and rain. I first tried to free the ship myself, but because this was unsuccessful I decided to request assistance, certainly in view of the fact that the weather forecast was for strong wind that night (SW veering to W 8–9 Bft). [..] By chance it turned out that the vessel of the Governor of Svalbard, the Polarsyssele, was about 7 miles away from us, and they came to us to provide assistance. [..] At around 23.15 hours the Polarsyssele was about 1 cable length from us and they launched an aluminium sloop. This pulled the Noorderlicht free within about a minute. [..] The people on board consisted of: [six crew members and seventeen passengers.]'

D. An investigation file of the Svalbard authorities enclosed with the petition – sent in the name of the Governor of Svalbard to the inspector – contains information including the following:



(i) a report of the investigation findings of chief police inspector Bjørn Georg Pedersen (affiliated with the office of the Governor of Svalbard):
'On 18 September 2016 I was on duty for the Svalbard police with chief inspector Trond Olsen. At 21:35 hours [...] I received a telephone call from the Noorderlicht [...]. The person I spoke to told me that he was the captain of the ship and gave a name that I understood as R. [...] After [...] had asked some questions I understood that the ship had grounded in the fjord 'Trygghavna' in Svalbard. [...] I was informed that the vessel concerned was a passenger vessel with a total of 23 people on board. [...] R. said that the people were not in any danger at the time of the call because the ship was not making water. He was concerned and needed help because there was a strong wind in the area. [...] Immediately after speaking to R. [...] I made a call to the Rescue Coordination Centre for Northern Norway (Hovedredningscentralen for Nord Norge HRS) and explained what was happening. They immediately informed me that they would take charge of the situation from that point onwards. I was told that the governor's ship, the Polarsysse, happened to be in the area, leaving the Isfjord towards Trygghavna. [...] It was agreed with HRS that I and Olsen would immediately go to the governor's office. [...] Olsen contacted hotels in Longyearbyen to find out whether it was possible to accommodate about 20 people, and that proved to be the case. [...] HRS was informed that the governor would make two helicopters available if necessary. [...] At 23:08 hours HRS made a telephone call reporting that the Polarsysse would try to refloat the ship with a smaller boat. It was explained that the tide was rising and that the sea [...] was much calmer. [...] At 23:38 hours HRS reported that the ship had been refloated, after which it was to lie at anchor in Trygghavna without the passengers needing to be transferred [...]. No damage to the ship was found, but the ship [...] would have a further investigation carried out the next day in daylight. [...] On Monday 19 September 2016 I spoke to the manager [...] of the Norwegian Directorate General for Shipping [...]. He said that it was compulsory for the ship's bottom to be inspected before permission [...] was given to continue the voyage. [...] On [...] 19 September 2016 [...] I discovered that [...] the Noorderlicht had passed hotel 'Isfjord



Radio' [...] and that it appeared to be setting course for the south. I tried to contact the ship by telephone, but failed to make contact.

(ii) an official report of the interview with the person concerned on 30 September 2016 carried out by chief inspector Pedersen, with the assistance of an interpreter, containing information including the following:

'[Question] After the ship grounded, was the bottom of the ship inspected in any way?

[Answer] The chief officer inspected the inside of the ship after the ship had grounded. Last week the suspect had a diver who inspected the ship and also filmed under the ship. There was no damage to the inside of the ship. [...]

The suspect states that the captain of the Polarsyssel asked whether the suspect wanted to go back to Longyearbyen. [...] The suspect answered that he wanted to go to anchor in Trygghamna and then continue the voyage to Bellsund the next day. The person on board the Polarsyssel who he spoke to was happy with this. They spoke to each other on VHF and did not see each other.'

(iii) an official report on a telephone call conducted on 3 October 2016 between chief inspector Pedersen and captain Kent Solhaug of the ship Polarsyssel, containing information including the following:

'[...] Solhaug [...] said that he was the captain of [...] the Polarsyssel when they rendered assistance on 18 September 2016 in Trygghamna in Svalbard [...] to refloat the Noorderlicht [...] Solhaug said that only a fairly small boat of the Polarsyssel was used to refloat the Noorderlicht. This is because the tide was rising. [...] The Noorderlicht was refloated very quickly. Solhaug was in contact with the captain of the Noorderlicht by radio. In behalf of the [...] HRS Solhaug asked the captain what he intended to do once the ship had been refloated. The captain replied that he wanted to go to anchor and inspect the ship the next day. [He] said that if the investigation revealed that there was no damage to the ship they would continue their voyage the next day. When asked, Solhaug told me that he had not in any way given the captain of the Noorderlicht permission to continue the voyage the next day. Solhaug does not believe that he has the authority to give permission. Solhaug explained



this by saying that he acted as a liaison officer between HRS and the captain of the Noorderlicht. [..]’

E.1 Section 4.4 of the Dutch Seafarers Act stipulates:

‘The captain and ship’s officers shall act on board in a manner befitting a good seaman with respect to the people on board, the vessel, its cargo, the environment and shipping.’

E.2 Article 67.1 of the Ships Decree 2004 stipulates the following (as part of Chapter 5 on the captain's obligations):

‘If a ship has sustained damage or has been involved in an incident justifying a suspicion that damage or a defect may have been caused that could affect the ship's safety, the captain must inform the Head of the Shipping Inspectorate of this as soon as possible. If the damage or the incident affects the hull [..], the captain must also inform the authority provided for in Article 37. If the ship is situated in a port outside of the Kingdom, he must also inform the local authorities.’

F. The person concerned provided information including the following at the hearing of the Disciplinary Court, partly in addition to the statements set out above (in line with his statement of defence):

‘I have been sailing as a captain at Spitsbergen for 23 years, so I knew the area quite well. The Noorderlicht is an old sailing ship, built in 1910. She has been in service as a sailing ship since 1994. For this purpose I built up the ship from hull to sailing commercial vessel with my partner in 2.5 years. I was the manager/owner of the ship together with my partner, via our company Ribro Boot B.V., the shipping. That is no longer the case. We have since sold the shares in Ribro Boot B.V. and now work as contractors ashore. The prospective buyer of the ship was also on board the Noorderlicht when the accident took place.

On 18 September 2016, I decided owing the poor weather to go to Trygghamna, a fjord that provides more shelter, at least as far as waves are concerned (Trygghamna means: safe harbour). It was indeed much calmer in Trygghamna, but there was a very gusty wind. I had already been to Trygghamna at least a hundred times, and anchored close to the place where



I grounded. This time it went wrong because I made a stupid mistake. When I entered Trygghamna on 18 September 2016 the weather was poor: at least 30 knots. I eased both sails in Trygghamna. There was a problem with one of the sails, the fore trysail. The crew tried to fix this and I also went to it myself. The ship changed course while we were working on this. When I returned to the helm and looked at the screen/electronic chart I saw that we were in shallows. I tried to go hard astern, but we were too close to the bottom and grounded. We were travelling at a speed of about 3 knots when the ship grounded.

I first spent 10 minutes trying to refloat the ship with engine power. When this proved unsuccessful I asked the Norwegian Coastguard for assistance. This had to do with the safety of my passengers and bad weather forecast for the night to come. After refloating the ship I went to anchor around midnight. All holds and bilge alarms were monitored during the night, and also in the morning. There were no signs that the ship was making water. Since I knew how strongly built my ship was, and also that only the very strong keel beam had been on the rocks, I decided at the end of the morning on the next day to continue my voyage in a southerly direction. Of course, I was unable to check the outside bottom of the ship and was therefore not 100% sure that everything was all right. However, I had the fullest confidence in the ship. Also, I have grounded before and also sailed through ice. There is a keel beam with a thickness of 15 centimetres under the ship.

I did not know that I had to inform the ILT about the grounding, which is why I did not do so. A subsequent diver's inspection showed that the reinforcement under the keel had a few scratches, there was no significant damage whatsoever. The keel arch showed some damage during the annual inspection. There was a small dent in it, and a plate of 30 x 30 cm was used to cover it.

I did not say that the Dutch authorities had given me permission to continue my voyage. I said that I had received permission from the governor of Svalbard. A ship of that governor, the Polarsyssel, had assisted with pulling the ship free. The captain of that ship was therefore in the best position to decide whether it was safe to continue the voyage. I regarded him as being



the governor's representative. He did not in any way make it clear to me that I could not continue my voyage.

My conclusion is that I had every reason to regard the Noorderlicht as still being seaworthy after the grounding. This is confirmed by the underwater images made by the divers and the dock service carried out in December 2016. I certainly did not place the passengers in danger.'

5. The ruling of the Disciplinary Court

A. The findings based on the content of the documents referred to above and the statement of the person concerned are as follows.

At around 21.30 hours on 18 September 2016 the sailing passenger vessel Noorderlicht grounded in Trygghamna, a bay in the northwest of the Isfjord, which fjord is located on the west coast of the Norwegian island Spitsbergen, Svalbard. The person concerned was the ship's captain at the time. In addition to him, there were 22 people on board, including 17 passengers, who were taking a cruise on the Noorderlicht. The person concerned put into Trygghamna owing to the bad weather (strong wind); there was less wind in Trygghamna, and few or no waves. After entering the harbour the person concerned lowered the two raised sails, the fore trysail and jib. It did not prove possible to completely lower the fore trysail because the lines of the lazyjack got caught. For this reason the sail had to be raised again or the lazyjack had to be untied, neither of which was an easy task. The crew tried to solve this problem. The person concerned also went to help. For that purpose he left his position at the helm, without having somebody else take over the helm. By the time he returned to the helm the ship had changed course and had entered shallows. Going astern did not solve the problem: the ship had grounded with about two thirds of the hull resting on the seabed. It was not possible to refloat the ship with its own engine power. In view of the approaching bad weather (strong wind, southwest veering to west 8–9 Bft) and the presence of passengers on board, the person concerned decided to ask the Norwegian coastguard for assistance. The government vessel Polarsyssel, which was located about 7 miles away at the time of the call, came to provide assistance. The Noorderlicht was pulled free using a



small boat deployed by the Polarsysssel. This went fairly smoothly because the tide was rising. A crisis organisation had been set up ashore, and the necessary measures had been put in place to deploy helicopters and provide accommodation for the people to be collected from the vessel. It did not prove necessary to use these facilities because there was no need to collect anybody from the vessel. The Noorderlicht, which had not shown any signs of leakage at the time, went to anchor close the location of the grounding. The holds and bilge alarms were monitored during the night, and the following morning. Since the Noorderlicht was still not making any water, the person concerned continued the voyage. In this regard the person concerned stated that he knew how strong the ship was, which he had rebuilt with his partner in the nineteen-nineties and which dated back to 1902, and that he was virtually certain that only the reinforced keel beam had grounded on the rocks. In his opinion the Noorderlicht was still seaworthy after the grounding and the safety of the passengers was not at risk. To support this assertion he cites the diver's inspection carried out on 23 September 2016 and the annual maintenance service in December 2016, during which it was established that only minor damage had been sustained.

The person concerned admits that he failed to inform the ILT/Shipping of the incident. He offers as an excuse for this that he did not know that this was compulsory and that he believed that the captain of the Polarsysssel, who he regarded as being the representative of the governor of Svalbard, had no objection to his continuing the voyage. He did however report the incident to Register Holland on 20 September 2016.

B. It is an established fact that the person concerned can be held accountable for the grounding of the sailing passenger vessel Noorderlicht. He wrongly left his position at the helm without ascertaining that it was safe to do so at that time. He thus acted contrary to the principles of good seamanship. This is exacerbated by the fact that there were quite a lot of people on board, including 17 passengers, which makes this a serious error. The person concerned continued the voyage the following day, without the underwater hull first being properly inspected. No matter how certain the person concerned was – based on his knowledge of the ship's construction –



that the grounding had not affected the ship's seaworthiness, and despite the fact that this subsequently proved to be correct, his unilateral decision to continue the voyage with 22 other people on board without first having the outside of the underwater hull properly inspected is condemned in the strongest terms. As he acknowledged during the hearing, he could not be 100% sure of the condition of the ship's bottom after the grounding and being pulled free. He should have put safety first and either arranged an underwater inspection himself or asked the competent authorities how to proceed. On this point, too, he acted contrary to the principles of good seamanship. The same applies to his failure to comply with the obligation to notify; since there had been an incident that could give rise to doubts about whether damage or a defect had been caused to the underwater hull, which could have affected the safety of the vessel, the person concerned should have informed the Dutch shipping inspectorate; by failing to do so he frustrated the ability of the public authorities to intervene. The claim of the person concerned that he was not aware of the notification requirement is not an adequate excuse. It has not been plausibly demonstrated that the permission of the Norwegian authorities was obtained to continue the voyage without having the underwater hull inspected. Such permission (granted tacitly) could not reasonably be inferred from the claim of the person concerned that the captain of the assisting vessel, the Polarsysssel, had not protested against the intention to continue the voyage. The person concerned had no reason to regard this captain as a decision-making authority in this matter. The person concerned should at least have verified this, in which case it may be presumed that the captain of the Polarsysssel would have referred him to the HRS, or at least have said that it was not his decision to make.

C. It must be concluded that the acts and omissions of the person concerned constitute a violation of the regulation of Section 55a of the Dutch Seafarers act in conjunction with Section 4.4 of that Act as set out above. The failure to correctly comply with the duty to provide information qualifies as a violation of Section 67.1 of the Ships Decree 2004 as cited above. Both violations are culpable.



6. The disciplinary measure

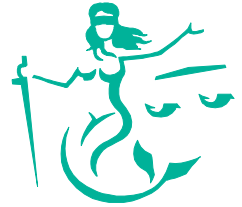
The Disciplinary Court judges that the person concerned failed in his responsibilities as captain. This applies first and foremost to the – in the words of the person concerned – stupid mistake that resulted in the Noorderlicht running aground and also to the decision to continue the voyage without having the underwater hull thoroughly inspected after the ship had been refloated and the non-compliance with the obligation to notify. On these points the person concerned did not act in a manner befitting a responsible captain/officer of the watch, which meant that the safety of the crew, the vessel, its cargo, and the environment were jeopardised. Especially in view of the presence of a large number of people on board, including passengers, the person concerned could reasonably be required to comply strictly with these regulations.

In view of the seriousness of the evident behaviours a suspension of the navigation licence for a period as demanded by the inspector is in itself appropriate. However, this will be departed from in the favour of the person concerned. The following circumstances have played a role in this regard: (i) the person concerned has not had any previous convictions under disciplinary or criminal law for marine law violations; (ii) the person concerned has acknowledged that he acted wrongly and has learned from what happened; (iii) the person concerned is not currently sailing and (iv) the adverse effects of the grounding were relatively limited. Taking the above into account, a partly unconditional suspension for the duration set out below is judged to be appropriate.

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 3 (three) 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 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 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, R.J. Gutteling and D. Roest, members, in the presence of D.P.M. Bos as deputy secretary

J.M. van der Klooster
president

D.P.M. Bos
secretary

and pronounced by J.M. van der Klooster, LL.M., in public session on 3 November 2017 in the presence of E.H.G. Kleingeld as secretary.

J.M. van der Klooster
president

E.H.G. Kleingeld
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.