



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE
NETHERLANDS
OF 4 July 2018 (NO. 6 OF 2018)
IN THE CASE 2017.V10-SYMPHONY SKY**

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

A. d. H.,
the person concerned,
counsellor: J.M. de Boer.

1. The course of the proceedings

On 28 November 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 Symphony Sky 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, enclosing a copy of the petition with appendices and informed the person concerned of the right of appeal.

On 07 February 2018 a statement of defence was received from the counsellor of the person concerned.



The presiding judge stipulated that the oral hearing of the case would be held at 11.00 hours on 13 June 2018 at the offices of the Disciplinary Court in Amsterdam.

The Human Environment and Transport Inspectorate and the person concerned and his counsellor 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 13 June 2018. 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 11 June 2017 at approximately 18:14 hours UTC, after bunkering at Skagen Roads, a collision took place between the Dutch seagoing vessel Symphony Sky and the 14-metre Danish fishing vessel Frisk Fisk (S521). Both vessels suffered minor damage and were able to continue their voyage. There were no personal injuries.

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

The person concerned is accused of not having sufficiently monitored the situation in his supervision of the navigation of the vessel, carried out by the chief mate, and therefore of not having taken timely action to rectify the errors of the chief mate, resulting in a collision.

Reference is made to the Convention on International Provisions for the prevention of collisions at sea, 1972: Regulation 2b, 7, 8f (iii), 17a and 17b.

The person concerned thus acted contrary to the principles of good seamanship within the meaning 55a of the Dutch Seafarer's Act.



3. The position of the person concerned

Rendered in summarised and concise form, the person concerned has advanced the following arguments:

There are serious deficiencies in the investigation carried out, such as the absence of a statement by the person concerned.

After weighing anchor and turning the chief mate took over the watch until the time that the captain – the person concerned – was to relieve him. By agreement, the person concerned then worked on the ship's administration on the port side of the bridge. When the person concerned interrupted his administrative work and went to the front of the bridge, he noticed after a few seconds of orientation the Frisk Fisk, which was fast approaching his vessel. He realised that a collision was unavoidable. He immediately intervened by having a sound signal given and turning hard to starboard and then hard to port. Due to his swift and effective action, the collision damage was kept to a minimum.

The navigation watch was assigned to the chief mate. The person concerned was working on the administration and not the navigation watch. Although he could always be contacted, the chief mate did not involve him in the navigation watch or even consult him. The accusation that the person concerned did not supervise the chief mate's performance of the navigation watch is incorrect, as is the accusation that he did not intervene in time.

4. The assessment of the petition

A. According to the documents and public sources attached to the petition, the ship's details of the seagoing vessel Symphony Sky were as follows: Dutch cargo ship of 6749 GRT, length 122.5 m, breadth 17 m, year of construction 2015.

B. A report form (Appendix 4 to the petition, p. 14/17) contains the following information, rendered in concise form.



The form was completed by the person concerned and is dated 12 June 2017.

The Symphony Sky had departed from Gdynia [Poland] and its destination was Pasajes [Spain].

Description of the accident on 11 June 2017 18:15 hours UTC:

That afternoon the ship had anchored in Skagen Roads [Denmark] for bunkering. The weather was good, wind SW 4 and good visibility.

At 17:00 UTC the bunkering was completed. At 18:00 UTC the anchor was raised and the ship was ready for departure. Captain on duty together with the chief mate and the lookout seaman.

At 18:10 UTC, as the speed gradually increased, two small fishing vessels, not engaged in fishing and coming from port, were observed. After passing the first fishing vessel in front, it was suddenly noticed that the second fishing vessel, the Frisk Fisk, was coming straight from port towards the Symphony Sky. A signal was given and the captain ordered a turn hard to starboard because nobody was visible in the wheelhouse of the Frisk Fisk, then ordered a hard turn to port to avoid a collision with the rear part of the port side. However, a collision with the 14-metre Frisk Fisk could not be avoided.

The Symphony Sky was hit at 18:15 UTC on the port side at the rear at the engine room controls. There were no leaks or dents; there was only paint damage (5 m long, 30 cm wide).

Contact was sought with the Frisk Fisk but the crew could not be contacted. Lyngby Radio was informed that there were no casualties on board the vessel and that there was only minor damage to the hull. With the permission of Lyngby Radio the voyage was continued at 18:40 UTC.

C. A written statement dated 12 June 2017 of the chief mate (Appendix 8 to the petition, p. 24/25) states – rendered in concise form in Dutch – among other things the following.

The bunkering operation was completed at 17:00 UTC. It was agreed with captain that I would be in charge when raising the anchor, picking up speed



and resuming our voyage to Pasajes, in order to qualify in these operations in connection with my upcoming promotion to captain.

At 17:50 UTC weighing anchor begins. The captain is on the bridge.

Good weather, wind SW4, light sea, no swell, good visibility.

At 18:00 hours UTC anchor raised; bridge checklist for departure completed; underway; traffic situation was checked beforehand; after passing a sailing vessel I started turning the vessel to port to get on a course of 035°–037° and to pass between the anchor berths to our next waypoint.

"Captain st-by/assisting on the bridge en finalizing reports".

At 18:05 UTC, able seaman B. came to the bridge to keep lookout.

At 18:10 UTC heading 035°–037° (autopilot), continue to increase speed.

Two small fishing vessels, which did not indicate that they were fishing, were noticed over our port side. The first fishing vessel changed its course to port to increase the CPA to cross over in front of our bow and it passed 2–3 cables in front of us. The second fishing vessel continued to maintain its course and speed and its intentions were unclear, due to its small changes of course. Our speed was about 6–7 knots and I continued to increase speed to give the fishing vessel the opportunity to pass behind us; in this situation reducing our speed was not an option because of the loaded condition of our vessel and major changes of course were also not possible or feasible because the area was full of anchored vessels. At that moment I had no doubts and I continued to observe that vessel, visually and with the radar. A little later I noticed that, from my point of view, that vessel suddenly came straight at us; we gave a long sound signal, without any reaction from the fishing vessel. The captain then ordered us to switch to manual steering and to turn hard to starboard (our bow began to move to starboard) and then to go hard to port to avoid a collision with the aft part of our port side. The fishing vessel continued to approach our vessel and the captain did not see anyone on the bridge of that vessel.

At 18:15 UTC the fishing vessel collided with our port side.

At 18:17 UTC the captain ordered our vessel to stop and later to turn around in order to help the fishing vessel. It turned out to be impossible to



communicate with the crew on the fishing vessel. There were no casualties on our ship and there was only paint damage to the hull on port side (approx. 5 m by 30 cm). We heard from Lyngby Radio that there were no casualties on the fishing vessel, that there was only minor damage and that there was no need for assistance. We were allowed to continue our voyage. At 18:40 UTC we turned our vessel to a course of 035°–037° and resumed our voyage.

D. About ten AIS images (Annex 10 to the petition, p. 28/38) show the AIS data of the Symphony Sky with a number of other vessels, including the two fishing vessels and an anchor Sigas Silvia, in the period from 11 June 2017 18:10:19 GMT to 18:14:22 GMT.

E. The petition (Appendix 7, p. 21/23) is accompanied by ECDIS images showing the track of the shipping lane followed by the Symphony Sky after weighing anchor.

It can be seen that this vessel first followed a course of approximately 037°, that from around 18:14:00 UTC a turn to starboard was initiated at 057°39,862'N 010°39,199'E, followed by a sharp turn to port, after which the vessel returned roughly to that position with a sharp turn to starboard. After this 'zig-zag' manoeuvre, the vessel resumed its course of approx. 037°.

F. In the petition (p. 4/5), the inspector makes an assessment on the basis of these ECDIS and AIS images, transferring the manoeuvre referred to above to the AIS situation at 18:10 UTC (pp. 43/45). His conclusion is that it was indeed possible for the Symphony Sky to take evasive action to starboard with a sharp turn, avoiding a collision with the Frisk Fisk and also remaining free from a nearby anchor berth, provided that this turn was started in time after recognising the risk of collision.



G. At the hearing of 13 June 2018 – rendered in abridged and concise form – the following statement was made by the person concerned:

I was on board the Symphony Sky as captain as of 2 May 2017. I had also previously sailed on the sister ship Symphony Sea.

A notable aspect of the Symphony Sky and its sister ship is that the superstructure with the accommodation and the bridge are on the front of the vessel and that the engine room is at the stern.

Sailing with this ship is different from with traditionally built vessels, with the superstructure aft, but you get used to it quickly.

I was on watch from 20.00 to 24.00 hours. The chief mate was on watch from 16:00 to 20:00 hours. Ship's Time was UTC+2 hours.

On 11 June 2017, my watch started at 20:00 BT; the collision took place at 20:15 ST or 18:15 UTC.

I had spoken to the chief mate beforehand about how we would proceed. The agreement was that I would watch while the chief mate weighed anchor. He did not have much experience with that specific work. It was not an exam situation, but a matter of gaining experience with a view to his promotion to captain.

After that, the chief mate was to take the navigation watch while I was doing administrative work, after which I would take over his watch when I had finished doing with this.

The chief mate could consult me if necessary.

The chief mate certainly had sufficient experience in leaving the anchorage and resuming the route. I thought he was capable of doing that. He had been on board for a month and had also sailed on the Symphony Sky and a sister ship. He was experienced enough to sail with these Symphony vessels. I regarded him as one of the better navigating officers.

As agreed, I was involved when the chief mate weighed anchor. This procedure takes about 15 minutes. When that procedure was almost finished



and the vessel was prepared for departure, I handed over the navigation watch to the chief mate and started doing the administration: settling the bunkering operation, including scanning and sending the bunker papers. I did this at a large table on the port side of the bridge. The table contained a laptop, a printer/scanner and other equipment for sending emails. I sat at that table with my back to the windows on the port side. From there I could only look out at the starboard side and at the front of the vessel. Before I started my administrative work, I and the chief mate looked at the traffic situation in the area where we had anchored. I had also seen the two fishing vessels at that time.

While I was busy with the administration I did not monitor what the chief mate was doing at the front of the bridge. I had no reason to do so. The mate was now responsible for the navigation. He had taken over the navigation. He could consult me if necessary.

At one point I walked from the desk to the front of the bridge. The defence states that I interrupted my proceedings, but in fact I had almost finished my work. In any event, there was no special reason to go to the front of the bridge. It was not the case that the chief mate or the lookout had said or pointed out anything that gave me cause to do so. I just went for a look. I saw the Frisk Fisk coming straight to the Symphony Sky on our port side. I can't estimate the distance and speed.

I saw that a collision could no longer be avoided. I intervened immediately. A sound signal has been given. I switched to manual steering and turned hard to starboard. That had the desired effect. Then I turned hard to port. This was intended to reduce the angle of collision, and this was achieved, otherwise the collision would have been much worse. It was a glancing collision which left a five-metre long mark in the paint as a result. The collision took place approximately one minute after I had intervened. I had seen with the binoculars that nobody was present in the wheelhouse of the Frisk Fisk.



Then I had the vessel turn twice, until we were roughly back at the place of the collision. My intention was to provide any necessary assistance to the Frisk Fisk. We sought contact with that vessel, but communication was not possible because nobody on the vessel spoke English. We heard from Radio Lyngby that there were no casualties on that vessel. We were allowed to continue our voyage and we did so.

A list of standing watch orders is displayed on the bridge, including the requirement to warn the captain in the event of an imminent collision. The chief mate failed to act accordingly. I do not know why. I was available if necessary.

The chief mate had not taken any other measures to prevent a collision either. He had only increased speed, apparently in the hope that the Frisk Fisk would pass behind him. The chief mate therefore did not intervene on time. I spoke to him about that as well. We both found it incomprehensible.

The inspector's accusation that I was supervising the chief mate's navigation is incorrect.

The situation and the agreements were clear. After weighing anchor, the chief mate had a navigational watch before and at the time of the collision; he could always call me if necessary. We communicated in English. I would not be taking over the navigation again until I had finished my administration. That point had not yet been reached.

In the collision notification form (appendix 4), I indicated in the description (p. 16) that 'we spotted 2 small fishing vessels' and 'we suddenly found out' etc. That is not to say that I was also involved in the navigation watch. The procedure is to make a statement as soon as possible. I made my statement on the basis of the information from the chief mate.

I had however spoken to the chief mate about the fact that two fishing vessels were heading towards us when we weighed anchor.



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 11 June 2017, at approximately 18:15 hours UTC = 20:15 hours ST, the Dutch seagoing vessel Symphony Sky (6749 GRT, length 122.5 m, width 17 m) collided in Danish waters with the Danish fishing vessel Frisk Fisk (length 14 m).

The Symphony Sky was on its way from Gdansk to Pasajes. That afternoon it had been anchored at Skagen's roadstead for bunkering. After completing the bunkering the vessel had weighed anchor and then resumed its voyage. Weather conditions were good, daylight, wind SW4, light sea, no swell and good visibility.

The chief mate was the officer in charge of the Symphony Sky watch from the departure of the anchorage. The person concerned, the captain, was also present on the bridge, as was a lookout. The chief mate's watch was between 16:00 and 20:00 ST, and that of the person concerned between 20:00 and 24:00 ST.

The person concerned and the chief mate had made an agreement. The chief mate would be in charge of weighing anchor and preparing for departure. He would do so under the supervision of the person concerned. The chief mate had not yet gained much experience in weighing anchor and departing and would thus gain more experience with a view to being promoted to captain. The chief mate would then be in charge of the navigation watch. The person concerned would then do administrative work on the bridge (completing the bunker administration). When that work was completed, the person concerned would take over the navigation watch from the chief mate. In the meantime, the person concerned could, if necessary, be consulted by the chief mate.



When the weighing anchor procedure was almost completed and the vessel was prepared for departure at around 18:00 UTC, the person concerned handed over the navigation watch to the chief mate and the person concerned went elsewhere on the bridge to do the administration. He did this at a table on the port side of the bridge. The person concerned sat at the table with his back to the windows on the port side and therefore had no view of the port side area of the Symphony Sky in his work.

The chief mate put the vessel on a course of 035°–037° and gradually increased its speed. Two fishing vessels were sailing in the area in question. They had already observed by the person concerned and the chief mate shortly before handing over the watch to the chief mate.

Because the Symphony Sky was approaching from starboard on an intersecting course for the two fishing vessels, the fishing vessels – which were not engaged in fishing – were obliged to divert. After a change of course, the front fishing vessel passed in front of the Symphony Sky. The rearmost fishing vessel, the Frisk Fisk, has not changed its course or speed. Apparently nobody was present in the wheelhouse. In principle, the Symphony Sky should have maintained its course and speed. The chief mate continued to increase the speed slightly. According to the AIS data, this vessel was on a course of approximately 037° and remained on that course until very shortly before the collision. Its speed was 9.3 knots at 18:10 GMT and then increased slightly to 10.7 knots at 18:13 GMT. The chief mate did not take any further measures to prevent a collision.

Approximately one minute before the collision, the person concerned got up from his table and walked towards the front of the bridge. He then saw that the Frisk Fisk approaching the Symphony Sky directly on the port side. The person concerned intervened immediately. A sound signal was given; at the same time, the autopilot control was transferred to manual control and a hard turn to starboard was made, followed a little later by a hard turn to port. A collision between the Frisk Fisk and the port side of the Symphony Sky



could not however be avoided. However, the angle of collision had been reduced to such an extent that the glancing collision only caused damage to the port side of the stern of the Symphony Sky.

After the collision, the Symphony Sky made two consecutive turns, which brought it back to the location of the collision, to assist the Frisk Fisk if necessary.

Contact was sought with the Frisk Fisk and Lyngby Radio. There were no casualties on the Frisk Fisk and permission was given to the Symphony Sky to resume her voyage. This was done.

B. This shows that although the person's watch started at 20:00 BT according to the schedule, the person concerned and the chief mate had agreed that the latter would take over the navigational watch after departure from the anchorage, that the person concerned would in the meantime carry out administrative work elsewhere on the bridge – where the person concerned could be consulted if necessary – and that it was only when the person concerned had finished this work that he would take over the navigation watch from the chief mate again.

These were good and clear agreements and the person concerned and the chief mate also acted accordingly. The person concerned did not interfere with navigation after departure and had no view of it from his desk seat; in particular, he had no view of the fishing vessels approaching from port. There was no reason for the person concerned to doubt the ability of the chief mate to correctly maintain a navigation watch from departure onwards.

The Disciplinary Court is of the opinion that the person concerned had no obligation or reason to supervise the navigation by the chief mate in any way or to monitor the situation around the vessel. The person concerned could be consulted by the chief mate if he considered it necessary. This was not done. It does not appear that the person concerned should have noticed that there was a risk of collision.



It was only when the person concerned went to the front of the bridge an completion of his administrative work that he saw the dangerous situation with the Frisk Fisk on a collision course. The person concerned intervened immediately and appropriately.

In the given situation, the person concerned cannot be held responsible for the conduct of the chief mate prior to that time and his possible failure to take timely measures to prevent collision.

The person concerned cannot be held liable for the fact that the Symphony Sky did not perform an evasive manoeuvre, such as a sharp turn to starboard.

He did not have to intervene any sooner than he did.

This is not altered by the fact that the person concerned was the captain.

C. It must be concluded that the person concerned cannot be held accountable for having acted in violation of the standard of good seamanship. The accusations made against him by the applicant are unfounded.

No disciplinary measure will therefore be imposed.



6. The decision

The Disciplinary Court finds that the objections are unfounded.

Duly delivered by A.N. van Zelm van Eldik, LL.M., presiding judge, C.R. Tromp and

D. Roest, members, in the presence of E.H.G. Kleingeld, LL.M., as secretary and pronounced by the presiding judge in public session on 4 July 2018.

A.N. van Zelm van Eldik
presiding judge

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.