



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE
NETHERLANDS OF 12 SEPTEMBER 2018 (No. 9 OF 2018)
IN THE CASE 2018.V4- ZILLERTAL**

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

S. K.,
the person concerned,
who did not appear.

1. The course of the proceedings

On 9 March 2018, the Maritime Disciplinary Court received a written petition for a disciplinary hearing of the case against the person concerned as the chief mate of the Dutch seagoing vessel Zillertal from M. Schipper, inspector ILT/Shipping in Rotterdam. 18 written 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) dated 11 May 2018 informing him of the petition and enclosing a translation of the petition and its appendices in English. The person concerned was informed of his right 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 hearing of the case would be held at 11.30 hours on 13 July 2018 at the courtroom of the Disciplinary Court in Amsterdam. The person concerned was summoned – in the English language and by both ordinary and registered mail – to appear at the hearing of the Disciplinary Court.

The hearing was held at 11.30 hours on 13 July 2018. M. Schipper, inspector at the ILT/shipping appeared at the hearing for the petitioner. The person concerned did not appear. Leave was granted to proceed in default of appearance against him.

2. The petition

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

On Wednesday, 10 January 2018 at around 5:36 AM UTC a collision took place – 3.5 nm NW off "Skagen W" Lighthouse in the position 57° 46.8' N; 010° 29.9' E between the Dutch seagoing vessel Zillertal and the seagoing vessel Edmy sailing under the flag of Cook Island, call sign E5U2465 and IMO number 7926409. Both ships sustained substantial damage. The person concerned, who was on the crew list as chief officer, was a watchkeeping officer on the Zillertal at the time of the collision. Shortly before the accident, he had sent the compulsory extra lookout to do other work elsewhere. He himself did not constantly keep an eye on the approaching Edmy.

The person concerned is charged with thus acting in breach Article 4.4 of the Dutch Seafarer's Act in conjunction with Article 55a of that Act and Section 1 of the Decree declaring the International Regulations for the Prevention of Collisions at Sea (Colregs) to be applicable, 1972, in conjunction with, inter alia, Regulations 2b, 5 and 7 of the Convention on International Provisions for the prevention of collisions at sea, 1972, London, 20 October 1972.



3. The position of the person concerned

Only a written statement, dated 10 January 2018, is available from the person concerned. He did not make a statement in response to the accusation made against him by the Inspector and did not respond to calls by the Disciplinary Board.

4. The assessment of the petition

A. With regard to the circumstances of the accident, the petition states, among other things:

On Wednesday, 10 January 2018 at around 05:33 UTC a collision took place – 3.5 nm NW off "Skagen W" Lighthouse in the position 57° 46.8' N; 010° 29.9' E between the Dutch seagoing vessel Zillertal and the seagoing vessel Edmy sailing under the flag of Cook Island, call sign E5U2465 and IMO number 7926409. Both ships sustained substantial damage. The Zillertal continued her voyage to Rotterdam. The Edmy was able to reach the port of Frederikshavn under her own steam. There were no personal injuries. The accident was reported by the shipping company to ILT on the same day.

B. A copy of a page of the Zillertal's logbook is annexed to the petition. The time at which the collision occurred was indicated as the Ship's Time (ST) of the collision at 06.37 hours. A comparison of the times in the ship's logbook with the available AIS times shows that $ST = UTC + \text{approx. } 65 \text{ minutes}$.

C. The Danish Maritime Assistance Service (MAS) has provided an AIS backtrack in the form of a PowerPoint presentation. This is contained in Annex 6 to the petition. This shows that both ships (the Zillertal and the Edmy) changed their course several times prior to the collision. The last significant change in the course of the Zillertal prior to the collision was at 05:10 UTC. The Edmy's last significant change of course before the collision was between 04.55 and 05.07 hours UTC. In any event from 05.15 hours



UTC there was a risk of collision between the two ships, which were approaching each other at intersecting courses.

D. A 'Statement of Facts' dated 12 January 2018 of the captain of the Zillertal and annexed to the petition includes the following information: 'M/v "Zillertal" has sailed fm St. Petersburg on 06.01.2018 [...] loaded with 6304.724 mts of Aluminium products, bound for Rotterdam [...]. On 10.01.2018 at 06:37 vessel has a collision with m/v "EDMY", call sign ESU2465, at position of 3.5 nm NW from "Skagen W" Lighthouse. I immediately came on bridge and took over the command. One vessel was observed very close at port quarter, and another vessel straight ahead.'

E. A written declaration by the crew member S. A., annexed to the petition, includes the following information: 'I arrived to the bridge approximately at 03.50 [...]. At 04.00 I took over the watch. Approximately at 06.30 C/o ordered me to check gangways and toilets for cleaning and report him. I was making this inspection, while I felt moderate impact.'

F. A written statement dated 10 January 2018 by the person concerned, annexed to the petition includes the following information:
'04:00 I took over the navigational watch. Visibility and weather condition was good. [...]
06:25 I allocated a target on radar with AIS name "Edmy". This target was slowly approaching to our port quarter [...]. After that I recognized this target visually.
06:37 Position Lat 57.46.8 N Lon 010.29.9 E Course 246° Speed 12.7 kn I went to chart room to make entry to log-book and at that moment heard and felt strong impact from port quarter and run to port-side wing. I saw a vessel which was going out of our port quarter, a distance was increasing.'

G. A report by Z. Tomijenovic, inspector of the Flag State, on his inspection on board the Zillertal on 12 January 2018, annexed to the petition, includes the following information:



'[during the investigation], the captain [...] verbally indicated that he had asked the mate what had happened, but did not receive a reply from the mate [...]. According to the captain, the mate stared ahead and said nothing at all.'

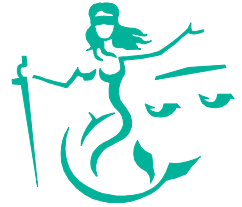
H. An IMO crew list attached to the petition states that during the voyage in question from St. Petersburg to Rotterdam the Zillertal had twelve (Russian) crew members, including the person concerned as chief mate and S. A. as O.S. (ordinary seaman).

5. The ruling of the Disciplinary Court

The findings based on the content of the documents referred to above are as follows.

On Wednesday, 10 January 2018 at around 05:33 UTC a collision took place – 3.5 nm NW off "Skagen W" Lighthouse in the position 57° 46.8' N; 010° 29.9' E between the Dutch seagoing vessel Zillertal (belonging to shipping company K&T Holland C.V. I) and the seagoing vessel Edmy sailing under the flag of Cook Island, call sign E5U2465 and IMO number 7926409. Both ships sustained substantial damage. There were no injuries. The Zillertal, which was on its way with a cargo of aluminium from St. Petersburg to Rotterdam was able after the collision to continue her voyage to Rotterdam in a damaged state. The Edmy was able to reach the port of Frederikshavn under her own steam.

The person concerned, who held the rank of chief mate, was the only watchkeeping officer on the Zillertal's bridge at the time of the collision, because he had ordered the extra lookout to carry out an inspection of the gangways and the toilets. The person concerned had himself gone to the chart room, where he updated the ship's log. According to his statement, he had previously seen the Edmy slowly approaching the port side of the Zillertal.



This state of affairs shows that the person concerned did not properly fulfil his duties as officer on watch; in particular, he did not fulfil the obligation to maintain a good watch at all times. In this case, this is all the more objectionable because of the presence of other shipping traffic. Furthermore, there were vessels changing course. The fact that the person concerned went to the chart room and did not constantly keep an eye on the approaching Edmy was also contrary to his duty to be alert at all times to the existence or development of the risk of collision. He should also have taken measures to avoid the risk of collision that came about. Such omissions constitute violations of, inter alia, regulations 5, 7 and 8 of the Convention on the International Regulations for the Prevention of Collisions at Sea, 1972, London, 20 October 1972. There were no mitigating facts or circumstances.

The conduct and negligence 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 a ship's officer contrary to the duty of care expected of a good seaman in relation to the persons on board, the ship, the environment and shipping.



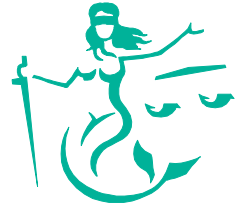
6. The disciplinary measure

The Maritime Disciplinary Court judges that the person concerned failed in his responsibilities as a ship's officer, which resulted in the collision. The person concerned did not act as befits a responsible duty officer. This placed the safety of the people on board, the ship and its cargo and the environment in jeopardy. In view of the seriousness of the negligence a suspension of the navigation licence for the duration mentioned below is appropriate. In view of the fact that there have been no previous violations and that the consequences of the failure in this case were limited to material damage to the ships, the Disciplinary Court sees good reason to stipulate that a part of the suspension of the navigation licence will be imposed conditionally. This penalty is in accordance with the Inspector's demand, which was communicated beforehand.

7. The decision

The Disciplinary Court:

- declares the objection 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 3 (three) months;
- stipulates that of this suspension, a period of 1 (one) month 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 J.M. van der Klooster, deputy presiding judge, H. van der Laan and O.F.C. Magel, members, in the presence of E.H.G. Kleingeld, LL.M., as secretary and pronounced by A.N. van Zelm van Eldik, LL.M., in public session on 12 September 2018.

J.M. van der Klooster
presiding judge

E.H.G. Kleingeld
secretary

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.