



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE
NETHERLANDS
OF 26 APRIL 2017 (NO. 6 OF 2017)
IN THE CASE 2016.V6 – SINGELGRACHT**

As petitioned by:

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

versus

E. J.,
the person concerned,
counsel: R.P. van Campen

1. The course of the proceedings

On 12 August 2016, 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 Singelgracht from M. Schipper, inspector ILT/Shipping in Rotterdam. Thirteen appendices were attached to the petition.

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

On 22 September 2016 a letter constituting a statement of defence with appendices was received from the counsellor of the person concerned.



The inspector responded to this by submitting a reply to the defence counsel's plea dated 3 October 2016, after which the defence council submitted a rejoinder by letter (with appendix) dated 14 October 2016. Copies of these documents have also been forwarded to the inspector and the counsellor of the person concerned respectively.

The hearing was subsequently held on 17 March 2017. M. Schipper, inspector at the ILT/Shipping appeared at the hearing for the petitioner. The person concerned appeared, represented by his counsellor.

2. The petition

In summarised form, the following forms the basis for the inspector's petition.

At around 18.39 hours UTC on 20 February 2016, shortly after departing from Portland (USA) and heading for Turkey, the partially loaded ms Singelgracht briefly grounded just outside of Portland harbour. A check for damage revealed that seawater was entering the ship's keel tunnel. The situation was brought under control using the ship's pumps. After anchoring in deeper waters the Singelgracht sailed, as proposed by the shipping company, to Halifax in Canada, which was a voyage of at least 325 NM in open sea. The ship was inspected by a diver in Halifax to establish the precise amount of damage. Temporary repairs were made and the ship then continued its voyage to Turkey. The incident was not reported to the ILT until 25 February 2016. The person concerned was the captain and duty officer of the Singelgracht at the time of the incident and during the subsequent voyage to Halifax.

Based on the situation outlined above, the inspector has made the following charges against the person concerned:



- failure to observe the principles of good seamanship, which could have prevented the ship from briefly grounding;
- continuing the voyage after the grounding, in the evident knowledge that it was no longer safe to assume that the ship was seaworthy;
- failure to inform the ILT of the incident as soon as possible (in accordance with Section 67.1 of the Ships Decree 2004), thus withdrawing the ship from the control of the competent authority and frustrating the possibility of intervention.

3. The position of the person concerned

In summarised form, the person concerned has argued that the course was properly charted during the voyage planning preceding departure from Portland and that waypoints were entered in the radar system to support the course to be followed. He attributes the grounding of the ship despite these preparations to the fact that even after repeated corrections, the waypoints on the course line in the radar image kept jumping, as a result of which flashes were shown on the radar. This caused confusion about the course to follow; the person concerned was distracted and did not change to the set course quickly enough. At the time of the grounding the Singelgracht was travelling at a speed of approximately 12/13 knots. The ship did not remain grounded owing to the relatively high tide. Once the ship had lain at anchor in the vicinity for some time and it was established that no oil was leaking and that the intake of seawater could be limited with pumps, the person concerned had – in his own words – the fullest confidence that it was safe to continue the voyage. He first carried out a new stability calculation (using the Seasafe program), which showed that the ship's stability was correct, and so was its flotation capacity. It was also established in Halifax that the strength of the ship was still well within the permitted margin. Some days after the arrival of the Singelgracht in Halifax he was called back to the Netherlands and was to report to the office there.

The person concerned immediately reported the incident to the shipping company on 20 February 2016 and assumed that the shipping company



would notify the relevant authorities. He also had a message sent to the pilot service in Portland.

4. The assessment of the petition

A. An overview of 'Facts during departure Portland' dated 20 February 2016 drawn up by the person concerned is attached to the petition. That overview, combined with the description given in the counsellor's letter of 22 September 2016, contains information including the following:

- during the morning of 20 February 2016 the cargo ship ms Singelgracht departed from Portland harbour carrying 4,040.5 tons of wood pulp and 4,571.4 tons of wood pulp packages;
- visibility was good, the wind was 'Sly 4-Bft' and the 'Sea state: Sly swell high around 2 mtr., decreasing';
- the ship was to sail in a south-easterly direction towards the traffic separation scheme, which is the usual route for outbound vessels;
- waypoints were entered into the radar system to support the course being followed;
- after the harbour pilot had first left the vessel at approximately 13:10 hours BT (= UTC -5), the sea pilot also disembarked at approximately 13:25 hours BT, which was sooner than usual;
- the pilot's advice was that the Singelgracht should keep to the red buoys on the port side;
- at that point the ship was to make two turns (one to port and one to starboard) before reaching the local traffic separation scheme;
- at 13:37:58 hours BT the person concerned noticed two red buoys on the starboard side;
- at 13:39:02 hours BT the ship was sailing at an increasing speed of approx. 13 knots, at a course of 147° and a depth of 123 metres free water under the keel;



- at 13:39:19 hours BT a scraping sound was heard on the bridge and the ship began to shake, after which it almost came to a halt; the depth meter showed that there was a 'peak';
- the person concerned gave orders for the tanks to be checked, after which it was reported at 13:52:13 hours BT that seawater was flowing into the keel tunnel, whereupon the pumps were switched on; it was also later reported that the 'void spaces' under the main engine were filling up;
- the person concerned immediately informed the shipping office, and at 14:11 hours BT he informed the pilot station that the Singelgracht would anchor in a deeper area;
- at around 13:20 hours BT on 21 February 2016 the ship left the anchorage, heading for Halifax;
- an inspection was carried out by a diver in Halifax; bunkering was also carried out because it was no longer possible to operate the valves to the foremost fuel tanks owing to the presence of seawater in the keel tunnel; for that reason the aft fuel tanks were additionally bunkered instead.

B. According to the email attached to the petition, the ILT received a report on the incident originating from the shipping company via the classification society Lloyds Register.

C. An Interim Certificate of Lloyds Register dated 29 February 2016 and attached to the petition contains a detailed report of several damages that were established during the inspection of the Singelgracht carried out in Halifax in the period from 25 to 29 February 2016. As well as leaks around the keel tunnel, there was damage to the propeller and the ER cofferdam. This certificate also shows that the ship was (only) able to continue its voyage to Turkey following some temporary repairs and under a number of conditions, in order to be further inspected/repaired after unloading.

D. The relevant IMDatE (Integrated maritime data environment) details show that the Singelgracht was travelling at a speed of 12.6 knots just prior to the grounding. Based on the IMDatE data, the area just north of Jordan



Reef is the most likely position of the grounding.

E. A report with the following title was issued by Westcon on the instructions of the shipping company on 27 February 2016: 'Evaluation of reduction effect on ship longitudinal strength due to Keel Tunnel damage Voyage 1602'. The report contains the following conclusion: 'Keel Tunnel damages reduce permissible SWBM&SWSF by 20%/1.5% respectively. Existing maximum SWBM/SWSF for Voyage 1602 use / develop 58%/36% of allowable values respectively.'

F. In a letter of 9 March 2016, the shipping company wrote the following to the person concerned:

'[...] The damage to the ship's bottom was caused by an incorrect course that was being maintained under your command; at the crucial moment it became clear that you were not aware of the ship's correct position and you changed course too late/insufficiently, as a result of the which the ship came into contact with the rocky seabed in 2 different places. Given the seriousness of the situation and based on the facts, including your explanation, we have decided to place you as 1st officer on one of our vessels for 2 posting periods. After these periods your performance will be evaluated and assessed [...]'. The person concerned signed the letter for agreement.

G. At the hearing of 17 March 2017 the person concerned made an additional statement to the effect that, with the benefit of hindsight, he should have paid closer attention to the buoys and set a PI (Parallel Index) line sooner. The person concerned also acknowledges that on departure from the anchorage for Halifax he did not yet have a complete image of the precise scope of the damage. Asked why he did not return to Portland harbour, the person concerned said that that was not what he had been instructed to do by the shipping company. Looking back, he realises that he should have made a different decision (other than sailing to Halifax). He has been subjected to the disciplinary measure of demotion for two voyages, with all the financial implications that entails. He very much hopes to regain



his rank of captain.

5. The ruling of the Disciplinary Court

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

In the morning of 20 February 2016 the Dutch cargo ship Singelgracht, carrying 4,040.5 tons of rolls of wood pulp and 4,571.4 tons of packages of wood pulp, departed from Portland, Maine (USA) for a voyage to Izmir (Turkey). Visibility was good and the wind force was approximately 4 Bft. Despite the completion of a proper voyage plan, the Singelgracht ran aground in local shallows (Jordan Reef) just outside of Portland harbour on its way to the local traffic separation scheme. According to the statement of the person concerned, who was the Singelgracht's captain, this was caused by the fact that he was focusing on the radar screen and was distracted by the jumping of the waypoints entered in that screen. This led to confusion; he was not aware of the ship's actual position and changed course too late/insufficiently. It is fair to assume that this could have been prevented if he had set out a PI line sooner and paid closer attention to the buoys, for example. The lack of attention to the ship's correct position constitutes culpable negligence, which resulted in the grounding.

The Disciplinary Court makes reference in this context to the provisions of the STCW-Code for the holding of a bridge watch, Chapter VIII – Section A-VIII/2 – Part 4-1 Performing the navigational watch – Article 25: 'During the watch the course steered, position and speed shall be checked at sufficient frequent intervals, using any available navigational aids necessary, to ensure that the ship follows the planned course.'

A check carried out on board the ship on the orders of the person concerned directly following the incident revealed that seawater was entering the keel tunnel. There is also a report that the void spaces under the main engine



were filling up. The intake of seawater was brought under control using the ship's pumps. After the Singelgracht had lain at anchor in a deeper area for one and a half days, it sailed to Halifax (Canada) in consultation with or on the instructions of the shipping company. The ship was inspected by divers and emergency repairs were made in Halifax. The person concerned, who had carried out his own stability calculation prior to this voyage to Halifax, has taken the position that the Singelgracht was still seaworthy after the incident, in which context he also makes reference to the Westcon report. However, the contents of this report refer to the situation after the voyage to Halifax. The matter at issue here is that prior to that voyage the person concerned did not have a clear image of the precise scope of the damage. He did not take sufficient account of the fact that the ship had sustained damage in several areas, especially on the ship's bottom, the propeller and the rudder. This damage would not necessarily lead immediately to new leaks, but could have been so critical/serious that the ship's movements could have caused new leaks, with consequences that were not entirely predictable/verifiable beforehand. In other words, the person concerned should have taken reasonable account of the fact that the whole of the ship's bottom could have sustained critical damage, both in terms of (potential) leaks and compromised strength. Without any further investigation he should not have assumed that the ship's seaworthiness was still guaranteed. He should have taken action in this regard, such as having the entire ship's bottom, rudder and propeller inspected at the anchorage or in the nearest seaport and informing the classification society of the results. By failing to do so he acted contrary to, for example, the regulation of Section 4.1a of the Dutch Ships Act, to the effect that before undertaking a voyage the captain is obliged to ensure that his vessel is entirely seaworthy and that all relevant internal and external openings have been sufficiently closed. The fact that the voyage to Halifax was undertaken on the instructions of the shipping company does not absolve the captain of his own responsibility for complying with the regulation.

It was also the captain's own responsibility to make the report to the Shipping Inspectorate in accordance with Section 67.1 of the Ships Decree



2004 following the incident. There is nothing to show that before commencing the voyage to Halifax the captain ascertained that his report (to the shipping company by the shipping company) to ILT/Shipping had been passed on, and he should not have automatically assumed this to be the case.

B. The conduct of the person concerned constitutes violations of the regulation of Section 55a of the Dutch Seafarers Act in conjunction with Section 4.4 of that Act: officer acting or failing to act on board as captain/ship's officer 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. These provisions should in this case be taken in conjunction with, inter alia, Section 4.1a of the Ships Act and Section 67.1 of the Ships Decree 2004.

6. The disciplinary measure

The Disciplinary Court judges that the person concerned has seriously failed in his responsibilities as captain. Through his acts and omissions he jeopardised the safety of the persons on board, the ship and its cargo and the surrounding area. In view of the seriousness of the evident behaviours a suspension of the navigation licence as demanded by the inspector is in itself appropriate. However there are reasons to strongly mitigate this demand in the favour of the person concerned, such as: (i) the fact that there were no accidents; (ii) the fact that the grounding exhibited behaviour that was (extremely) contrary to the principles of good seamanship but was not a wilful error, whilst the other two charges cannot be viewed (entirely) separately from the role of the shipping company in this matter; (iii) the fact that the person concerned did immediately report the incident to the shipping company and that the shipping company should have passed on the report immediately (and not after days had passed); (iv) the person concerned has been subjected to a serious disciplinary measure for the grounding by the shipping company, which had instructed him to make the



voyage to Halifax after the incident, or proposed that he should do this, which does not in any way absolve the person concerned of his own responsibility as captain, but can be assumed to have influenced the (incorrect) decision that the person concerned made in this case; (v) the fact that the person concerned has demonstrated that he understands the error of his ways and (vi) the fact that he has been seriously mentally impacted by the entire event and its repercussions. Taking all of the above into account, the Disciplinary Court sees good cause to impose a partially conditional suspension of the navigation licence for the following duration. It should further be noted that this measure would not have been (even) more lenient if one or two of the three charges (more specifically continuing the voyage/failing to report on time) had been found not proven/culpable.

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 (2) months;
- stipulates that of this suspension, a period of one (1) month 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, H. van der Laan and R.A. Oppelaar, members, in the presence of E.H.G. Kleingeld, LL.M., as secretary and pronounced by J.M. van der Klooster, LL.M., in public session on 26 April 2017.

J.M. van der Klooster
deputy 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.