

**RULING OF THE MARITIME DISCIPLINARY COURT OF THE
NETHERLANDS OF 4 July 2018 (NO. 7 OF 2018)
IN THE CASE 2018.V3 – RUYTER**

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.V. L.,
the person concerned.

1. The course of the proceedings

On 08 February 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 Ruyter from M. Schipper, inspector ILT/Shipping. Twenty-two 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.

No statement of defence or any other response has been received from the person concerned.



The presiding judge stipulated that the oral hearing of the case would be held at 13.30 hours on 13 June 2018 at the offices of the Disciplinary Court in Amsterdam.

The Human Environment and Transport Inspectorate and the person concerned – the latter in the English language, both by ordinary and registered mail – were summoned 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 did not appear. The person concerned informed us by email that he would not be attending the hearing. 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 10 October 2017 at around 23:00 hours, the Dutch seagoing vessel Ruyter ran aground on the north side of Rathlin Island (Northern Ireland). At the time of the grounding, the person concerned was the captain and officer of the watch, but he was not on the bridge. Nor had an additional lookout been posted. The captain was manifestly in a state of drunkenness and also failed to act in a manner befitting a ship's captain following the grounding.

The ship refloated itself independently and continued on to the destination port of Warrenpoint. It emerged that the ship had sustained substantial damage.

The person concerned is charged as follows:

1. the person concerned was in a manifest state of drunkenness during his watch;



2. the person concerned did nothing to deal with the emergency situation that had arisen, even when a second emergency occurred; he left it entirely to the chief mate, who felt compelled to take over command;
3. The person concerned did not keep a lookout during the watch in a manner befitting a good seaman;
4. The person concerned failed to post an extra lookout during the hours of darkness.

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

No response to the petition and the accusation made against the person concerned has been received.

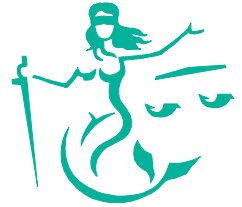
4. The assessment of the petition

A. According to the documents and public sources attached to the petition, the details of the seagoing vessel Ruyter are as follows: Dutch cargo ship (coastal vessel) of 2528 GRT, length 89.99 m, breadth 12.5 m, year of construction 2006.

B. In a document entitled Emergency Response Procedure issued by the ISM Manager of the ship (Annex 4 to the petition p. 15), it is stated – rendered in concise form – that the Ruyter was on its way from Lomonosov to Warrenpoint on 10 October 2017 with a load of approximately 4,700 m³ of timber.

At 23:23 hours the ship was reported to have grounded off Rathlin Island. At 00:28 the ship was once again off the rocks and then sailed to Warrenpoint with the assistance of the coastguard, ETA there 13:00 hours.

C. In a captain's statement (Annex 13 to the petition, p. 39), signed by the captain – the person concerned – and the first and second mate, it is



stated – rendered in concise form – that the Ruyter grounded at 23:20 hours on 10 October 2017 off Rathlin Island in St. George Strait [Northern Ireland], in the position 055°18'664N, 006°14'987W.

The weather conditions were: wind SW 7 Bft, swell 3 m, rain.

D. On a page of the ship's log (Annex 10 to the petition, p. 32) it is stated that the ship grounded in the said position with a chart depth of 3.6 metres with a draught of 4.4 m fore and 4.8 m aft.

B. An ECDIS screenshot of the route followed by the vessel (Annex 11 to the petition, p. 34) and a record from the ship's navigational system log (Annex 16 to the petition, pp. 44/58), the ship spent a longer period of time (approx. 73 minutes) travelling in a more or less straight line towards Rathlin Island.

The system log shows that the vessel had a speed of approximately 9 knots for more than an hour up until the grounding.

C. A statement of the chief mate (Annex 14 to the petition, pp. 40/41) states – rendered in concise form – the following.

On 10 October 2017 I was woken at 23:20 hours by a strange noise and vibrations. I ran to the bridge, just behind the second mate. When I arrived on the bridge at 8:22 PM, I realised that the ship had grounded. The captain was not present. The general alarm was activated. The crew came to the bridge.

At 23:24 hours the crew started to inspect the ship. A huge wave came over the stern. A fire alarm went off. I went to have a look. There was water in various places in the accommodation area. I saw no fire and I went back to the bridge. The boatswain checked the tanks and spaces in the forecabin. He informed the bridge via the VHF that the forepeak had been damaged and that water was entering it (1.5 m). Other compartments were dry.



I went to the forecastle. There was water in the bow thruster compartment and water was constantly coming in. There was a crack in the front bulkhead to starboard.

The inspection was completed at 00:10 hours. The ship was being pushed towards the rocks by waves and slowly turning to port. Staying in that position for longer was very dangerous. I took the decision to get away from leave there.

At 00:14 hours the whole crew was on the bridge with safety equipment. The ship was lying with the port side and the fore ship on the rocks. The engine was put in reverse. The ship started to move and turned to port. Waves brought the fore ship to the rocks. The ship had a list of approximately 40° to starboard. The deck cargo shifted to starboard. The stern also turned towards to the rocks. Visibility was very poor. The rocks were 30 m from the stern. The ship turned. A few jolts fore were given. After that it the ship once again went hard astern.

At 00:30 hours the ship came out of its dangerous position.

I left the bridge and went to the fore ship to investigate the situation there.

At 01:00 I heard from the second mate that the fire alarm in the engine room had sounded. I went to the engine room and saw smoke coming out of the rear part of the propeller shaft generator. This was cooled with water.

The engine was restarted and set to 70% ahead. The ship then sailed to the port of destination.

During the emergency the captain did not realise what was happening to the ship. He was terribly drunk.

F. A statement of the second mate (Annex 15 to the petition); p. 42/43) – in summarised form – includes the following information.

On 10 October 2017 I was woken at 23:20 hours by a strange noise and vibrations. I ran to the bridge. I saw that the ship had grounded. There was no one on the bridge; the engine was running at 80% ahead. A few seconds later, the chief mate also came up, followed by the captain. I stopped the engine and sounded the general alarm and gave information to the crew via



the public address system. Together with the chief mate I instructed the entire crew on the situation.

At 23:25 hours the crew went to check all the compartments and the accommodation; a report was made via VHF. I informed the coastguard in Belfast.

I noticed that the situation was becoming even more dangerous because of the swell and the weather conditions. The stern was flooded with waves and it was dangerous to go there; a seaman was almost washed overboard. From time to time I reported to the Coastguard. There was no action on the part of the captain. The chief mate took command of the vessel.

The weather also caused water to enter the accommodation and the engine room.

The inspection was completed at 00:20 hrs. The engine was ready and it was decided to get the ship back afloat by going full power astern; there was no other option because the ship had started to turn and there was a danger that the steering gear and the propeller would be damaged. The chief mate manoeuvred the vessel; the entire crew was on the bridge with safety equipment and ready to abandon ship.

At 00:38 hours the ship came afloat. I took over the helm from the chief mate, who went on deck to check the situation. A lifeboat came to the ship. We went 70% ahead. The weather was still bad with a rough sea.

At 01:00 hours the fire alarm went off. I stopped the engine and informed the crew that there was a fire in the engine room. The chief mate and crewmembers went below to investigate this. I was in charge on the bridge.

At 01:11 the engine was restarted. I took over the helm on the bridge. I set the propulsion at 15%. I was in contact with the coastguard. At 01:45 hours I increased the propulsion to 70% ahead. We then sailed on to the place of destination.

The captain did not even come out of his cabin after the fire alarm had sounded and I had announced via the public address system that there was a fire in the engine room.



G. A newspaper article (Appendix 19 to the petition, p. 77) contains the following information, rendered in concise form.

Criminal proceedings on the grounding of the Ruyter were held against the person concerned at Armagh Court. The Maritime Coastal Agency charged him with two offences: (1) that he had failed to maintain a proper lookout to assess the risk of collision, (2) that he had failed to arrange an adequate lookout during the hours of darkness. The party concerned admitted both offences.

The judge said that the person concerned had left the bridge while the ship was approaching the coast of Northern Ireland. The radar and the lighthouse on Rathlin Island should have made it clear to him that he was coming close to the coast. The judge said that the person concerned was lucky that the ship had grounded in a shallow area under the rocks and that the ship was quickly refloated without anyone on board being injured. The judge said that he was convinced that no alcohol was involved (*"he was satisfied alcohol is not involved"*), although no indication was given as to how the judge had arrived at this judgment.

The person concerned was given to £ 500 fines.

The report shows that these fines were paid on the same day.

H. An audit report of RINA UK Ltd (Appendix 8 to the petition, p. 30) contains the following information, rendered in concise form.

The captain responsible for the grounding has since been dismissed and replaced.

The captain stated that he had consumed alcohol before his watch (*"has declared to use alcohol before his watch"*).

Nothing is said about when and against whom the person concerned had stated this and what exactly that statement meant.



6. 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.

On 10 October 2017 The Dutch seagoing vessel Ruyter (2528 GRT, length 89,99 m, breadth 12,5 m) was on its way from Lomonosov (St Petersburg, Russia) to Warrenpoint (Northern Ireland) with a cargo of timber. The person concerned was the captain He was on watch from 20.00 to 24.00 hours. At 23:20 hours the ship ran aground off the northern coast of Ireland on the northern side of Rathlin Island, as the Disciplinary Court understands: on a shallow stretch at the bottom of the rocks. The ship had sailed there for a long time on a more or less straight course and at a speed of approximately 9 knots. It was dark and the weather was poor: wind SW 7, rough sea, wave height 3 m and rain.

The first and second mate ran to the bridge immediately after the grounding. There was no one there, while the engine was running 80% ahead. A little later the captain came to the bridge, as did all the other crewmembers. The second mate had immediately stopped the engine.

The chief mate gave instructions and the crew started inspecting the ship. It was established that water was flowing into the bow thruster compartment. Waves were going over the stern, causing water to enter the accommodation and the engine room. The Coastguard in Belfast was alerted.

The chief mate had command of the ship. The captain did not take any action whatsoever.

The ship was in a dangerous situation, partly because of the bad weather conditions. The chief mate decided that the ship had to get away from there. The engine was started and the vessel went astern. The chief mate manoeuvred. The crew was on the bridge with safety equipment and was ready to abandon ship.

The ship was lying with the port side and the fore ship against the rocks. The ship started to move and turned to port. Waves brought the fore ship to the



rocks. The ship had a list of approximately 40° to starboard. The deck cargo shifted to starboard. The stern also turned towards to the rocks. Visibility was very poor. The vessel went hard astern.

After some time the ship refloated – possibly also due to the wash – and was able to get out of its dangerous position.

The second mate took over the watch. The ship sailed away at 70% power. The weather remained poor with rough seas.

At 01:00 hours the fire alarm went off. The second mate stopped the engine and informed the crew about the fire in the engine room via the public address system. The chief mate and crewmembers went below to investigate this. Smoke was coming out of the propeller shaft generator. This was cooled with water. The second mate was in charge on the bridge. He was in regular contact with the coastguard.

The captain did not even come out of his cabin after the fire alarm had sounded and it had been had announced via the public address system that there was a fire in the engine room.

At 01:11 the engine was restarted. Propulsion was set at 15%. It was decided to sail to the destination and the ship sailed to Warrenpoint with limited capacity (70% from 01:45 hours) and with the assistance of the Coastguard. The vessel arrived there on 11 October 2017 at around 13:30 hours.

During the emergency on board, the person concerned did not show any sign of realising what was happening.

The chief mate stated has that the person concerned was extremely drunk. There were no personal injuries. On the other hand, the ship suffered serious damage. Apparently, no harmful substances were released into the sea or onto the coast. It does not appear that other shipping traffic was endangered. A lifeboat did sail to the position of the grounding, but the crew of the Ruyter remained on board the ship.



B. The above shows that for an extended period of time, approximately one hour, the ship sailed on a straight course and at high speed towards Rathlin Island and ran aground on the rocky coast. From this and from the fact that the two navigating officers discovered immediately after the grounding that there was no one on the bridge, it can be deduced that the person concerned, who had not been on the bridge long before the grounding, had not been engaged in navigation, had not been keeping a lookout, had not noticed that the vessel was heading straight for the rocks and had not taken any measures to prevent a grounding. All this took place during the hours of darkness in the shipping area between Northern Ireland and Scotland with many irregularly shaped rocky coasts, and in poor weather conditions. No crewmember was posted as an extra lookout.

After the grounding, the person concerned did nothing at all, while the ship was in an emergency situation. The chief mate had to take command of the vessel. He was assisted in this by the second mate. The damage was inspected and it was decided to get out of the dangerous situation. This was ultimately achieved under the command of the chief mate.

When the ship was underway to Warrenpoint, the engine room fire alarm sounded. Apparently this was caused by the propeller shaft generator. Measures were once again taken, again under the command of the chief mate. Even then, the person concerned remained completely uninvolved.

C. It must be concluded that the person concerned completely failed to navigate the vessel for a longer period of time, resulting in the grounding. Even after that, during the emergency situation when the ship was grounded against the rocks and needed to get away from there, and also when the fire alarm went off later, he did not perform his duties as captain in any way. The person concerned has shown himself to be a poor navigation officer and a poor captain. The person concerned did not give any explanation for his behaviour whatsoever, either in writing or orally, not even at the hearing of the Disciplinary Court.



The person concerned has acted in breach of the provisions of the STCW Code on navigational watchkeeping, in particular the obligation to maintain a proper lookout and not to leave the bridge at any time (Chapter VIII, Section A-VIII/2, Part 4 and 4-1, Articles 10, 14, 16, 24 and 32) and of Regulations 2 and 5 of the International Regulations for the Prevention of Collisions at Sea, 1972 (precautionary measure in accordance with good seamanship and a proper lookout). Good seamanship also meant that during the hours of darkness, certainly in that shipping area and in bad weather, there should have been an additional lookout on the bridge as well as the watchkeeping officer; in this respect, reference can be made to the UK Maritime and Coastguard Agency's Marine Guidance Note 315 (M) of February 2006.

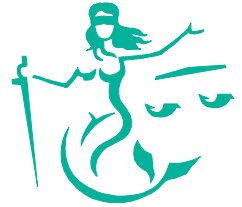
The conduct and attitude of the person concerned constitutes a violation of the regulation of Section 55a of the Dutch Seafarers Act in conjunction with Section 4.4 of that Act: acting or failing to act on board as captain contrary to the duty of care expected of a good seaman in relation to the persons on board, the ship, its cargo, the environment and shipping.

D. The Disciplinary Board does not consider that a sufficient degree of certainty – as required for such a serious act – has been gained to the effect that the person concerned was in an apparent state of drunkenness during his watch (and thereafter).

Only the chief mate stated that the person concerned was seriously drunk. However, according to RINA's report the person concerned has stated that he was drinking alcohol on watch, but this statement raises the question as to what exactly this statement is referring to.

On the other hand, the second mate did not mention anything about alcohol consumption and drunkenness, although this would obviously have been the reason for the failure of the person concerned, about which he did provide the relevant information.

The newspaper article states that the judge of the Armagh Court held that there had been no alcohol involved in the grounding.

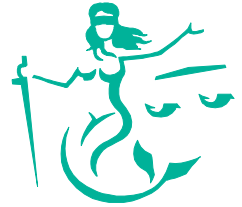


6. The disciplinary measure

The Disciplinary Board judges that the person concerned has seriously failed in his responsibilities as officer of the watch and in his position as captain. His extreme misconduct as officer of the watch and the resulting grounding endangered the persons on board and the ship, as well as the cargo and the environment. He subsequently completely failed in his duty as captain during the very dangerous situation of the ship and later when the fire alarm sounded.

In view of the seriousness of the conduct of the person concerned the Disciplinary Court considers it right and proper to suspend his navigation licence for two years.

In doing so, the Disciplinary Board takes into account the fact that the person concerned has been convicted by a criminal court in Northern Ireland for (1) not keeping a proper lookout and (2) not providing an adequate lookout during the hours of darkness, imposing on him two fines of £ 500. Account has also been taken of the fact that the person concerned has been relieved of his duties.



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 two years;
- declares the objections to be otherwise 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 04 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.