



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE
NETHERLANDS 3 NOVEMBER 2017(No. 9 OF 2017)
IN THE CASE 2017.V1 – MERWEBORG**

As petitioned by:

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

versus

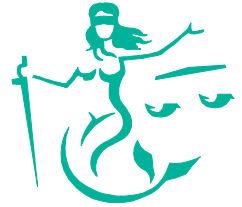
V. I.,
the person concerned,
who did not appear

1. The course of the proceedings

On 27 March 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 Merweborg from M. Schipper, senior inspector ILT/Shipping in Zwijndrecht. Ten appendices were attached to the petition.

The Disciplinary Court sent the person concerned a letter in the English language (both by registered and ordinary mail) informing him of the petition, enclosing a translation of the petition and its appendices in English, and notifying the person concerned of the opportunity to file a statement of defence. This opportunity was not taken.

The presiding judge stipulated that the oral hearing of the case will be held at 12.30 hours on 22 September 2017 at the offices of the Disciplinary Court in Amsterdam.



The inspector and the person concerned were summoned – in the English language, both by ordinary and registered mail – to appear at the hearing of the Disciplinary Court.

The person concerned gave notification in his email of 19 September 2017, 17:43 hours – sent from his email address – that he would not be appearing at the hearing.

The court hearing was held on 22 September 2017. M. Schipper, as named above, appeared at the hearing for the petitioner. The person concerned did not appear. Leave was granted to proceed in default of appearance by the person concerned.

2. The petition

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

On 26 January 2016, at around 09:00 hours UTC, the m/v Merweborg and the m/v Estland approached each other at opposite or intersecting courses in the estuary of the Gulf of Finland. The Merweborg, which was obliged to take evasive action, did not change its course in a clearly perceivable manner, in good time and sufficiently to avoid a collision. The person concerned was the captain of Merweborg and the officer of the watch.

The person concerned is charged with acting in breach of the following regulations and provisions:

- Convention on International Provisions for the prevention of collisions at sea, 1972: Regulation 8 (a) and (b) and Regulation 14 or 15, in conjunction with Article 1 of the Decree declaring the applicability of that convention;
- Seafarers Act, Sections 4.4 and 55a.



3. The position of the person concerned

The person concerned has stated (in summarised form) that he was the captain/officer of the watch on the bridge of the Merweborg at around 09.00 AM on 26 January 2016. In his opinion, there was no danger of a collision with the m/v Estland. A starboard–starboard passage was possible at first, but m/v Estland changed course (hard to starboard) at the last minute and opted for a port–port passage. The person concerned responded by immediately changing the Merweborg's course to starboard to enable a safe passage. The person did not hear any call from the Estland at all, but did hear two calls from Helsinki Traffic; he responded to the second call that he heard and explained the situation. He says that he was listening out on channels 16 and 60 before and after the incident.

4. The assessment of the petition

A. The following information is derived from the ship's detailed enclosed with the petition, including the Continuous Synopsis Record (CSR).

m/v Merweborg, IMO number 9142552, call sign PDBM, is a general cargo ship with a gross tonnage of 6540 and is owned by Scheepvaartonderneming Merweborg B.V., established in Delfzijl. The m/v Estland is presumed to be a general cargo ship sailing under the English flag, with IMO number 9247314, call sign MJFC3.

B. A letter enclosed with the petition with appendices dated 1 March 2016 from the Finnish Transport Agency, Vessel Traffic Services, addressed to the ILT, reports a violation committed by the Merweborg on 26 January 2016, at around 09:00 hours UTC, of Regulations 15 and 16 of the Convention on International Provisions for the prevention of collisions at sea, 1972 (COLREG). The letter contains information including the following: 'According to the report and printouts from the Gulf of Finland Vessel Traffic Centre, M/V Merweborg navigated without any acceptable reason against the international rules and regulations. The vessel is also presumed to have contravened the IMO Resolution MSC.139(76) Annex 1 "the Mandatory Ship



Reporting System in the Gulf of Finland Traffic Area” by failing to maintain a continuous listening watch on required VHF channels.’

C. The appendices to the letter referred to under B contain information including the following:

– The Gulf of Finland Vessel Traffic Centre/Helsinki VTS – based on the AIS (automatic information system) – noted and visualised the positions of the Merweborg and the Estland, showing the following position of the Merweborg at 09:00 UTC: 59°38.616’N 023°11.134’E;

– as ‘details of incident’:

All times UTC:

08:58 Vessel “Merweborg” was proceeding from east to west and vessel “Estland” was on her starboard bow approaching from west to east. Distance between vessels approximately 4.2 nm.

CPA was really small, according to VTS equipment 0–0.2 nm.

Helsinki traffic wanted know vessel’s intention and called “Merweborg” on ch 60 without any response. During the following minutes Helsinki Traffic tried to contact “Merweborg” on ch 60, ch 16 and DSC. First no response, later Helsinki Traffic got contact to vessel “Merweborg”. Also “Estland” tried contact “Merweborg” on ch 16.

09:03 “Estland” altered course hard to starboard and after that “Merweborg” altered course slightly to starboard.

09:05 Helsinki Traffic got contact to “Merweborg” and asked reason for her actions. OOW answered that situation was monitored all the time and now channel 60 will be listened all the time.’

D. The petition contains the following findings of the inspector based on the AIS data provided by the Finnish authorities:

– The Merweborg and Estland approached each other with a CPA between 0.2 and 0.0 nm;



- The difference between the courses of the two vessels was approximately 170°;
- the Merweborg perceivably changed course at 11:01:25 LT (= UTC+2) and the Estland changed course at 11:02:15 LT (= UTC+2);
- at 11:01:25 the Merweborg was travelling at about 12.4 knots and the Estland at least 9.8 knots;
- the distance between the two vessels (CPA) was 2.55 nm at the most at 11:01:25 LT;
- the TCPA (Time to Closest Point of Approach) was at that time – without changing course and speed – no more than 8 minutes;
- the Merweborg's change of course was approximately 10° to starboard;
- the change of course made by the Estland was much bigger and must have been clearly observable from the Merweborg.

E. Some email correspondence with the person concerned is enclosed with the petition and includes:

- (i) an email of 28 January 2016, 12:32, from senior inspector J. Kokko of the Western Inspection Unit, Ships Division, Finnish Transport Safety Agency (Trafi), addressed to mv.merweborg.master@wagenborg.com, with the subject line: 'Merweborg vessel was observed contravening the International Regulation [..]', in which clarification was sought in response to the observed violation on 26 January 2016;
- (ii) an email of 28 January 2016, 13:47, with the reply of the person concerned as set out under point 3 above;
- (iii) an email of 28 January 2016, 15:15, with another reply of J. Kokko, as follows: 'Thank you for your own opinion [..] In future you shall follow the International Regulations at sea in all situations and all conditions.', with another reply – sent on the same day – from the person concerned to J. Kokko: '[..] Many thanks for you[r] understanding, will do all best.'



F. In his email of 19 September 2017, the person concerned wrote to the Disciplinary Court: 'Acknowledge receipt of documents related to the incident m/v MERWEBORG, which carefully studied.

Contained in the documents is consistent, however, according to the ship marine equipment discrepancy was assumed I have the STB sides on the shortest distance of 0.8 mm until a sharp change of course MV ESTLAND to break up the P/S. The traffic situation was under constant supervision from my side.'

G.1 Regulation 8 – of the convention referred to under 2 – with the heading: 'Measures for the prevention of collisions' stipulates under (a) that measures to avoid collisions must be taken in good time, taking close account of the principles of good seamanship and under (b) that all changes of course and speed made to avoid a collision must, if the circumstances allow, be large enough to be easily observable by another vessel [...] Regulations 14 – 16 concern sailing on directly opposite courses, crossing courses and the measures to be taken by the ship obliged to take evasive action.

G.2 Section 4.3 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.'

5. The ruling of the Disciplinary Court

A. The content of the documents referred to above has led to the following conclusions being drawn in this case with an adequate measure of certainty.

The cargo vessels m/v Merweborg and m/v Estland approached each other on 26 January 2016 at around 09:00 UTC in the estuary of the Finnish Gulf at opposite or intersecting courses; the m/v Merweborg – whose position at the time was 59°38.616'N023°11.134'E, was sailing at a speed of approximately



12.4 knots from east to west, bound for Pietarsaari in West-Finland, when the m/v Estland, sailing from west to east, approached her starboard side at a speed of approx. 8.9 knots. Based on the data obtained via the AIS (automatic identification system), the CPA (closest point of approach) at 09:00 UTC was 0–0.2 nm. Helsinki VTS (vessel traffic services) attempted – in view of the danger of collision – to contact m/v Merweborg on VHF channels 60 and 16 and DSC (digital selective calling), but the initial attempt was unsuccessful. Helsinki VTS heard that the m/v Estland was also attempted to contact the m/v Merweborg on channel 16. Shortly after that, at around 09:03 UTC, m/v Estland was seen to turn hard to starboard, followed by a less obvious change of course to starboard by m/v Merweborg. During the contact that was subsequently made between Helsinki VTS and the m/v Merweborg at around 09:05 UTC, the person concerned – who was the captain and the officer of the watch on the m/v Merweborg – said that he had been clearly aware of the situation for the whole time. Unlike Helsinki VTS, he had not heard any call from the m/v Estland. He also apologised for failing to respond to the previous call made by Helsinki VTS.

B. The person concerned has put forward the defence that the distance between the two ships at approx. 09.00 UTC, based on a starboard–starboard passage, was amply sufficient; in his last email he even mentions a CPA of 0.8 nm. However, in view of the available radar and AIS data, the accuracy of this has not been demonstrated and cannot be verified. This position of the person concerned has not been sufficiently substantiated in view of the observations and findings of the Finnish shipping authorities, combined with the sharp change of course made by the m/v Estland at approx. 09.03 UTC. The person concerned has invoked the nautical equipment on board the m/v Merweborg, but has not submitted, for example, a printout of the onboard data of the m/v Merweborg. Nor is there any other form of support for his defence; this is entirely isolated stance, which is not supported by anything or anybody.

The person concerned has not denied that he initially failed to respond to the VHF calls of Helsinki VTS, which is also indicative of not being sufficiently



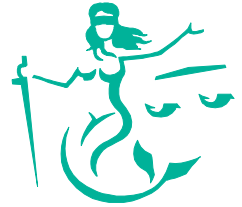
alert to the observed situation. He did not hear or reply to the calls of the m/v Estland at all, which is what prompted the m/v Estland to make a sharp change of course in order to be on the safe side.

C. Viewed as a whole, the explanation of the person concerned is rejected as being incorrect, and it is presumed that the observations of the Finnish shipping authorities are correct. It follows from these observations/this information – as also attested to in the inspector's assessment of this – that there was a danger of collision and that the person concerned did not take action to prevent it by changing the course of the m/v Merweborg clearly, promptly and amply, despite the fact that this is what was called for by the situation.

D. It is concluded that the person concerned, as captain of the m/v Merweborg, which was obliged to take evasive action, acted contrary to Regulation 8 (a) and (b) and Regulation 14 of the Convention on International Provisions for the prevention of collisions at sea, 1972, which Convention was put into effect in the Decree declaring it applicable. Furthermore, 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/officer of the watch contrary to the duty of care expected of a good seaman in relation to the persons on board, the ship and shipping.

6. The disciplinary measure

The Disciplinary Court is of the opinion that the person concerned has failed in his responsibilities as captain/officer of the watch by failing to change the course of the m/v Merweborg, which was obliged to take evasive action, promptly and sufficiently, in a manner perceivable by the approaching m/v Estland, in order to avoid a collision. The person concerned thus failed to 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. Although the person concerned thus failed to act in accordance with the standards of good seamanship, for which he can be held accountable, it appears that the situation was ultimately kept under control. For that reason, a warning will suffice. This is in keeping with the warning provided for under E (iii) as issued by the Finnish senior inspector J. Kokko to the person concerned. The passage of time since the incident and the medical issues of the person concerned have also been taken into account in his favour.

7. The decision

The Disciplinary Court:

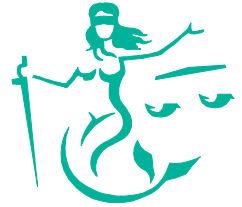
- declares the objections against the person concerned as stated under point 5 to be well-founded;
- imposes on the person concerned a *warning*.

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, 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.