



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF
30 OCTOBER 2019 (NO. 6 OF 2019) IN THE CASE 2018.V8-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

P. F.

the person concerned,

counsellor: O. Böhmer.

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 second 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 31 January 2019 a statement of defence was received from the counsellor of 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 appeared, represented by his counsellor.

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 acted as second mate 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, the person concerned:

- accepted the limited availability of necessary lookout resources, in particular the radars, without clear instructions on the effective use of other resources;



- accepted that, even under the prevailing circumstances and at night, he had to take the bridge watch alone.
- was unclear about to what extent the defendant protested against these two points to the chief mate and or at least asked the captain for additional instructions and/or resources (additional lookout). The fact is that even if he did protest against this, it did not have the desired effect and he more or less resigned himself to the fact that he was unable to keep an anchor watch in accordance with the standards of good seamanship;
- apart from the above, did not keep a good lookout. Even with the available resources, although not intended for that purpose, other ships could have been effectively monitored. If he had seen that the Trueborn had come over a mile closer during his watch, action could have been taken earlier and well in time.

The inspector's demand is to impose a warning on the person concerned.

4. The position of the person concerned

In his defence, the person concerned indicates that he knew that, in principle, the radars had to be switched on while at anchor and that he had no problem with the fact that he had to keep the bridge watch (from 00.00 to 06.00 hours) alone. It is possible that he could have adopted a less law-abiding and more sceptical attitude with regard to the instructions to switch off the radars during purging.

It was usual for one officer to keep an anchor watch.

The person concerned is of the opinion that he kept a good lookout by all other possible means and that the drift of the Trueborn was unnoticeable. He disputes that he did not act in a manner befitting a good seaman.



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 and largely in Dutch – 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.

Viewing the ECDIS data yielded the following facts:

1. The Trueborn was anchored at the beginning of the recording at a distance of 3 nautical miles from the Coral Patula.



2. The distance between the two ships started to decrease from February 9th at 02.00 hours.
3. The speed of the anchor dragging increased slowly during the first hours (0.5 to 0.8 miles), and two hours before the collision it increased to more than one nautical mile, which was 2 nautical miles 15 minutes before the collision.

Interviews with the second and third mate showed that the ECDIS *at the conning position* was set on a large scale to reflect changes in position and a possible dragging anchor. As a result of this setting, the surroundings could not be seen beyond a distance of 1 nautical mile. The ECDIS on the chart table was set on a small scale so that the coast was visible. With the known anchor position, visibility had to be more than 24 nautical miles in order to be able to display the coast within the visibility range of the map. With the Trueborn at a distance of 3 nautical miles it was very likely that a small change in the distance would not be noticed without a proper overview of those distances and location of the ships near the Coral Patula.

At the time of the collision both radars had been switched off, as confirmed by the VDR and the statement of the third mate. The latter stated that the radars had been deactivated by order of the chief mate.

[..]

The shipping company has drawn up clear instructions regarding the manning of the bridge, including the single lookout by the officers of the watch.

The following is written in the Bridge manual, which is part of the SMS.

[..]

"02.9 OOW axis SOLE LOOK-OUT

The OOW may be the sole lookout when the vessel is underway in daylight conditions only.

The OOW may be the sole lookout when the vessel is at anchor or moored at buoys during day time and night time.

[..]

Prior to any Officer taking the role of sole look out, it must be ensured:



[..]

All essential equipment and alarms on the bridge are fully functional”.

[..]

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”.

[..]

The *Master's Standing Orders* include the following:

“Performing the watch

The OOW shall make the most effective use of all navigational equipment at his disposal, this includes the main engine.

[..]

At anchor

[..]

All traffic around the Vessel has to be monitored with the outmost care.

[..]

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 table with the accompanying text in the petition reads:

"Based on the report of the shipping company, the following table has been compiled showing how much closer the Trueborn came per hour from the moment that the Trueborn started to drag its anchor.



LT=BT=UTC+9						
OOW	Time		Range	decreasing range		
	UTC	LT=BT		per hour		2/0 watch
2/0	15:00	00:00	-		-	1,14
	16:00	01:00	2,98	0,03	0,09	
	17:00	02:00	2,95			
	18:00	03:00	2,86	0,13	0,23	
	19:00	04:00	2,73			
	20:00	05:00	2,5	0,66	1,23	
3/0	21:00	06:00	1,84			
	22:00	07:00	0,61			

The table shows that during the defendant's (TC: the person concerned) watch the Trueborn came 1.14 Nm closer and during the first hour of the third mate's watch 1.23 Nm closer.”

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

When asked, the second mate confirmed that he had received instructions to switch off the radar from the third mate when changing watch and that he had not received any other instructions in this regard. The presiding judge asks the second mate whether he had asked for an alternative at the time. The second mate answers as follows: I know that all available resources must be used. The second mate states that he did not turn off the radars and did not turn them on during his watch.

The presiding judge tells the second and third mate that the second accusation against them is that they have accepted that they each had to keep the bridge watch alone. The presiding judge asks whether it was right to be on watch alone at night when the radars are off and whether there should not be an extra watchkeeper as standard, in view of the instruction



that all available resources should be deployed. The second mate answers that there was no extra watchkeeper, but the usual watch. According to the second mate he would have been informed if an extra watchkeeper was required.

The presiding judge asks the second mate whether he had made a protest with regard to the third objection and whether he had asked for additional instructions. The second mate answers that this kind of thing has to be decided during the day. You can't wake somebody up for this. You put it to me that the situation lasted a few days. But when you are at anchor, it is not mandatory that there is a duty seaman, according to the second mate.

The fourth objection is that you did not keep a good lookout, and that if you had looked properly you would have taken action sooner, says the presiding judge. The presiding judge refers to the diagram on page 7 of each of the petitions, which shows how the Trueborn approached the vessel during the period of time. The presiding judge asks the second mate how it is possible that the Trueborn came 1.14 nautical miles closer without this being noticed. The second mate answers as follows. We were on a busy route and there were a lot of ships passing by. A vessel at least three nautical miles from us didn't immediately catch the eye. You ask me what equipment I used to keep an eye on the others. That was ECDIS, and everything else on the bridge. I don't remember exactly what else was on the bridge. ECDIS is the most important thing at night. The Trueborn came only one mile closer in 6 hours; on the small scale of 24 nautical miles this is not noticeable. You ask me why I didn't adjust the scale. On one EDCIS was a large scale and on another ECDIS was a small scale. I didn't adjust the scale because I had a clear image of the situation around us. The change of a nautical mile was difficult to observe. The second mate is asked in which steps the ECDIS scale could be increased or decreased. He answers that this can be done per half mile, whole mile, three miles, four miles, six miles and twelve miles. AIS is connected to ECDIS, and you can also see the information there. When the button of the AIS is switched on, you can see the triangles on the ECDIS. On



the radar you have to switch the AIS on and off separately, according to the second mate. You ask me if I saw the Trueborn when it arrived to go to anchor. No, I didn't especially notice or pay explicit attention to that vessel. I don't know if I saw the Trueborn on my watch either. Many ships passed by. We didn't notice that the Trueborn was unlit.

The third mate explains that during the night hours on the bridge the chart table lights were on and the bridge lights off. The second mate confirms this. If passing ships had their navigation lights on, we could see them, according to the second mate.

I don't know if the electronic chart could be projected onto the radar, says the third mate: The second mate indicates that if the device supports that, it can. Whether that was supported in this case, I don't know, says the second mate.

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

The second mate answers: I have also sailed on other ships of the same size. I had already worked as a second mate under a contract, and my next contract had started shortly before that. The first contract was 90 days, the second was from 17 January 2017. Therefore, at the time of the incident I had been there a little bit longer than what is stated on page 21. I still work for Anthony Veder. I learned a lot from 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:

- accepted the limited availability of necessary lookout resources, in particular the radars, without clear instructions on the effective use of other resources;
- accepted that, even under the prevailing circumstances and at night, he had to take the bridge watch alone.
- did not object to the above two points to the chief mate and the captain and did not request additional instructions and/or resources (additional lookout). The fact is that he more or less resigned himself to the fact that he was unable to keep an anchor watch in accordance with the standards of good seamanship;
- apart from the above, did not keep a good lookout. Even with the available resources, although not intended for that purpose, other ships could have been effectively monitored. If he had seen that the Trueborn had come over a mile closer during his watch, action could have been taken earlier and well in time.

B. Although the person concerned knew that all available resources had to be used when keeping watch, he took a very passive approach with regard to the order to turn off the radars and with regard to the fact that under these circumstances (night time, no radar, significantly worsening weather conditions) he had to keep the bridge watch alone. Also in the opinion of the Disciplinary Court, the captain should have taken more of a leading role here. The person concerned can, however, be held accountable for failing to



consult with the captain in this particular situation. As second mate, the person concerned should also himself have realised that switching off the radars was not acceptable under the given circumstances.

Although AIS is not intended as a navigational tool, he should have projected AIS onto the ECDIS in this case, given the absence of the radars, and the person concerned should have adjusted the setting so that he also had an overview of the movements of ships in the vicinity of the Coral Patula, such as the Trueborn.

It can be assumed that the fact that the radars were switched off and that he did not keep a sufficient lookout by other means 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 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. It follows from the above that the Disciplinary Court does not share the view of the person concerned that the drifting of the unlit Trueborn (1.14 nautical miles in 6 hours) could not be observed; indeed not with the naked eye but with the AIS via the ECDIS.

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 conduct as set out above under 5, the Disciplinary Court considers that not a serious warning as demanded, but a reprimand is appropriate in this case.

Given the circumstances set out below, the Disciplinary Court sees reason not to impose an even more severe measure. The captain failed to take a lead in this case. According to the three mates, the culture on board was not such that it was possible to question his performance. Also, there were no instructions from the shipping company for purging while at anchor. Finally, the person concerned says that he has learned from this incident.

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;
- imposes the measure of reprimand on the person concerned.

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
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.