



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF
30 OCTOBER 2019 (NO. 5 OF 2019) IN THE CASE 2018.V7-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

S. Y.,

the person concerned.

counsellor: M. Wattel

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 the chief mate 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 16 September 2018 a statement of defence was received from the person concerned.



The presiding judge stipulated that the oral hearing of the case will be held at 10.30 hours on 16 July 2019 at the offices of the Disciplinary Court in Amsterdam.

The Human Environment and Transport Inspectorate and the person concerned 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 16 July 2019. Ms K. van der Wall, ILT/Shipping inspector, appeared at the hearing for the petitioner. The person concerned also appeared at the hearing.

2. The petition

The accident is briefly described in the petition as follows:

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.

The accident was reported by the shipping company to ILT.

3. Objections of the Inspector

According to the Inspector, the person concerned in his capacity as the chief mate acted in violation of (among other things) the duty of care that he, as a good seaman, should observe with regard to the persons on board, the vessel, the cargo, the environment and shipping traffic.

In particular:

- the person concerned chose to rely on the Cargo Operations checklist 1 – Pre-operation;
- To comply with the checklist, the radars had to be turned off. The checklist prescribes: *“All deficiencies found during Pre-Operations*



checks are to be brought under the attention of the master whom shall decide further follow-up“. According to the captain, he did not do this.

- Switching off the radars should not have been acceptable to the person concerned under the given circumstances either.

The Inspector's demand is to impose on the person concerned a two-month suspension of his navigation licence, one month 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 acknowledges that he as the chief mate gave instructions to switch off the radars during the purging process. He did so not only on the basis of the *Cargo Operations Checklist* but also for safety reasons. He also feared a dangerous situation that could lead to an explosion. The person concerned thought he'd read that in the shipping company's regulations. He acknowledges that he did not consult with the captain about turning off the radars.

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 VDR data was saved and later viewed at the office by the investigation team. Among other things, it was observed that the radar connected to the ECDIS was on standby and did not provide any information about the collision. The VHF recordings were clearly audible and made it clear that the crew of the Trueborn was not aware of the Coral Patula lying at anchor nor of their own dragging anchor.

At the time of the collision, both radars of the Coral Patula were switched off, as confirmed by the VDR and the statement of the third mate. The latter stated that the radars had been switched off by order of the chief mate who had designated the gas purging as a *cargo operation* using the *Cargo operation checklist 1 – pre commencement of operation*. According to Appendix C this checklist contained 30 points including "*Radars are off and main radio transmitting aerials disconnected and earthed*". At the bottom of the form the following is circled in red: "*All deficiencies found during Pre-*



Operations checks are to be brought under the attention of the master whom shall decide further follow-up“.

The shipping company has a written work instruction 01-09-01-007

“Anchoring”. This includes, among other things:

“The Master shall leave clear instructions, regarding the fixing of the vessel’s position. Full use shall be made of the radar and any other aids which can assist in monitoring the position on a continuous basis”.

[..]

Master to be called – at any time – on the following:

[..]

If the OOW has the slightest doubt regarding the safety of the persons on board, the safety of the Vessel, the cargo and/or the marine environment.”

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

5. Have you been informed about the radars being switched of?

6. Do you agree with C/O to use the “Cargo Operations Checklist 1 – Preoperation “ for the purging operations at sea?

The following answers of the captain of the Coral Patula are also given:

Question #5: No, I was not informed about that matter by C/O nor by OOW

Question#6: No, I do not agree because purging operations are not to be considered as normal cargo operations but as specific operations.

D. At the hearing of 16 July 2019 – rendered in abridged and concise form – the following statement was made by the person concerned:

I disagree with the Inspector. The checklist as included in the shipping company's report (pages 66–67 of the file) shows circled in red the sentence that has just been discussed, namely: *“All deficiencies found during the Pre-Operations checks are to be brought under the attention of the master whom shall decide further follow-up“*. This states that I'm obliged to report irregularities to the captain. But I didn't speak to the captain on the basis of this checklist. This checklist did not apply exactly. However, there was no checklist on board for the specific situation of purging while the ship was at



anchor. Since there was no applicable checklist, I used it anyway. It states that the radars must be switched off (see page 66 of the file). You ask me whether there was no reason to consult with the captain because this was a different case. I only discovered a few minutes before the start of the purging operation that the radars were on; that was the opposite of what is stated in this checklist. In addition, I remembered that the radars had to be switched off in the event of cargo operations on board gas tankers. That was in instructions from the shipping company of the past, of which I have made copies and which I am now submitting to these proceedings (*Uncontrolled cargo vapour release EP9A* and *Liquid cargo spill on deck EP8*). Section 4.5 under 3 of the shipping company's report also contains a reference to instructions on how to switch off the radar (page 63 of the file). I had safety in mind. At that moment the weather was calm, there was almost no wind, and we had to blow out a lot of explosive gas. I was busy preparing the purging procedure. I had no experience with this and I hadn't done it before. During these preparations, I was near the bridge. When I saw that the radars were still on, I went above and asked the third mate to turn the radars off. That was on the third mate's watch. The expectation was that the purging would be finished very quickly, so I didn't think to consult with the captain. I should have done that at the time or a later time. In the end, the purging was not finished until 13:00 the next day.

I showed the third mate the checklist to support my decision to turn off the radars. You ask me if anyone has noticed that this was a checklist for use in the port. Nobody noticed. There was no other checklist that could be used for this; it was the most applicable one.

When asked whether I told the third mate that the radars had to be switched off for a certain time, I replied: It's been two and a half years. I think I said that the radars should be switched off for the duration of the purging; I didn't say for exactly how long or until when, but I did say for the duration of the purging, which would take about two hours. I made sure there were no



other vessels around. So there was no danger. At that time, the explosion hazard was the most important aspect.

The weather did indeed deteriorate later on, but purging the gas wouldn't take that long. I was still working on deck procedures, too. I did not go to the bridge after that and I failed to notice that the radars were still switched off.

I am asked whether I should have asked for instructions to use other equipment to compensate. I completed a risk assessment form and submitted it to the captain. The captain added a few points and that's it. There was nothing about the radar in there. The risk assessment was completed on the computer and printed. The risk assessment went to the office. You ask me what kind of gas it was about on board that we had to work with. It was ethylene.

The presiding judge reads to me that the document I have just submitted, *Uncontrolled cargo vapour release EP9A*, reads '*Consider shutting down of radars and maintaining radio silence*'. The same thing is stated in the second document I submitted. I understand from the word *consider* that there is room for discretion in this. But at that moment I thought there was a dangerous situation that could lead to an explosion, so I asked for the radar to be turned off. In my opinion there was a danger of a cloud of vapour lingering around the vessel because there was little wind. This can also be seen in the ship's log.

You read to me that on page 17 of the shipping company's report, in the instructions given there, it says the following: "*Full use shall be made of the radar (...) on a continuous basis*". I understand that, but in the circumstances of that moment, under pressure and in haste, I made a different decision.

The inspector tells me that the instructions state that all means must be used. You ask me what alternative I put in place when the radar was off. My answer is that you can use AIS and ECDIS, and, of course, keep a visual



lookout. I didn't say that the officer of the watch should be informed. At the time, I was preparing for the purging. You ask me whether the fact that the radio and antenna were not switched off is a deviation from the checklist and from the documents I have submitted. At the time, I was using my common sense. If I'd turned it off, we wouldn't have had any contact with the surrounding vessels at all. I had in mind that the radar had to be switched off on the basis of several documents and that's why I did it. I didn't give orders for the radio to be turned off. There was not much time; I had a quick look at the checklist. I had to turn off the radar, and I overlooked the radio. It's true I just said it was common sense to leave the radio on. It's been two and a half years and everything happened in a short time. I still have an image of what I was thinking, but I can't explain that exactly step by step anymore.

There were three days between anchoring and purging. You put it to me that I give the impression that the purging was prepared quickly, because there was little time. My response is that was not the case. I'd been preparing for the purging all along. This process goes through a number of phases. The moment that the purging itself takes place is the least difficult. Shortly before, I noticed the point concerning of the radars.

You ask me what happened before the purging in those days. My reply is that I was going through and preparing a list of things. All steps were discussed with the captain and the gas inspector. There was no mention of switching off the radars at the time. I was thinking about the radars when we were about to purge the gas.

The captain did not give me the right support. The captain had experience, but I don't know if he had experience in this situation. As far as I know, the captain used to work on oil tankers.

I did not inform the office that there were no clear instructions for the situation of purging during anchoring. The captain did the correspondence and I don't know what he wrote. Now that I have more experience, I feel free



to take up that contact. At the time this was not possible because of my lack of experience and because the captain did not allow it.

The presiding judge indicates that he would like to know what the personal situation regarding the ship's officers is. He refers to page 21 of the shipping company's report and asks each of the ship's officers if that gives an accurate image of their experience.

The chief mate answers the following: yes, I still work at Anthony Veder. The incident had an emotional impact on me. I stayed home for six months, also because my father was ill. The shipping company did not sanction me for the incident. I would like to say, and I think that was the case with others, that relations with the captain were difficult. This was my third contract with this captain. Despite that, the relationship was still not good. I've never been in contact with Captain again since the incident.

6. The ruling of the Disciplinary Court

A. 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.

The person concerned had chosen to rely on the *Cargo Operations checklist 1 - Pre-operation*. To comply with the checklist, the radars had to be turned off. The checklist prescribes: “*All deficiencies found during Pre-Operations checks are to be brought under the attention of the master whom shall decide further follow-up*“. According to the captain, he did not do so and this checklist did not apply.



B. This shows that the person concerned incorrectly based his approach on the *"Cargo Operations checklist 1 – Pre-operation"*. He also failed to consult with the ship's captain in this particular situation. However, the person concerned as chief mate should also have been aware that switching off the radars was not acceptable under the given circumstances.

It can be assumed that the fact that the radars were switched off also contributed to the 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 and the Coral Patula by the officers of the watch led to the collision in the first place.

C. 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'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.

D. The Disciplinary Court finds that the person concerned's invocation of the contrary regulations of the shipping company is unfounded. During the hearing it became clear that the documents to which the person concerned refers do not prescribe switching off the radars, but provide the discretion to do so in certain cases. Under the circumstances of this specific case (the purging took much longer than planned, night had fallen and the weather conditions had in the meantime deteriorated considerably) there was no danger for the persons on board or for other persons, but there was a danger of colliding with ships that had slipped their anchors.

7. The disciplinary measure

The Disciplinary Court judges that the person concerned has failed in his duty as Ship's officer. The person concerned did not act as befits a responsible officer, as a result of which the safety of the people on board the vessel in particular and shipping in general were 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. The person concerned acted from a safety point of view and not for blameworthy motives. His knowledge in these situations was still limited and he did not receive sufficient support from the captain. Also, there were no instructions from the shipping company for purging while at anchor.

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:

- 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 4 (four) weeks;
- stipulates that of this suspension, a period of 2 (two) 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 Mr P.C. Santema, LL.M., in public session on 30 October 2019.

P.C. Santema
president

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.