



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF  
30 OCTOBER 2019 (NO. 4 OF 2019) IN THE CASE 2018.V6-CORAL PATULA**

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

B.M.J. G.,

**the person concerned,**

counsel: W.H. van Dijk, LL.M., and Prof. Dr E. Van Hooydonk, LL.M.

**1. The course of the proceedings**

On 18 May 2018, the Maritime Disciplinary Court received a written petition for a disciplinary hearing of the case against the person concerned as captain of the Dutch gas tanker Coral Patula from M. Schipper, inspector ILT/Shipping in Rotterdam. Fifteen 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 31 January 2019 a statement of defence was received from the legal counsel of the person concerned. Five appendices were attached to the petition.



The presiding judge of the Disciplinary Court then ordered a preliminary investigation, which he instructed the deputy presiding judge, J.M. van der Klooster to perform. The latter was instructed to hear as witnesses in the context of the preliminary investigation the third mate and to perform any other investigative acts to be determined in consultation with the presiding judge. Finally, at the request of the presiding judge, the Chief Engineer was also heard. The hearings were held on 16 July 2019 and 6 September 2019 respectively, each time in the presence of the Inspector and the legal counsel of the person concerned.

The presiding judge stipulated that the oral hearing of the case will be held at 10.30 hours on 25 September 2019 at the temporary offices of the Disciplinary Court in Amsterdam.

The Human Environment and Transport Inspectorate and the person concerned and his counsel 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 25 September 2019. Ms K. van der Wall, ILT/Shipping inspector, appeared at the hearing for the petitioner. The person concerned also appeared, represented by his counsel.

## **2. The petition**

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

On Thursday 9 February 2017, around 07:15 hours ship's time, at Yeosu (Korea), there was a collision between the Dutch gas tanker Coral Patula and the Belize-flagged seagoing vessel Trueborn. Both ships sustained substantial damage.

The accident was reported by the shipping company to ILT.



### **3. Objections of the Inspector**

According to the Inspector, the person concerned acted as captain in violation of (among other things) the care that he, as a good seaman, should take with regard to the persons on board, the ship, the cargo, the environment and shipping traffic.

In particular:

1. The person concerned chose, despite being advised on board to do things differently, to have the purging operations take place while the ship was at anchor; The ship and crew were seriously endangered as a result;
2. Even after the incident involving high measured values of explosive/harmful gases in the accommodation, the person concerned did not reconsider his decision to have the purging operations carried out at anchor;
3. One of the following two matters arose:  
The person concerned did not continuously ascertain that all the tools necessary for the safe anchor watch, in particular the radars, were available and being used. It is plausible that he was aware of this from the moment that he temporarily took over the watch in the incident involving high measured values of explosive/harmful gases in the accommodation;  
Or  
From the beginning of the purging operations, the person concerned was aware of the fact that radars were not being used;
4. It appears the person concerned did not give instructions regarding the readiness of the main engine;
5. After the incident involving high measured values of explosive/harmful gases in the accommodation the person concerned took the decision to extend the length of the hose used for the discharge of cargo vapours overboard. This blocked the propeller, so that from that moment on the propulsion was no longer ready for immediate use;



6. The person concerned did not ensure that the conditions for keeping a one-man watch on the bridge were met;
7. The person concerned did not give any instructions regarding the use of other resources, in particular for monitoring other ships in the vicinity, during the period that the ship was at anchor;
8. The person concerned did not give instructions regarding the size of the safe zone around the ship;
9. The person concerned took no other measure than to call on the Trueborn to prevent the collision after the risk of collision had been established. This is despite the fact that there were approximately 20 minutes remaining. For example, he could have considered slipping the anchor.

During the hearing, the Inspector dropped the last line of objection 9. The Inspector's demand is to impose on the person concerned a four-month suspension of his navigation licence, two months of which conditionally.

The Disciplinary Court was surprised to note that the Inspector did not pay any attention to the risk assessment and toolbox meetings in relation to the objections, in so far as these had already been drawn up or had taken place. In situations such as this, the use of these instruments is standard in many SMS (*Safety Management System*). As this was not included in the objections – and the person concerned was therefore unable to prepare for them – the Disciplinary Court did not consider this aspect further in its disciplinary assessment of the case.

#### **4. The position of the person concerned**

The person concerned primarily takes the view that the Inspector's petition should be declared inadmissible because the investigation was carried out without due care. In his view, there are fundamental objections to the way in which the inspectorate carried out the investigation and therefore it cannot form a basis for a measure being taken.



In the alternative, the person concerned takes the view that the nine objections are unfounded or, at the very least, requests that the penalty to be imposed on him be limited to the absolute minimum laid down by law and that the petitioner be ordered to pay the legal costs incurred by him. At the hearing, his counsel made it clear that she is aware that at this moment the law does not provide for the possibility to order the Minister to pay the costs, but that she requests the Disciplinary Court to take this into account in the reasons for the decision.

With regard to the nine objections, the party concerned – in summary – makes the following points:

1. This was a well-considered choice, made in the light of the relevant nautical circumstances and after consultation with the technical shipping company manager on board. In addition, purging at anchor is an accepted alternative.
2. After an unforeseeable problem with carbon monoxide, the procedure was adapted by using longer hoses, partly on the advice of the chief engineer. Appropriate measures were therefore taken.
3. Deactivating the radars was an own initiative and completely incorrect initiative of the chief mate, carried out by him in collaboration with the third mate. The captain was not aware of this and could not reasonably be. Deactivating the radars went against the *Master's Standing Orders* and the *(Night) Master's Orders*.
4. This is also a misrepresentation. The machine was indeed on "*short notice*", as the chief engineer agrees in his detailed explanation.
5. The use of longer hoses was a perfectly normal measure, the propeller was not "blocked". Depending on the position of the hoses, it could of course be necessary to remove them before operating the machine. However, this situation is not indicative of anything being done wrong.
6. These conditions were clearly met. It goes without saying that the captain may assume that the officer of the watch will follow his instructions. Otherwise, one-man watches would never be possible.



7. The *Master's Standing Orders* and the specific (*Night*) *Master's Orders* are clear about the use of the equipment and all other relevant issues. Disabling the radars went against the instructions.
8. That is correct. See the *Master's Standing Orders*. Also, any additional instructions would not have changed the circumstances of the accident.
9. This is completely wrong. In the few remaining minutes (nine to be precise), the captain took various actions as any other captain would have done. He did indeed consider slipping the anchor, but that would not have been right at all. The captain, given all the circumstances of the case, did everything that could reasonably be expected of him.

## 5. The assessment of the petition

A. The following information is derived from the ship's details attached to the petition (annex 2 to the petition). The Coral Patula is a seagoing vessel sailing under the Dutch flag (IMO number 9425241 and call sign PDDC).

B. A copy of the shipping company's investigation report attached to the application (Appendix 6 to the application) contains – in summarised form – the following:

The gas tanker Coral Patula (115 x 18.9 x 8.67m, 7,251 gross tonnage) arrived in Yeosu (Korea) OPL anchorage on 4 February 2017 at 03.36 local time. The vessel was at anchor and had been instructed to prepare her cargo tanks for taking on new cargo.

The seagoing vessel sailing under the flag of Belize Trueborn (170 x 27 x 7.2m, 18,036 gross tonnage) anchored on 6 February 2017 at 17.30 hours at a distance of 3 nautical miles from the Coral Patula.

On Thursday 9 February 2017 at around 07.15 hours ship's time, a collision occurred between the Coral Patula and the Trueborn, causing both vessels to suffer (substantial) damage.



Conditions at the time of the incident: 7 to 8 Bft according to the crew and 6 to 7 Bft according to the VDR, swell about 3 metres and current about 1 nautical mile. Sunrise was at 07:20.

The *Master's Orders* showed no clear instructions regarding the *engine state of readiness*. These orders do however contain the following:

"At anchor

[..]

*The OOW has to check that the state of readiness of the main engine and all other machinery equipment is in accordance with the Master's instructions."*

C. A questionnaire from the ILT/Shipping Inspector (appendix 11B) attached to the petition, containing the following question, among others:

*1. What happened?*

With the following answers from the third mate of the Coral Patula:

*1. At arrival at Yeosu we dropped anchor for preparing gas freeing operations. Normal procedure according our company is to sail during gas freeing operations so we can adjust the wind direction by altering course of the ship. The idea is to have a course at which the wind will blow the gasses of the ship, need to make sure that the wind never blows against the accommodation.*

*Captain was told and advised about the normal procedure by one of the engineers who is experienced in our company as well as engineer as superintendant. Captain refused and made the decision to use a hose, from the manifold overboard. After some time there was a certain level of carbonmonoxide measured inside the accommodation. After the situation was over again captain was advised to sail around instead of perform the gas freeing operation at anchorage, instead decision was made to use a longer hose which blocked the propellor.*

D. An official report of the Maritime Disciplinary Court, containing the statement made on oath by the third mate of the Coral Patula, given as a witness in the context of the preliminary investigation against the person concerned on 16 July 2019, contains where relevant the following:



"With regard to the venting procedure, I told the Inspector that I did not agree with the way in which this was done, i.e. while we were at anchor. I know the captain thought it was a good idea. The chief engineer and second engineer were fairly against it. The second engineer had also worked as a superintendent for Anthony Veder. He has said on several occasions that the normal procedure is to vent the ship whilst underway. You can then determine the relative wind direction yourself.

We also previously had a carbon monoxide incident on board as a result of purging while we were at anchor.

The Inspector notes: as I recall, you did not say that this is a 'fixed procedure', but that in this case it is sensible to purge whilst underway. The witness: that's right. This arose especially after that carbon monoxide incident. In short, it means that I stand by what I wrote down in response to the Inspector's questions."

E. An official report of the Maritime Disciplinary Court, containing the statement made on oath by the Chief Engineer of the Coral Patula, given as a witness in the context of the preliminary investigation against the person concerned on 6 September 2019, contains where relevant the following:

"I knew that purging was taking place on 9 February 2017. I know from experience that it is best to purge whilst underway and have been involved in the discussion about the desirability of purging while the vessel was at anchor. I don't know why the captain thought it could be different in this case. Perhaps because it was a busy sailing area, or because of the weather conditions, or because of his personal preference. I knew about the carbon monoxide incident. That was discovered by us as mechanics. The co-alarm had gone off, asking whether it was CO or a *cross sensitivity* / ethylene. After that there was a meeting in which I myself, the captain and if I remember correctly (the gas specialist, TC) were present and maybe even more people. The next question was: how are we going to solve this, because this is not the right way. My initial advice was to purge whilst underway. This was also suggested by the second engineer who had been sailing with Veder





for some time. I don't know why the captain didn't take my advice. Secondly, I suggested using longer hoses to vent the vapours. I understood from Anthony Veder that the office had indeed assumed that it was always done whilst underway, but that it was not in writing. Following the incident, they adapted the procedural rules accordingly. It was not until later that it was agreed that the purging had to be carried out whilst underway."

F. At the hearing of 25 September 2019 – rendered in summarised and concise form – the following statement was made:

"Block A (general questions, and objections 4 and 8 on failure to give instructions)"

The gas specialist Robaeyns came aboard the Coral Patula in Taiwan. I had already discussed the purging with him at that time, as well as the commercial operator of the shipping company Anthony Veder. The purging had to be done either whilst underway or at anchor, I read in an e-mail from the latter. Because the Coral Pearl had had many problems before, because of the bad weather and because it was a busy sailing area, I thought it would be better to purge at anchor so that I could really focus on the purging. It was a special operation, for the first time on this ship. That was the idea behind doing it at anchor.

I was expecting the purging to take 5 to 6 days. Remaining for so long in such a crowded area is unsafe. It was also relevant that the time charter was about to expire. I think we had to be ready on 15 February to load a certain load; then the new charter took effect.

You ask me whether it was an option to purge whilst underway between Taiwan and Korea. I answer that we had indeed already started warming up the tanks by then. This was so as not to waste any time. The journey between Taiwan and Korea took about two days.

With reference to objection 4, you ask me whether I gave instructions with regard to the readiness of the main engines. I answer that I asked the chief engineer to leave the engine on standby (short notice). That means it can be started in 10 to 15 minutes. Short notice is the minimum.



You ask me if there is anywhere in my orders where the degree of readiness was called for. My answer is no. I told the officer of the watch orally when we came to anchor, and I didn't write it down.

I can tell you that during the five days that we were anchored, the weather did not deteriorate but remained the same. The weather was bad, wind force 6 to 7 and there was a bit of swell. The anchor was fixed. The engine remained on short notice.

You ask me whether I gave instructions on the safe area to be observed around the ship. Those instructions were there – see the *standing orders* on page 104, eighth bullet point, and on page 105 under "*At anchor*", fourth bullet point.

I hear that the Inspector notes that mention is made of a CO alarm but that this is not recorded in the logbook. I answer: yes, a CO alarm was triggered. I think that was the day before the collision. I think it was about 9 or 10 o'clock in the morning.

You ask me why I was in the cargo control room the morning of the collision. My answer is: to talk about the progress of the purging operation. The chief mate was on watch from for 6.00 hours to midday. He was inexperienced. The gas specialist came too. We held a toolbox meeting to organise everything and stay informed. The chief mate, the gas specialist, the boatswain and myself were there.

**Block B (objections 1, 2 and 5 concerning the purging of the vessel at anchor)**

The person concerned states: I had purged 3 or 4 times before the day of the collision. That was both whilst underway and at anchor, both. You ask me whether there are any instructions from the shipping company when purging should take place underway and when at anchor. I answer: no. There was no fixed procedure for purging. But this time we did receive the previously mentioned instruction by email. That is the normal procedure for me: Both options are possible.

You ask me if I can remember what was in the e-mail from the commercial operator. It was an e-mail from him, sent to me. They were instructions, not in response to a question. The instructions were clear: purge at anchor or



whilst underway. So at anchor was an option offered by the shipping company, so the shipping company was OK with that. Following consultation with the gas specialist, I opted for purging at anchor.

I hear the presiding judge say that, on page 8 of the petition, the inspector's predecessor states that, according to the shipping company, purging is normally carried out into the wind. That is incorrect. The wind must come from across or from behind. Certainly not from the front, otherwise the gas vapours will get directly into the accommodation and the engine room. The two options are possible. The weather conditions, the area and how busy it is, the safety of the vessel and the availability and experience of the people are all factors that I consider (and did consider) when making a decision.

With regard to the personnel for this operation, I can tell you that there were two officers who were on watch with seamen. When purging at anchor, two additional seamen are available to help with purging.

Engine room personnel are also available in case of technical problems with the gas installation as happened on the Coral Pearl.

You ask me if there wasn't time to look for a quieter area. I answer you that that was almost impossible. Not least because we had to stay in the crosswind. If you manoeuvre a lot it's problematic; if you change course, the vapours will get in.

I don't know exactly what the problem was on the Coral Pearl. I think there were technical problems. I don't know exactly what problems. But in any case, because of these problems, the gas specialist has been placed on board with us. Because of these technical problems, it was better for us to purge at anchor.

I declare that others on board probably gave me different advice. I spoke to the gas specialist. Apart from that, I don't remember. You tell me that the third mate stated that the experienced engineer (the second) but also the chief engineer had advised me on several occasions. I answer: that is possible, perhaps, I do not know, and advice is advice. You ask me why I ignored that advice. I answer you: for the same reasons that I gave, and the experience that I had.



I answer to the presiding judge: the gas specialist is not a seaman. And I discussed with him the fact that I had two options. I discussed my decision with him and he accepted it. And when we were anchored, he saw how busy it was and he agreed.

There was a toolbox meeting every morning. Sometimes during the day, because I knew the people were inexperienced. The second and third mates were not there. I was there, the gas specialist, the chief mate and the boatswain. You ask why the other mates were not there, I reply that the chief mate had to explain it to the rest of the mates.

You ask me whether in view of the CO or ethylene alarm and the measurements I think it was still a good idea to purge at anchor. I answer: the gas incident took place because the hoses used were too short. After the incident we had a meeting on the bridge with the third mate, and then the question was: do we have any other hoses? Then the chief engineer proposed using the fire hoses if necessary. We tried various lengths. First three hoses, then four and then five. The wind came from the front and we were anchored. Using the hoses, we made sure the vapours came out behind the ship. It was a test and it worked. If it hadn't worked out, we'd have had to find another solution.

You ask me if the length of the hoses allowed us to start the engine. I answer that the hoses were on the starboard side. They were in the way. That's why I said later: Don't start the engine now. You ask me if I didn't think, "I might need to get away from here fast." I answer: What is fast? I was concerned about the safety of the people on board. You ask me if I considered the fact that that was a risk. I answer that if you have enough time to start the engine, it's no problem. According to the chief engineer, it took 15 minutes to start up. That's long enough to bring in the hoses.

You ask me if there was any leakage of CO or ethylene. I answer the chief engineer called to say there was a CO alarm. I then sent people to take readings in the engine room and accommodation and in the meantime stopped the purging and air the accommodation areas. And I had the ventilation checked to see if it was efficient. I was also shocked by the alarm.



I've acted properly. I tell you that CO is not good. It's dangerous. That's why I stopped the purging.

In response to your question as to whether the issue of turning off the radars has been raised, I would say that the radars should always have been switched on. Always. There was no need to turn these off. When asked why the vent mast was not purged, I answer that the way we did it with compressors was more efficient and faster. When you are at anchor, the wind comes from the front, so that the gas, even when it comes high from the vent mast, enters the accommodation. That's why a hose behind the ship was decided on. That is 100% secure and does not lead to a question or consideration on my part.

It's true that a fire hose is only 2 inches wide. The pressure of the compressor will be maybe 2 to 3 bar. I am asked why, since only a small amount could pass through the fire hose, I did not still use the vent mast, also as there was a strong wind. It is put to me that ethylene is non-toxic and lighter than air. I answer that it was not far from the bridge and the wind pushed the fumes into the accommodations as well. We always have to do it the safe way, so I didn't use the vent mast. When asked whether it was possible to manoeuvre the vessel lying at anchor in a different position, I answer: no. We were lying in the water with a long chain. And always with the head in the wind. There was a swell. It was not possible to manoeuvre. I'm asked if I considered keeping a watch myself. I answer that that was a possibility. As I was dealing with inexperienced people, I was always on standby. I spent a lot of time on deck, too. That's why I didn't keep a watch myself.

I'm asked if I considered, when I decided to purge at anchor, bringing everyone together so that everyone knew who was to do what. I answer: that is one of the duties of the chief mate. He's in charge of safety on board. He has to do the purging on deck all the time and explain it to the crew. And that's what the chief mate did.

The inspector asks roughly how far the fire hoses came out behind the ship. I answer about 20 metres, maybe a little more. We attached 4 or 5 hoses to each other. The inspector asks me whether I thought the use of the fire



hoses was the best option, as they are not intended for purging. I answer that we had to do something quickly and that is why we tried and did this. The best option was to use hoses. Fire hoses are not an ideal material, but the other two hoses were too short. The inspector asks me if I have told the shipping company that there were not enough hoses. I answer you that it was probably mentioned. We had to order several dedicated hoses for the future. The inspector notes that in fact the fire hoses were not suitable for purging because they can age faster, and asks if I checked the condition of the hoses afterwards. I answer: no, because after the incident there were other things to do. And there were spare hoses on board. We probably checked that later. The inspector, referring to my statement that I had already started purging on the journey from Taiwan to Korea, asks if I sailed from Taiwan to Korea at normal speed. I answer that I can no longer remember whether I sailed at normal or economic speeds and whether I could have sailed more slowly. I didn't purge at first, we had to heat up first.

The inspector asks me if there were any procedures for purging at the quayside that stated that the radar had to be switched off. I answer: that seems to be the case. The inspector asks if I informed the shipping company that there was no procedure for purging at anchor. I answer: no, which means I don't remember.

I am asked if my relations with the shipping company were good. Yes, they were good, I answer. You ask me whether the shipping company was involved in the proceedings concerning purging on board. I answer: yes, through the gas specialist. And there was daily contact with the shipping company by telephone. I didn't experience any pressure from the Operations Department or management because the gas specialist was on board to advise us. He was the contact between us and the shipping company. The e-mail we were talking about was at beginning of the matter. I have never received any instructions or suggestions from the Quality and Safety departments in this matter. I was only in contact with the Operations Department.

Block C (objections 3, 6 and 7 on engine readiness)



The presiding judge indicates that the key question is whether the person concerned knew or should have known that the second and third mate did not use the radars during purging. I answer: I didn't know. The radars have to be up and running. I should have been told. We should have used all the means at our disposal.

You ask me if I should have found out for myself that the radar was off and whether I monitored the work of the officer of the watch. I answer that when you get on the bridge, you have a direct view of the radar screens. Every time I was on the bridge, they were running. I went there several times a day; that was the case for all the days prior to the incident. Also the day before the accident itself, when I had taken over the watch for a few hours in the course of the morning. The radars were on at that time.

The presiding judge asks if I could explain why the radar was on standby. I answer: I was on the bridge for some time when the radar was on at night. You ask me if the radars were off when I was on watch earlier in the day. I answer that the radars were running then, too. I note that when I saw the collision, I immediately asked why the radar was off.

You ask me whether I would have put an extra person on the bridge if I had known that the radars were off and for some reason could not or were not allowed to be switched on. I answer: yes, in that case I would have put an extra person on the bridge. That's normal procedure. You ask me if I would have recommended the use of AIS. I answer: standing orders state that all available means must be used. So if it can be used, it must be used. I'm asked what I do during a visit to the bridge. I answer that if there is no problem, I look at the general situation. I look outside, and I discuss things and check that everything's going well. You ask me if I saw the Trueborn at any time before the collision. I answer that I must have seen it. It was a big ship. It was far enough away from us, about three nautical miles. I didn't notice anything unusual. We have officers on the bridge to check that. I was last on the bridge the night before. The Trueborn began to drift from about 5:00 in the morning, I understand.



You ask me if the crew was sufficiently familiar with what the equipment on the bridge could be used for. Yes, even better than me, I answer. They can do it perfectly. All officers have a certificate.

Block D (objection 9 on measures to prevent the collision)

The presiding judge asks how much time I had to take measures to prevent the collision. I answer that it was incredibly short. Van Dijk notes: the 9 minutes are also noted in the shipping company's report. The presiding judge notes that the third mate mentioned 20 minutes in his statement. I answer that's not right. I immediately went up top. The chief engineer told us what the gas specialist had told him and that the vessel was approaching. I hadn't been informed of the vessel approaching us.

The presiding judge asks me what measures I took when I was on the bridge and realised that the Trueborn was close by. I answer that I did the following:

- I called up the Trueborn. We saw the name of the vessel directly on the ECDIS, and the channel is on standby to call someone up. I'd have called them in 30 seconds at most. It was urgent. The third mate said it took five minutes; that's not true.
- I ordered the chief mate to stop the purging. And when I heard the hoses were in the way, I told them to get them out of the water. I don't remember who I gave this order to, it could have gone through the third mate.
- I called the chief engineer twice. I told him that I needed the engine as soon as possible, so please start the engine immediately. And then not to start because of the hoses.

The third mate stated that I hesitated and didn't know what to do, and that I refused to comply with the Trueborn's request to take action myself. He is incorrect to say that. I said to the Trueborn: *I will do the same on my side; I will do what is necessary*. I wanted to start our engine right away. This was an immediate response. Without an engine, there's nothing you can do. I never panicked.





I probably told the third mate that I had told the chief engineer not to start, so he had to tell him again not to start. After all, the hoses were in the water. I don't remember the third mate asking for further instruction at the time.

You tell me that I wrote that I didn't consider hoisting the anchor. I answer that the collision was so imminent that I would never send anyone forward under the circumstances. It would be crazy to do that. Safety comes first. I tell you when asked that there were a lot of ships. I hadn't specifically noticed the Trueborn before. I don't know when the Trueborn turned off the lights and hauled the black ball signal down. Immediately before the collision, I saw that those signals were gone.

#### Personal circumstances of the captain

The presiding judge refers to page 57 of the file, to the report of the shipping company. The person concerned states: I confirm that what is stated here is correct. I've had quite a few years of experience on gas tankers. My contract wasn't renewed with the shipping company. The official message was that my management style didn't suit the shipping company. I don't agree with that. Earlier there had been a favourable report about my management style in the Anthony Veder newsletter. That was in 2016. At the end of March 2017 I had a serious operation on a torn tendon. I had to convalesce for a year. I fell out of the scheduling. After each contract the shipping company wanted to extend my contract with the crew manager of Lowlands. But not anymore.

You ask me how I was characterised. I state that I am someone who is very transparent. Communication is very important to me. That's why I kept the toolbox meetings on board, often as many as two a day. People could make suggestions. I'm very open. That's my style, and that's what the newspaper article said. That's why the crew manager was surprised when my contract wasn't renewed.

I've always been transparent. I've always listened to people. I have to make a final decision, of course. It may differ from their opinion.



You ask me if my tendon has recovered. I answer you that's the case. After the end of my leave, I received notice of termination at the end of April 2018. During the following period I sent out my CV, and since then I have had 3 temporary contracts. I'm a freelancer now. Officially, I'm unemployed. I'm registered in the pool, looking for a job.

The measure proposed at the time by the inspector, a six-month suspension, two of which conditionally, would mean for me that I would not be able to sail on a Dutch vessel for that period. That wouldn't be good for my career. I may be able to sail on ships under a different flag, but it is not easy to find a job at my age. That limits my options.

You ask me if I have been able to serve out my current contract with the shipping company. I answer: yes, I have."

## **6. The ruling of the Disciplinary Court**

A. Contrary to what defence counsel has argued, the Disciplinary Court has not established any fundamental objections to the Inspector's conduct of the investigation. It is true, however, that the investigation was not complete. For example, the Inspector did not request any further information from the shipping company, such as the VDR data and the e-mail from the operational department, nor were any statements taken from the chief engineer, the 2nd engineer or the gas specialist. During the hearing it emerged that the legal counsel did not ask the Inspector to carry out certain investigative acts. Insofar as legal counsel's argument that the Inspector's investigation was one-sided is correct, this was rectified within the framework of the preliminary investigation and during the investigation at the hearing. The Disciplinary Court does not rule out the possibility that the gaps in the investigation were caused by the late response of the person concerned and his legal counsel to the questionnaire of the (previous) Inspector on the one hand and his (upcoming) departure when that response arrived 3.5 months later on the other. All in all, the Disciplinary Court finds that there has been no serious violation of the principles of good administration of justice by which, deliberately or with gross disregard for the interests of the person



concerned, his right to a proper investigation of his case has been violated. The claim regarding the inadmissibility of the inspector's petition is rejected. The fact that the investigation was not complete will – as will be shown below – however lead to the finding that in certain cases the Disciplinary Court has found insufficient evidence for the merits of the Inspector's objections.

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

On Thursday 9 February 2017, around 07:15 hours ship's time, at Yeosu (Korea) OPL anchorage, there was a collision between the Dutch gas tanker Coral Patula and the Belize-flagged seagoing vessel Trueborn. Both ships sustained substantial damage.

In particular:

- (1) the person concerned chose, despite being advised on board to do things differently, to have the purging operations take place while the ship was at anchor; The ship and crew were seriously endangered as a result;
- (2) even after the incident involving high measured values of explosive/harmful gases in the accommodation, the person concerned did not reconsider his decision to have the purging operations carried out at anchor;
- (4) the person concerned did not give written instructions with regard to the *readiness of the main engine*;
- (5) after the incident involving high measured values of explosive/harmful gases in the accommodation the person concerned took the decision to extend the length of the hose used for the discharge of cargo vapours overboard. This blocked the propeller, so that from that moment on the propulsion was no longer ready for immediate use;

C. The Disciplinary Court finds the Inspector's objections 3 and 6 to 9 are unfounded.



None of the witnesses stated that they had told the captain that the radars were not switched on during the purging process. According to the third mate, the person concerned must have noticed this when he arrived on the bridge because the screens were black. However, the Disciplinary Court deduces from the shipping company's report (p. 50) that, according to the VDR data, the radars were switched on for many hours on the evening prior to the collision, even at the time when the third mate was on watch and the captain visited the bridge. There is insufficient evidence that the person concerned was aware, or should have been aware, of the fact that the radars were not switched on during the purging process. For this reason, the ground under objections 3, 6 and 7 is also invalid, as counsel rightly argued. Objection 8 is unjustified because the person concerned has indeed given instructions in the Master's Standing Orders regarding the size of the safe area around the vessel.

Based on the limited investigation in this case, the Disciplinary Court must assume that the captain did not have more than 9 minutes to prevent a collision with the Trueborn. Only the third mate stated that the person concerned had about 20 minutes to do so. He is also the only one who has stated that the captain did not respond adequately on all fronts. The Disciplinary Court finds that in the limited time of 9 minutes the collision could not have been prevented, even if the engine could have been started immediately. The Disciplinary Court also finds that the person concerned did sufficient damage limitation at that time. As the Inspector has also recognised, it would have been irresponsible to release the anchor.

D. It is clear from the objections that have been declared well-founded that the decision of the person concerned to purge at anchor was incorrect. The Disciplinary Court does not in itself rule out the possibility that there may be special circumstances on the basis of which this is a better choice than purging whilst underway. In that case, there must be an experienced crew and the right materials must be on board. In the circumstances of this case, this was not good seamanship. The Coral Patula was held by a single anchor, so it was constantly lying with its head to the wind. There was a lot



of wind and swell. This made it impossible to purge with a cross wind. This, together with the use of hoses that were too short led to a dangerous situation for the vessel and her crew. After the CO alarm was triggered, carbon monoxide was measured in the crew quarters. Whether or not there was any carbon monoxide has not been established since it remains unclear which equipment was used to measure it and a cross sensitivity with ethylene was recorded by several gas meters. Even after this incident, the captain ignored the advice of others, who had already advised purging the vessel whilst underway, into the wind. The use of longer hoses made it impossible to turn the propeller immediately. As a result, the captain unnecessarily restricted himself in terms of safety.

Finally, the person concerned can be accused of not having included the degree of readiness of the main engine in the *Master's (Night) Orders* .

E. 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 Ship' 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.

F. The Disciplinary Court considers that the invocation of the person concerned of the shipping company's consent to purging at anchor is incorrect. The Disciplinary Court tends to agree with him that in the e-mail – about which he made a statement at the hearing – he was given a free choice. However, according to him, this e-mail was from the operational department and from the quality and safety departments, he did not receive or ask for any advice. He knew that the gas specialist present on the vessel had no nautical experience. The captain was therefore not entitled to consider himself covered by the shipping company.



## **7. The disciplinary measure**

The Disciplinary Court judges that the person concerned has failed in his duty as a Ship' captain. The person concerned did not act as befits a responsible captain, as a result of which the safety of the vessel and the crew in particular were seriously jeopardised.

In view of the seriousness of the evident behaviours a suspension of the navigation licence for the duration mentioned below is appropriate.

In view of the following circumstances the Disciplinary Court sees good cause to stipulate that the suspension of the navigation licence will be partially conditional. In the absence of clear instructions from the shipping company for purging, he took the wrong decision in this case to do so at anchor.

The captain's actions, which are considered proven in this case, did not directly play a role in the occurrence of the later collision. The Disciplinary Court acknowledges that the dragging anchor of the (unlit) Trueborn and the lack of – or at least inadequate – lookout on board the Trueborn led to the collision in the first place.

The Disciplinary Court is further of the opinion that if the person concerned had taken more of a lead with the officers of the watch and/or had involved them in the toolbox meetings, switching off the radar on board of the Coral Patula might have been prevented.

## **8. Practical recommendations**

Apart from the decision in this case, the investigation into the collision between the Trueborn and the Coral Patula has led the Disciplinary Court to make the following practical recommendations:

1. A shipping company must give clear instructions for purging.
2. When purging, a toolbox meeting must always be held in advance with the entire crew, during which the checklists are discussed: who does what and how. This ensures that the checklists are checked and, if necessary, supplemented.



3. Ship's officers must be made aware of their duty to keep a better lookout and to be aware of what is happening around them – even from a distance – so that it is noticeable if a vessel (such as the Trueborn without lighting) is behaving suspiciously.
4. Knowledge of radars/AIS/ECDIS and their integration should be improved. AIS remains visible on radars that are on standby.
5. The phenomenon of cross sensitivity in gas meters should be made more widely known.

## **9. The decision**

The Disciplinary Court:

- rejects the claim that the Inspector's petition is inadmissible;
- declares that the objections 1, 2, 4 and 5 raised against the person concerned are well founded as indicated above under 6B;
- declares the objections 3 and 6 to 9 raised against the person concerned unfounded as indicated above under 6C;
- suspends the navigation licence of the person concerned for a period of 8 (eight) weeks;
- stipulates that of this suspension, a period of 4 (four) 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 persons 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 P.C. Santema, LL.M., presiding judge, H. van der Laan and D. Willet, members and T.W. Kanders and G. Jansen, deputy members, in the presence of D.P.M. Bos, LL.M., as secretary, and pronounced by P.C. Santema, LL.M., in public session on 30 October 2019.

P.C. Santema  
presiding judge

D.P.M. Bos  
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.