

**RULING OF THE MARITIME DISCIPLINARY COURT OF THE
NETHERLANDS IN THE CASE DATED 23 MAY 2018 (NO 4 OF 2018)
2017.V7-SEA BRONCO**

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,

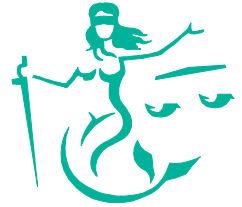
versus

D. K.,
the person concerned,
not represented by counsel

1. The course of the proceedings

On 27 October 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 Sea Bronco from M. Schipper, inspector ILT/Shipping in Rotterdam. Nineteen 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.



A statement of defence was received from the person concerned on 28 December 2017, a copy of which was forwarded to the inspector.

The presiding judge stipulated that the oral hearing of the case will be held at 10.00 hours on 30 March 2018 at the offices of the Disciplinary Court in Amsterdam.

The ILT, the person concerned and the witness T. H. were summoned to appear at the hearing of the Disciplinary Court.

The court hearing was held on 30 March 2018. M. Schipper, inspector at the ILT/Shipping appeared at the hearing for the petitioner. The person concerned appeared and so did witness T. H. The victim B. H. was also present.

2. The petition

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

On 23 December 2016 a serious accident occurred in the port of Vlissingen aboard the vessel Sea Bronco, in which the first mate of the Sea Bronco (B. H.) sustained a serious head injury. At the time of the accident the Sea Bronco was mooring alongside another tug, the Sea Bulldog. A forward spring had already been prepared and a crew member was working on the stern hawser on the afterdeck. The person concerned, the captain of the Sea Bronco, was using the towing winch to tighten a hawser connected to the towing cable from the back of the bridge. The victim later attached this hawser to the Sea Bulldog's centre bollard. When the hawser tightened the person concerned did not stop the winch quickly enough, which resulted in the hawser snapping. The victim was out of the line of sight of the person concerned, but was more or less in line with the tightened hawser on the afterdeck of the Sea Bulldog and was struck by the whipping end of the snapped hawser.



The inspector considers the following elements to be important in his charge against the person concerned

1. In view of the pulling power of the winch and the safe workload of the hawser being used, this combination as a whole should not have been used to draw the two ships together. Furthermore, the hawser was turned twice around the drum, which not only increased the risk of the hawser getting caught and broken if it came between the turns of the steel towing cable, but should also have been noticed by the person concerned.
2. While the work was being carried out the person concerned should have ensured that the personal protection equipment – especially the helmet – was being worn correctly and completely.
3. While the work was being carried out (when using the towing winch) the person concerned should have ascertained that there was nobody in the vicinity of the tightened hawser in order to rule out the risk of injury in the event of the hawser breaking;
4. During the work (when using the towing winch) no effective communication had been set up during the work between the person concerned on the bridge and the people carrying out the mooring and unmooring work on deck. The people on deck were therefore unable to promptly alert the person concerned to the danger of the hawser breaking.
5. The objection against the person concerned is that, in view of the elements outlined above, he did not leave any margin of error whatsoever, as a result of which the people on the deck of both the Sea Bronco and the Sea Bulldog were placed in serious jeopardy.

3. The position of the person concerned

In short, the person concerned stated at the hearing that he agreed with the inspector's first objection. He disagrees with objection 4 and has not



expressly disputed his responsibility in respect of the other objections. However, the person concerned paid attention to where the other people were when he was working on the winch. But it may also be that he had just turned around, so he couldn't see anything.

When the hawser tightened the person concerned did not continue hauling in the winch. According to him, the bad weather and, in particular, a possible gust of wind played a major role in everything that took place.

In his defence, the person concerned writes that there was a strong wind of 14 knots which, when moored, reached 30 knots, pushing the Sea Bronco against the Sea Bulldog and loosening it again (probably causing the wire to snap).

4. The assessment of the petition

A. It is clear from the ship's data attached to the petition (Annex 2 to the petition) that the tug Sea Bronco (gross tonnage 230, propelled by 2x Caterpillar 3508 B 746 kW) is a Dutch seagoing vessel entitled to fly the Dutch flag.

B. A report of the Dutch Human Environment and Transport Inspectorate (Annex 5 to the petition), drawn up by J.M. van Waesberghe and attached to the petition, includes – in summarised and concise form – the following:

On 23 December 2016, I was asked to go to the tug Sea Bulldog. An accident had occurred involving the first mate. At 14:45 local time I boarded the Sea Bulldog in Vlissingen, where the accident took place. The Sea Bronco's broken stretcher was wrapped around the bollard of the starboard rail of the Sea Bulldog. The stretcher looked used, but was not in poor condition. The broken stretcher was on the deck of the Sea Bronco. It had snapped on the winch drum, probably because too much force had been exerted. The stretcher was pulled completely between the steel towing cable on the drum and had snapped there.



The victim, B. H. was struck in the head by the broken stretcher on the deck of the Sea Bulldog. This caused him to lose consciousness, and he suffered a severe head injury. The victim was transported to a hospital in Rotterdam by ambulance and trauma helicopter. After being examined at the hospital he was put into an artificial coma. The side of his face was seriously injured and broken. Some of the victim's teeth had remained on the deck.

C. An official report attached to the petition of the Dutch Police, Zeeland–West–Brabant Unit, Water team, numbered PL2000–2016326768–2 (appendix 7 to the petition) contains – in summarised and concise form – the following:

On 23 December 2016, I heard as a witness in Vlissingen: Able seaman N. G. The witness made the following statement: “I’m an able seaman on board the Sea Bronco. Today at around 11.00 hours I was working on the afterdeck of the Sea Bronco. We had changed places between the Sea Bulldog and the Sea Bronco. Our captain was in the wheelhouse and the Sea Bronco was manoeuvring. He was using a winch to draw the tugboats towards each other. I think that the fore hawser between the two vessels had already been secured. I was securing the hawser on the stern. There was a hawser between the winch of the Sea Bronco and the centre bollard of the Sea Bulldog. This hawser is connected with a hasp to a steel cable that was fitted around a drum. The hawser had been given 2 or 3 turns around the drum. The two vessels were pulled reasonably tightly against each other. I saw that the hawser was continuing to be pulled tight. I saw the hawser getting thinner. If you pull hard on it, it gets thinner and thinner. I saw this happening and made hand gestures to the captain making it clear that he had to stop pulling. I suddenly heard a grating noise and realised that hawser was about to give way. I then heard a loud bang and saw the hawser break. I felt the slipstream from the hawser as it flew over my head. It only just missed me. I saw that the first mate was lying on the deck of the ship next to us, the Sea Bulldog. I could see that he was unconscious. I think that the captain of the Sea Bulldog called the emergency services.”



D. An official report of the SZW Inspectorate (appendix 8 to the petition), attached to the petition contains in summarised form, inter alia the following information:

On 23 December 2016, I, Hermanus Uijl, was on board the tug, Sea Bulldog. I spoke to T. H. there. He answered my questions as follows: “I saw that the captain of the Sea Bronco was fumbling around a bit. What I mean is that he left the winch running when the hawser was already tightened.”

E. A copy of Seacontractors' "QHSE Risk Assessment winch handling" (Annex 15 to the petition) attached to the request includes, in summarised form, the following:

Activity -task	Risk, consequence	Measures
Winch operations general	injuries to crew	Standard PPE: [...] helmet [...]
Winch in operation	serious injuries to crew, death	Keep clear of wires under strain, avoid deck where possible

F. At the hearing, rendered in summarised and concise form, the person concerned made the following statement:

The person concerned indicated that the ships had to be warped on that day. In addition, bad weather was on its way. Because the Sea Bronco was the second ship and the Sea Bulldog the third, the ships had to change places. The presiding judge asks whether the person concerned had used the winch when mooring? The winch is used for the mooring line amidships. Because of the expected bad weather, the person concerned wanted to pull the ships together with the winch. The presiding judge asked whether the use of the towing winch for the mooring line in the middle of the ship could be dangerous. The person concerned indicated that there was no other option at that time, but he agreed with the presiding judge. The weather at that time was also very bad; the wind was strong and therefore both ships had to be



well aligned. The other ship had to stay over for the weekend. The bad weather played an important role.

A spring, in the form of a stretcher, was attached to the steel towing cable, which was attached by the previous crew. The hawser was placed with several turns around the drum and between the steel cable. It got jammed during the tightening process. The person concerned agrees with the inspector that this was dangerous.

The mooring line was thrown from the Sea Bronco to the Sea Bulldog by the first mate of the Sea Bronco. The person concerned indicates that, in order to moor the vessel more quickly, the first mate laid the mooring line over the bollard of the Sea Bulldog.

At that time, the person concerned did not pay any attention to whether the first mate was wearing the personal protective equipment. He did not pay any further attention to this.

The person concerned did not pay any attention to the first mate when he started operating the winch. The person concerned saw him for a moment, but the first mate had to tighten the mooring line as planned. The other mate was not from the Sea Bronco but was on the Sea Bulldog. He was with the first mate in the beginning and they were to go together amidships to attach the mooring line.

At the moment when the middle mooring line broke, there was full tension on the fore and aft mooring lines. The person concerned did not continue to tighten when the mooring line was tight. At the time of the break, he turned around to see if the end had been secured at the fore ship.

The mooring line moved due to a gust of wind. The only thing the person concerned heard, when he turned around was that the end snapped. He then heard from the chief engineer that the first mate was unconscious. At that moment people warned him that the line was tight. The chief engineer had not said anything or noticed anything.

N. G., an able seaman, was working on the aft hawser, according to the presiding judge who was presenting his statement. The able seaman saw the mooring line amidships become thinner and tried to inform the captain about this. The person concerned did not notice this. The person concerned paid



attention to where the other people were when he was working on the winch. But it may also be that he had just turned around, so he couldn't see anything.

The communication took place via the onboard intercom. And the door to the bridge was open. Anyone could have communicated by calling, according to the person concerned.

The person concerned believes that a gust of wind may have been involved, this is somewhat speculative. He heard this because the ship had made a strong pull and when he turned around he noticed it as well. The person concerned remembers that he felt the gust of wind.

Mr Kanders asks whether the person concerned was aware of the snapback zones. He asks where they are. The person concerned says that the snapback zones were marked on the Sea Bronco. Mr Kanders asks whether the first mate could have known about the marking. The person concerned replies that the victim may have thought that the ship had already been moored and that he was there for that reason.

Mr Kanders asks whether the crews of Seacontractors are aware in advance of the QSHE provisions. The person concerned answers that this is the case. The ship's personnel are informed of this when they join the ship. The first mate had boarded before the person concerned came on board. The person concerned had assumed that the first mate had already read everything and that he was aware of all the actions required. He has not checked that.

The person concerned knew the maximum pulling force of the winch, which, according to the person concerned, was 25 tons. The person concerned assumes that the strength of the central bollard at that moment was 10 to 15 tons, but perhaps it was a little less.

Mr Lensen asks whether the person concerned could see the able seaman from the wheelhouse. The person concerned replies that he could see, at the moment of mooring, that he was standing on the stern.

The able seaman clearly indicated that things could go wrong, but the person concerned did not see that. At that time, the person concerned had turned his attention to something else. He was watching to see if the fore ship was properly secured and if he could put the winch into neutral position.



Mr Lensen asks whether the person concerned had seen or heard that the mooring line was very tight. The person concerned indicates that, because the wind was strong, he did not hear the sound.

The inspector has another question. Was the mooring line already secured at the time of pulling in the 2 ships by means of the winch? The person concerned replies that as far as he can remember both the bow and the stern were being pulled. The mooring line amidships was not stretched. If there was unequal tension, this was a bad situation because bad weather was on its way. The hawser could then break.

G. At the hearing, rendered in summarised and concise form, witness T. H. made the following statement:

The witness remembers exactly what happened that morning, 23 December 2016.

He was a marine engineer on the Sea Bulldog.

The Sea Bronco had come alongside the Sea Bulldog. First, the mooring line was to be attached, then the raft mooring line and then the middle mooring line with the winch via the centre bollard. He describes this as misuse of the equipment. But that's how it happened.

The ships were already moored and the Sea Bronco came alongside and was secured in the middle by means of a mooring line.

The witness saw that things were not going well and he left. He heard creaking after the winch was used and he called out that everyone had to leave the deck. There were four of them on board. All of them were on the deck of the Sea Bulldog; the mooring line had to come from the Sea Bronco and one of the men had to take the mooring line.

The mooring line was laid around the bollard and then it was hauled in. The witness heard that the mooring line was pulled too tight. They were standing at the centre bollard at the time. The crew started shouting, and the witness walked away in response to this.

The witness did not notice whether everyone always wears protective clothing. He knows that no one was wearing a helmet. But according to the



witness, that would not have made any difference in this case. Extreme forces were released. The victim was struck in the face.

The witness has used the word "fumbling" in his statement. By this he meant that the person in question was still manoeuvring and was doing other things as well. This is a reproach, but he also understands that the captain had to do many things at once. The witness does however feel that the captain should have paid more attention to the winch, which he should have had stopped on time: that is his accusation.

According to the witness, the weather conditions were as follows. It was cold and dry and there was no wind as far as he can remember.

The captain indicated that there was a gust of wind, according to the presiding judge. According to the witness, this would be possible, but he can no longer remember it.

When asked about the communication between bridge and deck, the witness replies that the information is passed on to the people by telephone. The witness himself was called by telephone by the captain.

Mr Lensen asks how far the ships were away from each other. The witness answers that the ships were already alongside each other when the winch was used and the accident happened.

The inspector's question is: when the winch is running, can you hear that too? The witness heard the mooring line snap. He also heard that the winch was still turning when the mooring line broke.

5. The ruling of the Disciplinary Court

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

At around 11.00 hours on 23 December 2016 a serious accident occurred in the port of Vlissingen aboard the Dutch vessel Sea Bronco, in which the first mate of the Sea Bronco (B. H.) sustained a serious head injury. At the time of the accident the Sea Bronco was mooring alongside another tug, the Sea



Bulldog. A forward spring had already been prepared and a crew member was working on the stern hawser on the afterdeck. The person concerned, the captain of the Sea Bronco, was using the towing winch to tighten a hawser connected to the towing cable from the back of the bridge. The victim later attached this hawser to the Sea Bulldog's centre bollard. When the hawser tightened the person concerned did not stop the winch quickly enough, which resulted in the hawser snapping. The victim was located on the aft deck of the Sea Bulldog and was hit by the swaying end of the broken mooring line.

It has also been established that in view of the pulling power of the winch and the safe workload of the hawser being used, this combination as a whole should not have been used to draw the two ships together. Furthermore, the hawser was turned twice around the drum, which not only increased the risk of the hawser getting caught and broken if it came between the turns of the steel towing cable, but should also have been noticed by the person concerned.

While the work was being carried out on deck the person concerned should have ensured that all of the prescribed personal protection equipment, especially the helmet, was being worn correctly. While the towing winch was being used, the person concerned also failed to ascertain that there was nobody in the vicinity of the tightened hawser in order to rule out the risk of injury in the event of the hawser breaking. The person concerned stated that he had paid attention to where the people on deck were when he was working on the winch, but on the other hand he also indicated that it is possible that he had just turned around, as a result of which he could not see anything. Also because it appeared that the person involved had not seen the able seaman's warning gestures, the Disciplinary Court concluded that the person concerned had insufficiently taken the safety of the people on deck into account.



The accusation that the person concerned had not established effective communication did not prove to be the case. After all, telephone contact was possible between the bridge and the people on deck.

The conclusion is that the person concerned, in view of the elements outlined above, did not leave any margin of error whatsoever, as a result of which the people on deck of both the Sea Bronco and the Sea Bulldog were placed in serious jeopardy.

B. 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.

C. Insofar as the person concerned has invoked partial force majeure, the Disciplinary Court considers this to be unfounded. First, it follows from the statements by the able seaman and in particular the witness T. H. that the tow winch operated by the person concerned continued to turn when it was already under tension and that the mooring line subsequently broke. In addition, it has not been plausibly demonstrated that there was a sudden gust of wind as a result of which the breaking of the mooring line can be (partly) explained. The police update report shows that on that day there was a southwest wind of 12 knots. The weather report enclosed with the statement of defence shows that the wind speed on 23 December 2016 was approximately 8 miles an hour at 11:00 hours and that it only increased later in the day. Nor can witness T. H. remember a gust of wind.

6. The disciplinary measure

The Disciplinary Court judges that the person concerned has seriously failed in his responsibilities as captain. When mooring, he made use of resources that were not intended and suitable for this purpose. He was not sufficiently aware of the resulting danger; nor had he ensured that the persons on board

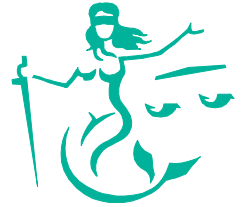


the two tugs were at a sufficient distance and were wearing a helmet. As a result, a mate suffered serious head injuries. During the session – more than 15 months after the accident – the mate indicated that he still had cognitive limitations as a result of the accident. He was not able to speak properly for a long time. Also, the able seaman only narrowly escaped from being hit by the broken mooring line. In view of the seriousness of the conduct, it is appropriate to suspend the navigation licence for the period specified and it is not sufficient to impose a fine, as the person concerned has requested. Given that the person concerned realises the seriousness of the incident (he did not sail for a few months because he felt personally insecure and he came to the Netherlands to render account for what had happened), the Disciplinary Court sees reason to stipulate that the suspension of the navigation licence should be imposed in part on a conditional basis.

7. The decision

The Disciplinary Court:

- declares the objections against the person concerned as stated under point 5 to be largely well-founded;
- suspends the navigation licence of the person concerned for a period of 12 (twelve) weeks;
- stipulates that of this suspension, a period of 6 (six) 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.
- declares the objections to be otherwise unfounded;



Duly delivered by P.C. Santema, deputy presiding judge, P.J. Lensen and T.W. Kanders, members,
in the presence of E.H.G. Kleingeld, LL.M., as secretary and pronounced by
Mr A.N. van Zelm van Eldik in public session on 23 May 2018.

P.C. Santema
deputy presiding judge

E.H.G. Kleingeld
secretary

A.N. van Zelm van Eldik
president

E.H.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.