

**RULING OF THE MARITIME DISCIPLINARY COURT OF THE  
NETHERLANDS  
OF 15 NOVEMBER 2017 (NO. 11 OF 2017)  
IN THE CASE 2017.V3 – HEKLA**

As petitioned by:

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

versus

C.R. v.d. V.,

**the person concerned.**

lawyer: O. Yesildag.

**1. The course of the proceedings**

On 12 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 seagoing vessel Hekla from M. Schipper, inspector ILT/Shipping. Ten 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 7 June 2017 a statement of defence was received from the lawyer of the person concerned.

The presiding judge stipulated that the oral hearing of the case would be held at 11.00 hours on 20 October 2017 at the offices of the Disciplinary Court in Amsterdam.



The Human Environment and Transport Inspectorate and the person concerned and his lawyer 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 20 October 2017. M. Schipper, inspector at the ILT/Shipping appeared at the hearing for the petitioner. The person concerned appeared, represented by his lawyer.

## **2. The petition**

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

According to a report received, the Dutch seagoing vessel Hekla grounded in the approach to Kolding in Denmark on 16 March 2016 at approximately 21.00 hours BT.

The person concerned was the ship's captain and officer of the watch at the time.

The grounding was caused directly by the under keel clearance (UKC) being insufficient and reduced in relation to the width of the waterway and the speed of the vessel.

The person is accused of having failed to take sufficient account of the possibility of an additional squat effect caused by the reduced UKC in relation to the speed and draught of the vessel, and thus having acted contrary to the standard of good seamanship as provided for in Section 55a of the Dutch Seafarers Act.

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

In his statement of defence, the person concerned stated – in summarised and concise form – that he had not acted culpably and that he denies that he failed to take account of the principles of good seamanship. The grounding was caused by phenomenon of 'squat'. The depth of the water at the location and the ship's draught caused suction, which pulled the ship to starboard, as a result of which it grounded. The person concerned had already reduced



speed sufficiently in the channel to 4.5 knots. If the speed had been further reduced, the ability to steer the ship could have been jeopardised. The person concerned is of the opinion that he took sufficient account of the squat effect by sufficiently lowering the ship's speed.

The person concerned took proper action following the grounding.

The person concerned has no previous convictions.

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

A. The statement of the person concerned dated 15 March 2016 (appendix 8, page 18), which is attached to the petition, contains information, rendered in concise form, including the following.

At 21.00 hours on 15 March 2016 in the approach – without a pilot – to the Kolding Fjord I ran aground when steering towards the channel. The ship's speed was 4.5 knots at the time. I had sufficiently reduced speed when steering towards the channel. The draught was 5.6 m forward and 5.35 m aft. The water depth of the channel was 6.8 m. Suction (squat) was caused by the water depth and our draught. This moved the ship to starboard and caused me to ground.

The mate had come to the bridge as a lookout beforehand, just before we passed Fredericia.

Visibility was very good, the wind was NE 2, the sea was very calm and the current was 0.4 knots with the ship.

The rudder and engine manoeuvres following the grounding were unsuccessful. The tanks were gauged; they were empty. There was no oil in the water. We checked the ship's draught all around.

After running aground I sought contact with the owner, M. L.

B. An accident report dated 20 March 2016 (appendix 7, pages 16/17), which is attached to the petition, contains information, rendered in concise form, including the following.

On 15 March 2016, following the grounding of the Hekla, following consultation between the ship and the office and the Danish coastguard, and in view of the good weather and sea conditions, it was decided that there was



no immediate threat to the ship, the crew, or the environment and that the ship could remain where it had grounded.

A tugboat arrived at the Hekla on 18 March 2016. Once the tugboat had sprayed away mud for two hours in order to clear a path, the Hekla was pulled free, after which the ship continued its voyage to the port of Kolding. The ship was inspected on 20 March 2016; no damage was found.

The holding of the ship by the Danish authorities was lifted.

The captain was familiar with the waterway and the narrowly dredged channel. However, this was the first time after the ship's draught had been increased to 5.40 m.

The grounding was probably caused by the failure to take account of this increased draught. The ship approached the channel at a speed that was too fast for the current draught and the available depth of water. As a result of the squat effect the ship turned to starboard and grounded between the two green buoys.

C. Information including the following is shown in the ECDIS screen prints (pages 19/20) as attached to the petition.

The second screen print (a detailed map) from 16 March 2016 at 9:36 hours shows the position where the Hekla was grounded in the electronic chart of the navigation area in question. That position was between the second and third green buoys on the starboard side of the navigation channel in the Kolding Fjord, ahead of the Hekla's direction of travel. That position was at the line of 6 m depth shown in the chart.

This screen print also showed the route between waypoint 037 and waypoint 038 with a dashed line. The ship was positioned to starboard of this line. At waypoint 038 the ship is said to have had to make a sharp change of course to starboard in order to enter a fairly narrow channel to the port of Kolding.

The route taken by the ship is not shown in the screen prints.



D. At the hearing of 20 October 2017, rendered in summarised and concise form, the person concerned made the following statement:  
The grounding of the Hekla took place at about 21.00 hours on 15 March 2016.

I was the captain and had been sailing on that ship for eight years. The Hekla's measurements are 2.281 BRT, length 88.97, width 11.80. The permitted draught of the ship under the summer deadweight was 5.40 m. This draught had been increased from 5.05 to 5.40 m shortly before the incident. This was my first voyage with that increased draught. The owners of the ship are Messrs. V. and L.

I was very familiar with the route to the port of Kolding. I had been there more than ten times before, also in the hours of darkness. It is not compulsory to use a pilot on that route. Since I was sufficiently familiar with the area, there was no reason to call in the assistance of a pilot.

We had arrived with the ship from IJmuiden, where we had take rolls of steel on board. The draught was measured after loading: 5.60 m fore and 5.35 m aft. The ship was therefore slightly bow-heavy, but that did not make the ship harder for me to steer.

The water in the Kolding Fjord would be slightly fresher than the water in the port of IJmuiden. That would have caused the ship to sink slightly more – I estimate about 10 cm.

I made a voyage plan before department. I always do that. There was a hard copy list of waypoints and the courses to be steered. I had entered the entire route in the ECDIS device on the bridge, also with track and waypoints. The draught in the channel of the Kolding Fjord at the position of the grounding was 6.80 m. I had taken that depth from the pilot I had consulted. I had also asked the agent in IJmuiden about that depth.

On the evening of 15 March 2016 I was on watch on the bridge. I was steering the ship manually. I had the ECDIS in front of me, showing the chart in which the route was plotted and where the buoys were situated. At the



time of the grounding I was looking at the detailed chart as shown in the second screen print in the file (p. 20). I was also facing a radar device set to a range of 0.5 miles. I could see the buoys marked on the radar. The buoys did not have lights, but they did have radar reflectors. I had green buoys to the starboard side. I also looked outside whilst steering.

There was an echo sounder on the bridge next to me. The echo sounder alarm was switched on, set as standard to a depth of 1.00 m under the keel. The conditions were excellent: it was dark but visibility was very good, there was hardly any wind or current.

I did not find any difficult waters there. I had however asked the mate to keep lookout. He had joined me on the bridge at Fredericia, at the beginning of the Kolding Fjord.

The detailed chart shows the planned route in a dashed line, which is the route I had plotted. The route was over the middle of the channel.

I had passed waypoint 037 and was heading for waypoint 038. My intention was to remain roughly in the middle of the channel. That is what I usually do. I believe that the width of the channel in the area of the grounding was between 30 and 40 m.

There were three green buoys on my starboard side. The line showing the water depth of 6 m was shown on the detailed chart, more or less along those three buoys. The figure 6 was shown alongside the line. I see here a coloured-in image of that chart. It shows the shallower water to the northwest behind the 6-metre line in a dark blue colour.

Past the third green buoy and at waypoint 038 I had to turn to starboard to enter a narrower channel.

I usually sail there along the dashed line on the chart, in the middle; that is the deepest part of the channel. I then call up the other ships, but at that time there was no other shipping, no incoming vessels and no approaching vessels in that part of the channel between waypoints 037 and 038.

I was aware of the danger of squat phenomena, which cause the ship to sink deeper if there is a limited depth of water under the keel. I know that the



danger becomes greater as the ship's speed increases. In view of this, I had reduced speed to 4.5 knots a good way before reaching waypoint 037. In that part of the channel I steered a course of 230° between waypoints 037 and 038.

In my voyage preparation I had not carried out a calculation to approximate the extra lowering of the ship owing to the squat effect. I do not know how to make such a calculation. I do not know the formulas needed for this purpose and nor do I know what the Hekla's block-coefficient is. I reduced speed by feel.

At a given point I realised that the ship was suddenly being pulled to starboard. This was caused by the suction. After that I grounded with the bows between the second and third green buoys, with the bows over the six-metre line. This happened very quickly. The ship was pulled to starboard and immediately grounded. I had no time to decrease speed further or to manoeuvre the ship. When the bows of the ship were pulled to starboard we had just passed the second buoy on our starboard side, at a diagonal distance of about ten metres.

I am not aware of the phenomenon of the bank effect, which occurs when sailing in shallows or along a quay.

I am not sure that the file tells the whole story.

It is not true that I mistakenly turned too soon to starboard, immediately after passing the second green buoy. I did not change course to starboard before the grounding. I didn't get that far. The ship was pulled by suction to starboard. There was nothing I could do about it.

The bows of the ship were pulled 10 m to starboard by suction. I sailed the ship properly and as planned. I did not make an incorrect manoeuvre. Nothing else happened.

I sailed past the point of the grounding again at a later date. Nothing went wrong. The ship was however stern-heavy that time.



The mate acted as a lookout, but no division of tasks on the bridge was agreed. The mate had not said anything before the ship moved to starboard and grounded. It all happened very quickly.

On 18 March 2016 the Hekla was pulled free by a tugboat, which first sprayed out a channel in the mud with its propeller. On 20 March 2016 the ship was further inspected by an expert and a diver in Kolding. No damage to the ship was found.

## **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.

At approximately 21.00 hours on 15 March 2016 the Dutch seagoing vessel Hekla grounded in the Kolding Fjord in the approach route to the port of Kolding, Denmark, to what was the starboard side of the waterway for this ship.

The Hekla's captain was keeping watch on the bridge at the time of the grounding. He was steering the ship manually. He was following the electronic chart on the ECDIS. There was a radar device operating on the bridge. The echo sounder was switched on. The mate was also on the bridge and was keeping lookout.

It was dark. The weather conditions were excellent: good visibility, calm water, hardly any wind or current.

The person concerned was well acquainted with this route and sailed without a pilot.

The ship was loaded and in IJmuiden it had a draught of 5.6 m forward and 5.35 m aft, averaging 5.475 m, which is more than the permitted draught according to the summer deadweight of 5.40 m.





The ship may have been slightly lower in the water owing to the fresher water in the Kolding Fjord. The person concerned estimated this extra lowering at 10 cm.

The depth of water in the channel where the ship grounded was 6.80 m. The detailed map on the ECDIS screen, which the person concerned was watching before and during the grounding, showed a line on the starboard side of the channel with a number 6 where the water had a depth of 6 metres. There were three green buoys more or less over that six-metre line. To the northwest of that line the water depth was less than six metres, indicated with a dark blue colour. The same six-metre line was shown on the other side of the channel, with an area shown in dark blue behind it.

This ECDIS chart showed the planned route with waypoints and a course line entered by the person concerned during the voyage preparation. Waypoint 037 had been passed; the ship was heading for waypoint 038. Past the third green buoy and at waypoint 038 the ship had to turn to starboard to enter a narrower channel.

After passing the second green buoy – according to the person concerned at a diagonal distance of about 10 m – the ship ran aground, with the bows over the six-meter line.

There are several possible causes for this grounding. According to the person concerned, he did not turn too soon to starboard, and had also greatly reduced speed to 4.5 knots. The file does not contain any further information about the ship's course and speed. The petitioner, the person concerned and the shipowner all agree that the grounding was caused by suction phenomena. The Disciplinary Court's findings in this regard are as follows.

The channel between two six-metre lines was shown in the chart. The three green buoys to starboard were more or less on the six-meter line. It follows that the marked waterway did not have the same depth of 6.8 m all along. This was less close to the green buoys. It seems that the seabed rose there.



The Hekla passed the second green buoy at a short distance; the person concerned estimates the diagonal distance at 10 m. This also means that the Hekla was at the same short distance from the six-metre line at that time. The bows of the Hekla rose up just before that buoy. The seabed was soft and muddy there. In view of the detailed chart, which shows a few water depths and also a headline at a fairly short distance from the grounding position – it can be assumed that the seabed rises, whether or not gradually, from that six-metre line. The bows of the Hekla had a depth of 5.60 m, with 10 cm extra to make allowance for the fresh water making this 5.70 m. For the average draught that is 5.475 m plus 10 cm = 5.575 m. The water depth under the ship, particularly under the bows, was therefore very limited. This vicinity of shallow waters, with the addition of the limited UKC, seems to have caused suction phenomena that affected the grounded vessel, which resulted in the ship being pulled to starboard between the buoys and over the six-metre line into the shallows, where it grounded.

The Disciplinary Court does not share the opinion of the person concerned that he cannot be held responsible for the grounding.

The person concerned was officer of the watch on the bridge and was steering the vessel. His approach to navigating the ship shows that he did not take sufficient account of the suction phenomena that could have been expected: close to the second green buoy and therefore close to the six-metre line, with a marginal UKC.

There was no need whatsoever to navigate in this way: the breadth of the channel was – as can be seen in the chart image – amply sufficient to turn much further away from the six-metre line and there was no other shipping. The grounding could indeed have been prevented.

B. It follows from the foregoing that the petitioner's charge is well-founded and that the person concerned did not act as befits a good seaman with a view to the ship, the people on board, the environment and other shipping traffic.

The ship did not sustain any damage because it rose up in the mud and the seabed at that position was soft. No environmental damage was caused.



The 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 captain contrary to the duty of care expected of a good seaman in relation to the persons on board, the ship, its cargo, the environment and shipping

#### **6. The disciplinary measure**

The Maritime Disciplinary Court judges that the person concerned failed in his responsibilities as captain and officer of the watch, which resulted in the grounding. The person concerned did not act as befits a responsible captain/officer of the watch, which meant that the safety of the crew, the vessel, its cargo, and the environment were jeopardised.

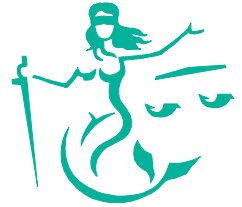
In view of the seriousness of the evident behaviours a suspension of the navigation licence for the duration mentioned below is appropriate.

In view of the facts that the person concerned took the correct measures after the grounding and no actual damage was caused, the Disciplinary Court sees good cause to stipulate that the suspension of the navigation licence will be imposed fully conditionally.

#### **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 two months;
- stipulates that this suspension 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;
- declares the objections to be otherwise unfounded.

Duly delivered by A.N. van Zelm van Eldik, LL.M., presiding judge, E.R. Ballieux and J. Berghuis, members, in the presence of E.H.G. Kleingeld, LL.M., as secretary and pronounced by the presiding judge in public session on 15 November 2017.

A.N. van Zelm van Eldik  
president

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.