



**RULING OF THE MARITIME DISCIPLINARY COURT OF 5 JULY 2019 IN CASE NO.
2018.V.13 – THAMESBORG (NO. 3 OF 2019)**

As petitioned by:

the Minister of Infrastructure and Water Management in The Hague,
petitioner,
authorised representative: K. van der Wall,
inspector at the Human Environment and Transport Inspectorate
(ILT)/Shipping in Zwijndrecht;

versus

R. Y.,
the person concerned,
counsel: T. Jumelet, LL.M., and O. Yesildag, LL.M.

1. The course of the proceedings

On 13 August 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 Thamesborg from M. Schipper, inspector ILT/Shipping. Twenty-two appendices were attached 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.



On 12 December 2018 a statement of defence was received from the lawyer of the person concerned. Two appendices were attached to the petition.

The presiding judge stipulated that the oral hearing of the case will be held at 10.00 hours on 24 May 2019 at the offices of the Disciplinary Court in Amsterdam.

The Human Environment and Transport Inspectorate and the person concerned and his lawyer 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 24 May 2019. The shipping inspector K. van der Wall, accompanied by Inspector S.E. Bakker, appeared at the hearing for the petitioner. The person concerned also appeared, represented by his lawyers.

2. The petition

Rendered concisely, the basis of the petition is as follows.

On Friday, 16 March 2018, the loaded Dutch vessel sailing under the Dutch flag Thamesborg was underway in an ice convoy in the Baltic Sea. The convoy consisted of the Swedish icebreaker "Ymer", the cargo ship sailing under the Cypriot flag "Mario L" and, lastly, the Thamesborg.

At around 15:00 LT the ice became thicker and, after an initial reduction of the speed of the "Mario L", this ship got stuck in the ice. Despite attempts by the Thamesborg to stop and/or take prompt evasive action, a collision occurred between Thamesborg and Mario L.

The collision took place very slowly, but the "Mario L" lost its "free fall lifeboat" and the Thamesborg sustained a small crack above the waterline.

There were no personal injuries.

The accident was reported to ILT via the classification society.



At the time of the incident the person concerned was captain of the Thamesborg and on watch on the bridge.

According to inspector Schipper, the person concerned was questioned at various points of the investigation without being cautioned. For that reason Inspector Schipper does not feel that disciplinary measures can be taken against the person concerned on the basis of the statements made and appended to this petition. The inspector requests the Disciplinary Court to rule solely on the question of whether this collision was due to a failure to comply with the standard of Good Seamanship, as stated in the Seafarers Act.

3. Objections of the Inspector

According to the inspector, the person concerned did not keep an adequate lookout, as a result of which the sudden speed reduction of the Mario L was noticed too late; or he failed to keep sufficient distance, as a result of which it was impossible to stop the vessel in time to avoid collision.

If the Disciplinary Court concludes that this was the cause of the collision, the question arises as to whether the person concerned should have agreed to the position in the convoy and/or the speed that was maintained. After all, the photos show, among other things, that the Mario L was much narrower than Thamesborg and was possibly less able to keep the wake of the icebreaker open long enough for the Thamesborg, so that it had to sail more closely behind the Mario L.

4. The position of the person concerned

In summary, the person concerned argued that the icebreaker did not give the correct instructions regarding the distance and speed. According to the person concerned, the accident would not have happened if they had been given.

The legal counsel of the person concerned raised two formal questions. In the first place, the question is whether the profession has an interest in this



case being brought. Secondly, according to legal counsel, the question arises of whether statements for which no caution was given allow a decision to be taken in the interests of the profession. Furthermore, legal counsel disputed the allegation that an inadequate lookout was kept on board the Thamesborg or that an excessive speed was being maintained. According to his legal counsel, the person concerned did not act contrary to the standard of good seamanship.

5. The assessment of the petition

A. The petition shows the following.

The Dutch-flagged seagoing vessel Thamesborg of shipping company Wagenborg has an overall length of 172m and a 7500 kW Wärtsilä 6L46F main engine. The ship has ice class F/S 1A and is equipped with an adjustable propeller.

During the investigation against the person concerned, the inspector printed out the position list and map representations of the Thamesborg and the Ymer from the IMDatE EMSA system. These are given in Appendices 6 and 7 to the application.

During the ongoing investigation, the inspector sent the person concerned (additional) questions by email and via Wagenborg at various times and the person concerned answered them. This exchange of emails is attached to the petition as Appendix 8. The following information, added as Appendices 9 to 18 to the petition, was also received:

- Damage report Thamesborg;
- Master Statement from the person concerned;
- Screenshots from Thamesborg's ECDIS;
- Copy of Thamesborg crew list.
- Passage Plan Thamesborg;
- Voyage planning for ECDIS;
- Copy of the ship's log of Thamesborg;
- Procedure Winter Navigation Wagenborg;



- Wheelhouse Poster Thamesborg;
- Report of Sea Trial Thamesborg.

As shown in Appendices 19 to 22 to the petition, the inspector;

- also downloaded the folder Winter Navigation 2017–2018 of the Swedish Maritime Administration;
- copied relevant pages from the book "The ICE NAVIGATION manual" by House, Lloyd, Toomey and Dickins;
- requested by email, a statement from the captain of the icebreaker Ymer, which was then translated into Dutch;
- Kiwa requested a copy of the navigation licence of the person concerned.

B. A statement by the person concerned (Appendix 10 to the petition), provided, in summarised form, information including the following: the icebreaker Ymer informed us around 15:00 hours local time that the ice was getting thicker and that Mario L might get stuck. We reduced speed immediately. The distance between the Thamesborg and the Mario L was about 4 cables. After a few minutes, at about 3:05 p.m., we established that the Mario L was slowing down, and later got stuck in the ice. As her speed decreased, we set the pitch to zero, and tried to go astern, but our vessel had a full cargo and was too heavy, so the distance was not enough to avoid a collision with Mario L. Mario L lost the free fall lifeboat (FFB) and the FFB davit. The Thamesborg sustained a tear in the hull with a length of 31 cm and a width of 5 cm.

C. A statement by the captain of the icebreaker Ymer (Appendix 21 to the petition) shows, among other things, that in a somewhat more difficult section the speed of Mario L suddenly dropped sharply, after which the officer in charge of the icebreaker told Thamesborg that she had to slow down because the Mario L had virtually come to a standstill while Thamesborg was travelling at more than 10 knots at that time. The IMDatE Thamesborg position list and map (Appendix 6 to the petition) also show



that the Thamesborg was travelling at a speed of about 10 knots just before the collision.

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

The person concerned agrees with the facts presented to him by the presiding judge that on Friday 16 March 2018 he was captain of the Dutch-flagged ship Thamesborg, sailing in an ice convoy in the Baltic Sea. The convoy consisted of the Swedish icebreaker "Ymer", the cargo ship sailing under the Cypriot flag "Mario L" and, lastly, the Thamesborg. The person concerned also agrees with the facts presented to him that around 15:00 LT the ice got thicker and, after an initial deceleration by the "Mario L", this vessel got stuck in the ice after which, despite attempts by the Thamesborg to stop and/or evade in time, there was a collision between the Thamesborg and the Mario L. The collision happened at a slow pace, but the "Mario L" still lost its "free fall lifeboat" and the Thamesborg sustained a small tear above the waterline. There were no personal injuries.

The person concerned sailed in ice for the first time in early 2000. Prior to the incident, he sailed in ice about ten times, three of which as captain. At the start of the convoy, the person concerned was instructed by the icebreaker on the order of the convoy. Mario L followed the icebreaker and the Thamesborg was the last vessel in the convoy. According to the person concerned, there were no instructions from the icebreaker about the distance between the ships, except that the ships had to sail at a safe distance at speed. The distance from the bow of the Thamesborg to Mario L was about 600 metres. According to the person concerned, a greater distance would entail the risk that the ship would get stuck in the ice.

Mr. van der Laan asked if there was a helmsman on board, in other words if the ship was driven manually or automatically (by autopilot). The person concerned answered that there was a second mate. The second mate was at the helm. The person concerned held the visual lookout.



The second mate kept an eye on the distance. The radar display was for the second mate. The person concerned also looked at the radar. According to the person concerned, the AIS data from the Mario L and the Ymer was visible on the radar screen. The person concerned controlled the ship's telegraph. He could have manoeuvred the vessel at any time.

The presiding judge asked at what point it was decided to put the vessel into reverse. The person concerned said they did that when the Mario L got stuck in the ice.

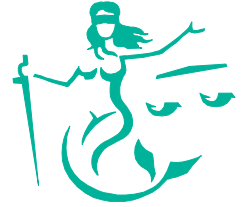
Mr van der Laan asked the person concerned about how much time elapsed between full ahead to full astern. According to the person concerned, from pitch to halt and putting the pitch full astern took 3–5 minutes because the vessel was also heavily loaded.

The presiding judge asks whether any consideration had been given to putting the bow in the ice. The person concerned confirms this. He refers to the right-hand illustration in figure 9.18 from the ICE NAVIGATION manual. Mr van der Laan asked whether the Thamesborg was a left- or right-turning vessel in reverse. The person concerned replied that the bows go to the right when reversing.

Mr Kuiken asked what method is used to determine the distance to the vessel in front. The person concerned answered that he uses the radar with the variable distance ring (range ring) for this purpose.

Mr Kuiken asked whether the hours of rest prior to the accident were planned and in accordance with international provisions. The person concerned answered that this is the case. There was also a full crew on board, according to the person concerned. According to him, the convoy started to sail at 14:00 and he had taken a rest before that.

The presiding judge cites Appendix 10. According to the statement of the person concerned the pitch was set to zero, but that the distance was not sufficient to prevent the collision. The person concerned stands by his statement. The Mario L was slowing down and no message had been received from the Mario L on the Thamesborg. If they had been informed earlier, they would have slowed down earlier on the Thamesborg, according to the person concerned.



The presiding judge asked whether the person concerned had sailed in an ice convoy since the incident. The person concerned confirmed this. The incident did however have repercussions for the person concerned. The shipping company sent him on an ice sailing course called Arctic Navigation. The person concerned indicated that he is now paying more attention to the distance and speed to be maintained. The person concerned wants clear instructions from the icebreaker as to what a safe distance is. The person concerned now maintains closer contact with the leader of the convoy. According to the person concerned, the reason for the accident was that there was insufficient communication. Now, with his new-found knowledge, he would do things differently. Because of the course, the person concerned will now be able to use the communication better to obtain good and clear instructions. According to the person concerned, it would have been better if he had taken the course earlier.

The inspector indicates that the question is about what caused the collision. The Disciplinary Court was asked to give an opinion on whether there was insufficient lookout or insufficient distance.

The inspector wonders whether the person concerned had been instructed to sail at full speed. The maximum speed of Mario L is less than that of the Thamesborg. According to the inspector, the person concerned has indicated that he was travelling at full speed. In response, the person concerned said that he sailed at the same speed as the Mario L to maintain the same distance between the two vessels. This was to avoid getting stuck in the ice mass.

The inspector notes that the person concerned had been instructed to sail at a fixed distance between the two vessels. The person concerned replied that the only instruction was to follow the Mario L from a safe distance.

Legal counsel pointed out that the person concerned has photos on his phone of the situation at the time of the collision. The person concerned showed the photos.

Counsel asked the person concerned how the distance to be kept is determined. The person concerned replied that they were following the



instructions of the icebreaker. But there were no instructions from the icebreaker. The speed had to be reduced, and he reduced it.

6. The ruling of the Disciplinary Court

A. The Disciplinary Court is of the opinion that it is in the interest of the profession to decide whether this collision was due to non-compliance with the standard of good seamanship, as stated in the Seafarers Act. A ruling on the application of the standard of good seamanship in ice convoy could contribute to the safety of the profession when sailing in ice convoy. In spite of the fact that no caution was given during the inspector's investigation, the Disciplinary Court can make a ruling in the interest of the profession. The Disciplinary Court pronounces this decision on the basis of the statements made by the person concerned at the hearing after the caution was given and on the basis of documents other than statements made by the person concerned during the investigation by the inspector.

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

On Friday, 16 March 2018, the loaded Dutch vessel sailing under the Dutch flag Thamesborg was underway in an ice convoy in the Baltic Sea. The convoy consisted of the Swedish icebreaker "Ymer", the cargo ship sailing under the Cypriot flag "Mario L" and, lastly, the Thamesborg, sailing under the Dutch flag.

At the start of the convoy, the icebreaker instructed the Thamesborg to maintain a safe distance from Mario L. The person concerned was on the bridge. The second mate was the helmsman and he kept an eye on the distance to the Mario L with the aid of the radar.

The distance between the bow of the Thamesborg and the Mario L was about 600 metres. The Thamesborg was travelling at a speed of approximately 10 knots.



At around 15:00 LT the ice thickened and Mario L's speed dropped. The icebreaker informed the Thamesborg that she had to slow down. The Thamesborg then tried to go astern. The Mario L got stuck in the ice. Despite attempts by the Thamesborg to stop and/or take evasive action, there was a collision between the Thamesborg and the Mario L. As a result of the collision, the Mario L lost its free fall lifeboat and the Thamesborg sustained a small tear above the waterline. There were no personal injuries.

C. Under Article 55a of the Seafarers Act, in conjunction with Article 4, paragraph 4 of that Act, a captain must act in accordance with the care which he, as a good seaman, is required to take in respect of the persons on board, the ship, the cargo, the environment or shipping traffic. Good seamanship means, among other things, that the captain must comply with the Convention on the International Regulations for the Prevention of Collisions at Sea, 1972. Under Regulation 5 of those Provisions, all vessels must at all times keep a proper lookout by looking and listening and by making use of all available resources appropriate to the prevailing circumstances and conditions in order to fully assess the situation and the danger of collision. Regulation 6 of those Provisions requires that each vessel must at all times maintain safe navigation so that it can take appropriate and effective measures to avoid collision and that it can be stopped within a distance appropriate to the prevailing circumstances and conditions. This must take into account aspects such as the manoeuvrability of the vessel, in particular with regard to the stopping distance and agility in relation to the prevailing conditions. In accordance with Regulation 7 of these Provisions, each vessel must use all available means, appropriate to the prevailing circumstances and conditions, to determine whether there is a risk of collision.

Good seamanship requires, especially when sailing in an ice convoy, sufficient manpower on the bridge and a clear division of tasks with regard to navigation, rudder movement and keeping an eye on the distance. On board the Thamesborg, the second mate was in charge of both steering and monitoring the distance with the help of the radar. The performance of

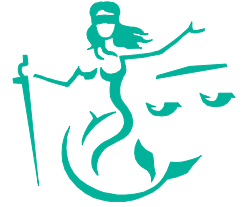


several tasks at the same time by the same person makes it difficult to make a full assessment of the situation and of the risk of collision.

Thamesborg's decision to slow down was made after the helmsman of the icebreaker Ymer told Thamesborg that she had to slow down because the Mario L had almost come to a halt. The Thamesborg would have slowed down earlier if the Thamesborg had been informed about the Mario L's reduction in speed. However, good seamanship requires that each vessel makes its own full assessment of the situation and of the risk of collision. Good seamanship also requires that each vessel uses all available means to determine whether there is a risk of collision. In an ice convoy, this calls for active communication between the vessels. When the ice got thicker, the Thamesborg did not receive a message from Mario L. It was a matter for the Thamesborg itself to actively seek contact with the icebreaker and Mario L. The fact that a vessel sails in a convoy does not detract from the captain's duty of care as a good seaman. The responsibility for maintaining a good lookout and safe navigation and determining whether there is a risk of collision cannot be shifted to the icebreaker or another vessel in the convoy. Sailing in an ice convoy requires an active approach on the part of the captain in order to maintain a good lookout, safe navigation and to determine whether there is a risk of collision.

The Disciplinary Court answers the inspector's question as to whether the person concerned should have agreed to the speed that was being maintained as follows: the person concerned is himself responsible for the speed that he maintains and for the timely adjustment of the speed if the prevailing circumstances so require.

The Disciplinary Court answers the question of the inspector as to whether the person concerned should have agreed to the position in the convoy as follows: the order in the convoy in which a smaller vessel sails directly behind the icebreaker and a larger vessel follows is the usual order when sailing in an ice convoy (see also: J. Buysse, *Handling Ships in First-Year Ice*, 2018, p. 58). The person concerned was therefore right to agree to the position in the convoy.



For these reasons, the Disciplinary Court is of the opinion that the collision between the Thamesborg and Mario L was caused by failing to act in accordance with the standard of good seamanship, as stated in the Seafarers' Act.

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/ship's officer 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 Disciplinary Court can contribute to the safety of the profession by concretising the standard of good seamanship when sailing in an ice convoy. The responsibilities of each vessel to maintain a good lookout and safe navigation and to determine whether there is a risk of collision are, among others:

- sufficient manpower on the bridge and a clear division of tasks with regard to navigation, steering and keeping an eye on the distance to the other vessels;
- active communication between the vessels in the convoy;
- the use of a variable range marker (VRM) and AIS data in the radar;
- crew members who are competent in ice convoy sailing, for example by taking an appropriate course.

7. The disciplinary measure

The Disciplinary Court will refrain from imposing a disciplinary measure on the person concerned. The reason for this lies in the fact that the inspector did not demand any disciplinary measure because the person concerned made statements at various times during the investigation by the inspector without having been given a caution.



8. The decision

The Disciplinary Court:

- declares the objections against the person concerned as stated under point 6 to be well-founded;
- does not impose a disciplinary measure on the person concerned.

Duly delivered by W. van der Velde, presiding judge, H. van der Laan and C. Kuiken, members,
in the presence of E.H.G. Kleingeld, LL.M., as secretary and pronounced by P.C. Santema, LL.M., in public session on 5 July 2019.

W. van der Velde
presiding judge

E.H.G. Kleingeld
secretary

P.C. Santema
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.