



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE
NETHERLANDS OF 25 APRIL 2018 (NO. 2 OF 2018)
IN THE CASE 2018.V2-FIDUCIA**

As petitioned by:

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

versus

C.F. v.d. M.,
the person concerned.

1. The course of the proceedings

On 26 January 2018, 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 Fiducia from M. Schipper, inspector ILT/Shipping. Twelve appendices were added 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.

No statement of defence has been received from the person concerned, but a reply by email dated 10 February 2018 was received. This reply was forwarded to the inspector.



The presiding judge stipulated that the oral hearing of the case would be held at 14.00 hours on 23 March 2018 at the offices of the Disciplinary Court in Amsterdam.

The Human Environment and Transport Inspectorate and the person concerned 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 23 March 2018. M. Schipper, inspector at the ILT/Shipping appeared at the hearing for the petitioner. The person concerned also appeared at the hearing.

2. The petition

The following – in short – forms the basis for the petition.

On 28 August 2017, the ILT received notification from the Danish authorities that the Dutch seagoing vessel *Fiducia* had grounded in Danish waters in position 56°35,88N 010°26,69E.

The person concerned was the ship's captain at the time.

The ship refloated itself independently. During a diving inspection in the port of Randers, Denmark, no significant damage to the ship was found.

The person concerned is charged as follows:

- Despite the real risk of a grounding, at least for the latter part of the voyage, no voyage preparation has been prepared that meets the standards of good seamanship; no information with regard to draught, squat and UKC has been included;
- The person concerned was certainly aware of the risk of a grounding, as evidenced by the fact that he had added extra ballast on the basis of that knowledge in order to refloat more quickly; he had not taken any action to eliminate or at least reduce the risk on a grounding;
- Shortly before the grounding, the person concerned was aware of the fact that the ship was vibrating more due to reduced UKC and subsequently took no action to eliminate or at least reduce the risk of a grounding.



The person concerned is charged with thus acting contrary to the care expected of a good seaman in respect of the persons on board, the vessel, the cargo, the environment and shipping (Section 55a of the Dutch Seafarer's Act).

3. The position of the person concerned

A response to the petition was received from the person concerned by the aforementioned email of 10 February 2018, in which the incident and the accusations made against him were not specifically addressed.

4. The assessment of the petition

A. 12 printouts of chart images of the AIS positions of the Fiducia in Danish coastal waters leading up to the port of Randers (annex 5B to the request, p. 18/29), originating from Defence Command Denmark, show, inter alia, the following.

On 25 August 2017, the Dutch freighter Fiducia sailed from 00:55 UTC in Danish waters in the direction of the port of Randers, at an initial speed of approximately 9.9 knots. From approx. 01:22 the speed decreased slightly to approx. 7.5 knots. At about 01:32:30 the speed was drastically reduced; the ship was then in position 56°37,93N 010°26,74E and came to a standstill. The ship had sailed to and over a shallower part of the sea, known as 'Boels Plade'. Near the place where the ship came to a standstill, the water depth was indicated on the AIS chart images as 5.5 m.

B. A screenshot of the ECDIS on board the Fiducia (Annex 9 to the petition, p. (37) clearly shows, inter alia, that the ship sailed on a straight course over the shallower waters of 'Boels Plade', with indicated water depths between 5.0 and 5.6m. The seabed consisted of sand. At about 01:32 hours the ship came to a standstill; near that position the water depth was indicated as 5.0 m.



C. In a voyage preparation for the trip from Seville to Randers (Appendix 10 to the application, p. 38/46), signed by the chief officer and the master, 177 waypoints are indicated with the courses to be followed. The columns for 'draught', 'squat' and 'UKC' do not contain any entries.

D. A captain's statement dated 26 August 2017 of the captain (appendix to the petition, pp. 50/51) contains – rendered briefly – the following information.

On 25 August 2017 at 03:32 LT, the m/v Fiducia grounded in position 56°37,9'N 010°26,7'E on the Randers roadstead in Denmark. I was the captain. The chief officer was on watch, but I had made and checked the route. We ran aground because I had been too complacent. I thought: there is usually more water than shown in the chart and if I run aground, that isn't a big problem.

In the waters around Denmark, the seabed is mainly sand flats. Not much can go wrong. The fact that I was aware of the risks can be seen from the fact that I had added a small amount of ballast before we reached the shallows. This is the reason why we were able to refloat without help and without damage.

E. A report of the hearing of the person concerned from the ILT, drawn up by M. Schipper, senior inspector (annex 11 to the petition, p. 47/49), includes the following as the statement of the person concerned.

I have indeed indicated that I was too complacent. I deliberately laid the route over this shallow area and assumed that there would probably be a little more water. We were a little late in making the agreed ETA in the port. I was aware of the risk of a grounding, but I thought and still think that, given the sandy soil in Danish waters, there was no risk involved if a grounding took place. I also added a small amount of ballast. If we ran aground, I hoped that by reducing ballast I would be able to break refloat quickly.

I was not on watch, I was in my cabin but was awake. I felt the ship vibrating for some time, owing to a relatively small UKC. I realise that I should have



instructed the chief officer to reduce speed further, but at the same time I didn't think the risks of a grounding were very serious.

It is true that the voyage preparation does not include data on tide, draught, UKC and squat. I considered this data to be less important precisely because I did not consider the risks of a grounding to be very high.

I may have been imprudent or complacent, but I do not think at all that I have been reckless.

F. At the hearing of 23 March 2018 – rendered in summarised and concise form – the following statement was made:

On 25 August 2017 I was captain of the Dutch freighter m/v Fiducia (2,862 GRT, length 94.70 m, breadth 13.40 m, fully loaded draught 5.70).

The ship was on its way from Seville in Spain to Randers in Denmark with a load of 1,400 tonnes of steel. On departure the draught was 5.55 m fore and 5.69 m aft.

I made the voyage preparations myself. I always try to take the shortest route and not sail a mile too much; that can also involve passing over shallows. The reason for this is to reduce fuel consumption as much as possible. Each extra mile costs fuel. I had noticed the shallow depth of 'Boels Plade' with indicated water depths of about 5 m and had intentionally planned the route over it because I estimated that the risk of grounding there was very small. It is not uncommon for me to sail in shallow waters. It is a question of risk assessment. If the soil is flat and sandy and does not rise steeply, not that much can happen if you come into contact with the seabed or sand. I knew what type of seabed was there.

I had taken on extra ballast. Reducing ballast makes it possible to fairly quickly refloat after grounding. Also, there is usually a little more water than indicated on the chart. I thought the risk of objects on the seabed was low. It was approaching low tide that night. I had taken that into account.



I was lying in my cabin prior to the grounding. I was awake. I had already felt the ship vibrating an hour or two before the grounding. That was no reason for me to do anything, such as telling the helmsman to reduce speed. The UKC was still two metres at first and the ship had not started to vibrate more. I did not feel that the ship would ground. That is how we consciously sailed.

It is true that I have indicated in previous statements that I had been a little too complacent. With hindsight, it would have been better to tell the helmsman to reduce speed above the shallows.

We were however, under some pressure of time. We were a little late for our appointment with the stevedore. The weather was calm.

I never enter the depth, squat and UKC in the voyage preparation. We don't work that way. According to the AIS data provided by the Danish authorities, the shallows were crossed high speed (7.5 knots). However, this is not a top speed by any means. I don't know what the squat of the loaded ship is at 7.5 knots.

We often sail at low tide. On IJsselmeer and the Trent, for example. In those cases we do maintain a lower speed, e.g. five or six knots.

We only have ECDIS on board and we do not have a paper chart of that area. I know that I can use the ECDIS to set a safety contour, with an alarm. I never do so, because that keeps triggering an alarm. That's the last thing I want, especially when I'm busy.

The actual draught was recorded when the ship was refloated and sailed to the flats: 5.50 m fore, 5.45 m aft. This information can be read remotely on this ship.

With hindsight, with what I now know, I should have done things differently and I would have reduced speed. It is a pity that this has happened. I have been complacent. It should not have happened.



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.

On 25 August 2017 at approximately 3:32 a.m. LT (1:32 a.m. UTC), the Dutch freighter m/v Fiducia (2,862 GRT, length 94.70 m, breadth 13.40 m, fully loaded draught 5.70 m) ran aground in the shallows 'Boels Plade' in Denmark.

The ship was on its way from Seville in Spain to Randers in Denmark with a load of 1,400 tonnes of steel. On departure the draught was 5.55 m fore and 5.69 m aft.

The person concerned made the voyage preparations himself. He had deliberately planned the route over the shallows 'Boels Plade'. The ECDIS map on board indicated water depths between 5.0 and 5.6 m. The ship was intended to pass the shallow water at low tide. The person concerned was aware of the risk of a grounding, but had estimated it to be very small. He considered that, in view of the flat, sandy bottom in Danish waters, there was no risk involved in a grounding should it occur. He had also added some extra ballast – which further increased the draught of the ship – in the expectation that the ship would soon refloat again if it were to ground. The person concerned had not paid any attention to draught, squat or UKC in the voyage preparation.

The person concerned was in his cabin that night. The chief officer was on watch on the bridge. At the start of the grounding the ship was sailing at a speed of approximately 7.5 knots. The person concerned was awake and had already felt the ship vibrate two hours before the grounding. However, he did not tell the helmsman to reduce speed or to change the route. As the person concerned knew, it was at low tide at the time. The water depth indicated on the ECDIS map near the grounding position (56°37.9'N 010°26.7'E) was 5.0 m. It was calm weather.



When the water rose and the extra ballast was unloaded, the ship refloated under its own steam and sailed on to Randers. No holes or cracks were found in the hull during the investigation.

After refloating, the current draught was recorded: 5.50 m fore, 5.45 m aft.

B. The Disciplinary Court is of the opinion that the person concerned wrongly planned the route over the shallow part of 'Boels Plade' in his voyage preparation. The data on Fiducia draught and water depth referred to above clearly shows that the risk of a grounding was very significant, even leaving aside the additional lowering caused by squat and taking on additional ballast. The person concerned – also wrongly – did not pay any attention whatsoever to this squat and the UKC. The person concerned was not even aware of the squat that was to be expected there.

When the person concerned felt that the ship had started vibrating that night – which indicated a low UKC – he should have instructed the chief officer to reduce speed or, if and as far as still possible, to redirect the route around the shallows. The party concerned apparently consciously omitted to do so. The Disciplinary Court does not share the view of the person concerned that a grounding was without risk. The presence of hard objects on the seabed (such as stones, lost cargo, anchors) cannot be ignored. These objects could cause holes or cracks in the hull, which could affect the ship's buoyancy and cause harmful substances to enter the sea. The seabed could also be less flat and soft locally, which could also have an impact on the ship in the event of a grounding (the ECDIS chart mentioned cobbles as well as sand).

The Disciplinary Court does not consider it a valid argument for the route chosen that fuel could be saved by sailing over the shallows, although it may be questioned whether less fuel would actually be used when sailing with a (very) small UKC. Press of time cannot be considered a valid reason either.

The deliberate acceptance of the very high probability of a ship such as the Fiducia running aground on the shores of Randers cannot, under the normal



circumstances and in the absence of any need to do so, in any way be regarded as good seamanship.

In summary, it must be concluded that the person concerned did not make proper voyage preparations and did not intervene when it was necessary to do so. The grounding was the foreseeable consequence of this.

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 (the criterion is therefore not whether the person concerned acted 'recklessly').

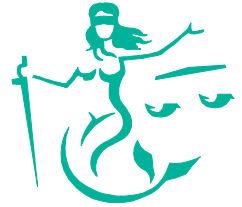
6. The disciplinary measure

The Maritime Disciplinary Court judges that the person concerned seriously failed in his responsibilities as captain, which resulted in the grounding. In view of the seriousness of the evident behaviours a suspension of the navigation licence for the duration mentioned below is appropriate. Part of this measure will be imposed conditionally. The person concerned partially understands the error of his actions, namely in relation to the failure to order a reduction in speed, but unfortunately not in relation to the incorrect preparation of the voyage. In addition, the conditional part of the measure may act as an incentive or, possibly, a deterrent, to act differently in the future.

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 ten weeks;
- stipulates that of this suspension, a period of five weeks 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 A.N. van Zelm van Eldik, LL.M., presiding judge, R.A. Oppelaar and J. van Vuuren, members, in the presence of E.H.G. Kleingeld, LL.M., as secretary and pronounced by the presiding judge in public session on 25 April 2018.

A.N. van Zelm van Eldik
president

E.C.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.