



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE
NETHERLANDS
OF 10 MAY 2017 (NO. 7 OF 2017)
IN THE CASE 2016.V9-AMADEUS AMETHIST**

As petitioned by:

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

versus

E. H.,
the person concerned,
counsel: Mr A. Jumelet, LL.M.

1. The course of the proceedings

On 6 December 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 Amadeus Amethist from M. Schipper, inspector ILT/Shipping in Rotterdam. Fourteen 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 30 January 2017 a statement of defence was received from the counsellor of the person concerned.



The presiding judge stipulated that the oral hearing of the case will be held at 14.00 hours on 31 March 2017 at the offices of the Disciplinary Court in Amsterdam.

The ILT, the person concerned and his counsellor were summoned to appear at the hearing of the Disciplinary Court.

The court hearing was held on 31 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 petition.

On Wednesday 1 June 2016 the ILT received a report from the shipping manager that the seagoing vessel sailing under the Dutch flag Amadeus Amethyst had collided with its raising wheelhouse against IJzerlaanbrug over Albertkanaal in Antwerp at around 23:20 hours on Tuesday 31 May 2016. The wheelhouse was dislocated and seriously damaged. One of the people on board was seriously injured and was taken to hospital. The person concerned was the ship's captain at the time.

The charge against the person concerned is that he did not leave sufficient time to make allowance for the technical failure of a system vital to safe navigation, in this case the raising wheelhouse, and to prevent a shipping disaster and that he thus acted in breach of the following regulations and provisions:

- Seafarers Act, Sections 4.4 and 55a.



3. The position of the person concerned

Rendered in summarised form, the person concerned has pleaded in his statement of defence that the charge ignores the following aspects (of good seamanship):

1. To maintain a clear view, it is important to avoid lowering the bridge too quickly. According to the statement of Mr L., the bridge was already at a low position.
2. The ship was sailing slowly. If the speed had been lowered more the ability to steer the ship would have been jeopardised.
3. There was another ship behind the Amadeus Amethyst that had to be taken into account.
4. He is a 'first offender' and requests that this mitigating circumstance be taken into account.

His defence counsel argued at the hearing that the ship – or the raising bridge – was afflicted by a defect. This was the 'proximate cause' of the incident, which cannot be reasonably attributed to the person concerned. Alternatively, the defence counsel contends that a suspension of the navigation licence is disproportionate because the person concerned did not act wilfully, because he was unable to do anything about the technical defect and in view of the serious impact the incident has had on the person concerned (not least owing to the media attention).

4. The assessment of the petition

A. It follows from the petition that the Amadeus Amethyst sails under the Dutch flag (IMO number 9223435, call sign PDDW) and has an overall length of 88 metres.

B. A "statement of E.H. L. concerning the collision involving ms. "Amadeus Amethyst" and a bridge" signed by him on 3 August 2016 (appendix 11 to the petition) contains – in summarised form – the following information:



"I am a retired inland shipping skipper. The owner had asked me to join the ship during the passage in Albertkanaal because the captain was not sufficiently familiar with the canal and had asked for assistance, and there is no pilot service for this canal. I did not have any formal role or powers.

I came on board at around 21.30 hours on Tuesday 31 May. We departed at 22:10 hours. Everything went well at first, the ship manoeuvred normally into the Albertkanaal. The first bridges were also passed normally, and there were no problems operating the raising column of the wheelhouse.

When approaching IJzerlaanbrug the wheelhouse was already in a low position from passing the previous bridges. However the wheelhouse was not yet in the very lowest position, which would be necessary to pass under the bridge. The intention was to lower the wheelhouse to the lowest position just before the bridge in order to keep the period in which the view from the bridge was poor as short as possible. The chief mate was keeping a lookout on the forecastle with a handheld radio telephone.

Once the bow was under the bridge the captain started to lower the wheelhouse to its lowest position. The ship was travelling at about 6 km/h at the time. However the wheelhouse lowered extremely slowly, much more slowly than with the previous bridges and much slower than normal.

We went full astern with the main engine but were unable to stop the ship in time, whereupon the wheelhouse fell about 10 cm short and collided with the bridge.

The windows shattered and the desk was forced back, and I was caught between the desk and a chair. It took a few moments for me to free myself from this position. With the captain's help I climbed outside through a window and laid on deck, from where I was later collected by the emergency services."

C. The "Shipping company report on the shipping disaster involving ms. Amadeus Amethyst (appendix 12 to the petition) contains – in summarised form – the following information:



"On 31 May 2016 our ms. Amadeus Amethyst collided with its wheelhouse against the IJzerlaanbrug in Merksem.

[..] Prior to that the first bridges of Albertkanaal had been safely passed without any problems with the hydraulic lifting system. The ship collided with the IJzerlaanbrug despite that.

This was caused by the malfunctioning of the hydraulic system of the wheelhouse.

The completely destroyed wheelhouse was removed from the lifting column once the ship had been towed to the repair shipyard. This also made it possible to remove the hydraulic unit from the lifting column and send it to an external company to analyse the function and operation of all of the hydraulic components.

The entire lifting column was also taken out of the ship, including the hydraulic cylinder that moves the wheelhouse up and down.

All of the hydraulic components were taken out of the hydraulic system and tested for their operation and internal leaks in a test setting.

All of the components fitted to the hydraulic unit were found to be in working order.

The operating panel in the wheelhouse was also removed and checked for its function and operation, no faults were found here, either.

The hydraulic cylinder was also taken out of the lifting column: the rod had been bent by the collision, and there was a rupture valve fitted to the hydraulic cylinder.

This rupture valve is of the flow type and comes into effect if the flow volume is too great.

This was checked and it was apparent that the adjustable mechanism was twisted and loose. This would normally be set to the calculated flow volume; it closes if the flow volume increases owing to the rupture valve.

The appendix (photo) shows that the adjustable mechanism no longer had the original set value, as a result of which it closed owing to the flow volume and the wheelhouse could no longer be lowered.

Conclusion:



The shipping company fully endorses Integron's conclusions. The shipping company points out that the valve had probably been set incorrectly some years ago, in any event prior to the ship being taken over in January 2016. The same applies to the fitting of the wrong type of valve. It is virtually impossible that the valve was fitted and adjusted by the crew itself. It can be deduced from the fact that even the paint on the valve was undamaged that the valve had been adjusted/replaced some time ago. The malfunction of the valve had therefore presented a latent danger for a long period of time, which would have manifested itself sooner or much later.

To conclude:

The shipping company is of the opinion that this accident can be attributed largely to a technical defect. Possible secondary causes include:

- 1) A higher canal level at the time of the accident.
- 2) The speed of the vessel (the ship was not sailing faster than the maximum permitted speed, but it is true to say that the ship could have been stopped in time if it had been sailing more slowly). Since this incident the shipping company has issued a standing order that the speed of the ships must be slow enough from them to stop in the event of the hydraulic lifting system failing."

D. The "Inspection reports and findings hydraulic system for Amadeus Amethyst", drawn up on 21 July 2016 by A. Meijer of Integron (appendix 13 to the petition) contains – in summarised form – the following information:

General findings:

Hydraulic unit:

[..]

- Rupture valve:



A defect was found in the rupture valve. The mechanism appears to be twisted, as a result of which less oil could get through the valve, which could cause it to close and prevent any oil at all from getting through.

This is very likely to be the cause of the fault.

We cannot say how the valve was twisted and why a valve that would allow this to happen was chosen.

[..]”

E. At the hearing of 31 March 2017, rendered in summarised and concise form, the person concerned made the following statement:

"The ship in question, the Amadeus Amethyst, was bought at the beginning of 2016, and the captain immediately started work as its captain at that time.

Mr L. came on board in Antwerp on his request. The shipping company had advised the person concerned to take him on board as a pilot.

Asked about the content of the voyage planning, the person concerned stated that he had checked the draught together with the chief mate and Mr L.

Both the draught and the water levels were checked as part of the voyage planning. The water level was unchanged. The levels were within the margins. It was only the raising wheelhouse that collided with the bridge. This shows that the clearance height was correct as laid down in the voyage planning.

The person concerned had also considered the clearance height above the water in Albertkanaal. The aircraft had already been worked on in Latvia. This must already have been clear in the loading dock, also taking account of the fuel consumption, which would change the draught.



The person concerned spoke to Mr L. about testing the wheelhouse. The test consisted of testing the pump and moving the wheelhouse a quarter before Mr L. came on board. The pump made a different sound at that time. The wheelhouse went up and down without any problems at that time.

The ship departed from Antwerp at around 22.10 hours. The person concerned took the helm up to the first bridge. Mr L. took over the helm at that point. They were both in the wheelhouse.

After passing the first bridge the person concerned operated the wheelhouse pump from the operating panel on the starboard side.

The person concerned left the pump on standby whilst underway in the Albertkanaal. There are 2 or 3 previous bridges on the route towards IJzerlaanbrug. There were no particulars when passing the various bridges.

The IJzerlaanbrug was the lowest in a row, and the wheelhouse had to be lowered to its lowest position to pass under this bridge – the lowest position up to that point.

Shortly before reaching the last bridge, the IJzerlaanbrug, the wheelhouse was at a height of 1.50/2 metres. The person concerned does not know how long the wheelhouse took to completely lower.

The chief mate went forward shortly before the IJzerlaanbrug was reached. The view was sufficient for the other bridges. The chief mate was not needed as a lookout on the forecastle for those bridges.

The ship's speed in the Albertkanaal was 3.2 knots, about 6 km an hour. This was roughly from the second bridge. Before that the ship sailed slightly faster; it slowed down for the second bridge.



The ship approached, and then there was a huge shock caused by the accident, the situation was completely chaotic. All of the windows shattered at once. There was glass everywhere.

Asked about the last minutes of the accident, the person concerned replied as follows. We approached the bridge. The telegraph was set to dead slow ahead, it was not possible to sail more slowly. The IJzerlaanbrug has protrusions that the pillars are placed on. It was therefore necessary to approach the bridge completely straight on, and that was the case. The person concerned lowered the wheelhouse and checked the panel and the lamps. He heard the pump start up. He held the button in and the wheelhouse lowered very slowly.

The pilot put the ship's engine full astern. The ship almost passed under the bridge, it only fell short by about 10 centimetres.

The person concerned pressed the button shortly before the bridge, at a distance of about 40 metres from the bridge to the wheelhouse. The bow of the ship, that is less than 90 metres long, was already under the bridge.

After the wheelhouse had collided and the ship had stopped, the person concerned looked left and could no longer see the pilot. The pilot had fallen to the floor.

The person concerned took Mr L. out of the wheelhouse and found that he was injured. Mr L. broke his hip in the accident, but eventually recovered.

Mr IJssel de Schepper asks how long it takes for the bridge to be lowered. The person concerned says that he does not know; there is no time frame. Neither did he test this.



Mr Tromp asks whether there is an emergency button to lower the wheelhouse faster. The person concerned says that there was no emergency button on board at the time. One has been fitted since.

A subsequent technical examination showed that the pump was working correctly.

An engineering office checked the hydraulic components after the accident. The pump was working correctly at that time.

There is no maintenance history for the pump's hydraulic system.

Mr Willet asks how many ship's lengths are needed to stop the ship at 3.2 knots. The person concerned answers 100 metres, about a ship's length.

The chief mate did not report any particulars either. There was no other ship manoeuvring at the time. There was an inland vessel sailing behind him, but that did not affect the person concerned. The electronic chart was being used for navigation.

The person concerned could have pressed the button sooner, but there was no reason to do so, and this would have obstructed his view.

The waterway was straight with a very slight curve at the location."

Reference is made to the notarial record of the hearing for the full statement of the person concerned.

5. The ruling of the Disciplinary Court

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



On Tuesday 31 May 2016, at around 23:20 hours, the seagoing vessel sailing under the Dutch flag Amadeus Amethyst collided with its raising wheelhouse against IJzerlaanbrug over Albertkanaal in Antwerp. The wheelhouse was dislocated and seriously damaged. One of the people on board was seriously injured and was taken to hospital. The person concerned was the ship's captain at the time.

B. It can be assumed that the accident was caused by a technical fault in the hydraulic pump of the raising wheelhouse, but this could have been prevented if the person concerned had pressed the button sooner, i.e. when the Amadeus Amethyst could still have come safely to a halt after it had become clear that the hydraulic system was malfunctioning. According to the person concerned a distance of about 100 metres was needed to come to a halt, well over a ship's length. The fact of the matter is that the person concerned, who had not been sailing with the Amadeus Amethyst for long and did not know how long it would take for the wheelhouse to lower normally, put his blind trust in the operation of the hydraulic system and did not press the button until the wheelhouse was about 40 metres away from the IJzerlaanbrug. In the knowledge that the Amadeus Amethyst was not equipped with an emergency button to quickly lower the wheelhouse at the time, and without there being a maintenance history for the pump of the hydraulic system being known, he thus took the risk that a technical failure could have caused serious human suffering and substantial financial losses.

C. 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.

D. The Disciplinary Court is unconvinced by the argument of the person concerned that he wanted to maintain a clear view from the wheelhouse for as long as possible. The chief mate with the handheld radio telephone was



fore, the waterway at the location was virtually straight and there were no other vessels manoeuvring at the time. Also, an electronic chart was being used. According to the statement of the person concerned at the hearing, he was not affected by the ship that was approaching aft.

6. The disciplinary measure

In view of the seriousness of the evident behaviours a suspension of the navigation licence for the duration mentioned below is appropriate. Given that the accident was caused primarily by a technical defect, that the person concerned did not act wilfully and that the accident, not least owing to the media attention, has had a serious impact on him, the Disciplinary Court sees good cause to stipulate that the suspension will be imposed entirely 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 1 (ONE) MONTH;
- 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.



Duly delivered by P.C. Santema, LL.M., deputy presiding judge, E.R. IJssel de Schepper, C.R. Tromp, D. Willet and A.J. de Heer, (deputy) members, in the presence of E.H.G. Kleingeld, LL.M., as secretary and pronounced by A.N. van Zelm van Eldik in public session on 10 May 2017.

P.C. Santema
deputy presiding judge

E.H.G. Kleingeld
secretary

A.N. van Zelm van Eldik
presiding judge

E.H.G. Kleingeld
secretary

An appeal against this decision 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), the Netherlands.