



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS
30 October 2019 (No. 7 OF 2019) IN THE CASE 2018.V9-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

K. M.,

the person concerned,

counsel: 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 third 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 counsel 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 counsel.

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 third 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;



- the person concerned accepted that, even under the prevailing circumstances and at night, he had to take the bridge watch alone.
- It is clear that the person concerned protested against the two above points to the chief mate and not to the captain. In addition, he did not request any additional instructions and/or resources (extra lookout). He more or less accepted the fact that he was unable to keep an anchor watch in accordance with the standards of good seamanship;
- apart from the above, the person concerned failed to keep a proper 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 till discovery, action could have been taken earlier and well in time.

4. The position of the person concerned

In his defence and at the hearing, the person concerned states that the radars had to be turned off on the orders of the chief mate; he had told him that this was contrary to the Colregs and Master's Standing Orders. The chief mate then showed him a checklist of the shipping company, after which the person concerned considered turning off the radars to be an order. He did not know the checklist was only for cargo operations at the port. The captain had also seen that the radars were blacked out.

The person concerned acknowledges that he could have acted more steadfastly on this point.

He does not consider himself responsible for the keeping the anchor watch alone; it is the captain who determines the composition of the watch. The captain wasn't open to discussion.

The person concerned believes he kept a proper lookout. He cannot be blamed for not seeing the Trueborn sooner.



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 second mate's watch the Trueborn came 1.14 Nm closer and during the first hour of the defendant's (person concerned) 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:

The third mate confirms when asked that he had received instructions from the chief mate to switch off the radars and that he did not receive any other instructions in that regard. The presiding judge asks the third mate whether he had asked for an alternative. The third mate answers as follows: No, I was shown a checklist. I thought it was likely that it had been decided by the captain in consultation.

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 is right to keep watch alone at night when the radars are switched off. The third mate answers that if you are anchored, it is not mandatory that there is another seaman present. I can always call someone, says the third mate. The



presiding judge asks whether there should not be an extra lookout by default, in view of the instruction that all available resources should be used. The third mate says he didn't oppose captain and the rest. The captain wasn't open to discussion. So I didn't ask any questions about the fact that there was no extra watch on the bridge. The third mate says: captain asked if I could do it myself, so that's what I did.

The third mate replies to the third objection against him as follows. I didn't protest against keeping watch alone. I did object to the chief mate turning off the radars. The chief mate then showed me the office checklist convincingly. It was my first time, and I didn't know that the checklist was only for cargo operations in the port. So I didn't notice then that it was the wrong checklist.

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 third mate states the following. I didn't think about AIS. At school I had learned that AIS cannot be trusted as a navigation device. I couldn't determine a range outside of AIS. It's been a long time, two and a half years. I had filled in the bridge log and gas reports, and prepared a few things. Only the gas reports were done during the watch, the rest was preparatory work. The captain came on the bridge, shortly after the gas specialist. He came to consult with the gas specialist. The Trueborn wasn't lit. The vessel was black. I didn't see it coming at first. The presiding judge asks how that can be as the Trueborn approached by 1.23 nautical miles in the first hour of my watch. I finally saw the vessel just before 7:00 hours. It was still dusky at the time. I saw a shape. The captain then used AIS and made contact. I was standing on the closed bridge wing. It is possible that I did not pay close attention to this because of the gas consultation, I can't remember that exactly. I positioned myself in such a way that I could always look outside and I went out every five to ten minutes to look. This was also to ensure that



the watch alarm didn't go off. That alarm would have gone off every 12 minutes, but it didn't. The watch alarm could be reset in three places, on the middle console and on both wings.

I'd like to say the following about the purging: The parties involved (including the Chief Engineer) had repeatedly indicated that the tanks should be purged in a different way. There were heated discussions. The captain always ignored the advice of others. There was no open contact with the captain. He decided for himself. I felt like I didn't really belong and didn't matter.

The third mate explains that during the night hours on the bridge the chart table lights were on and the bridge lights off.

The third mate says there was a watch order book on the bridge. I can't remember exactly what it said, he says. It didn't say anything about radar use. I don't remember exactly what it said about warning the captain in case of bad weather. The captain was aware that the weather was getting worse. I don't know if the electronic chart could be projected onto the radar:

The inspector asks the third mate if he considered calling the Trueborn and asking what their plans were when it approached unlit. The third mate replies that the captain called up the Trueborn, and that was his first reaction. I hadn't seen the Trueborn before that, says the third mate. I can't remember how I found out the radar was off. The Inspector refers to the statement of the third mate on page 125 of the file, which states that when the third mate takes over the watch, he makes a round on the bridge and looks at what is off and what is on. Did you not do that on the night in question, the Inspector asks. The third mate answers: I saw that the screen was black, so the radar was off. When the screen is off, I assume that the captain sees that too, so it's okay that the radar is off.

The inspector asks how the hierarchy was on board. The third mate replies that the captain made the decisions on board. He did what he wanted. The Chief Engineer was ignored, as were others.

The inspector asks the third mate what exact instructions he received about the radar. The third mate answers as follows: I was instructed to turn off the radar by the chief mate, just before the purging operation. I protested. Then



he showed me the checklist. And he's my supervisor. So I stopped protesting. I don't remember who turned on the radar again.

Counsel Böhmer asks the third mate if he can describe what you see on the screen, regarding AIS and ECDIS. The third mate answers as follows: That depends on what you select, and what it's set to. You see green elements, which are ships or buoys with a time interval of 3 or 6 minutes. If you select the triangles you will see what they are. Not every chart has the same range of zooming in and out. It depends on how far you can zoom in on each chart. To see a vessel at three miles, it would have had to be at about six or eight miles. It can get messy if the triangles overlap when you zoom out too far. At setting six or eight you can see as many as twenty ships passing by per unit of time. I don't remember how many ships were at the anchorage.

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 third mate answers: of the 13 weeks I had nothing to do with gas operations for 11 weeks because we were always at anchor. My experience is less than it says. I work for Shell these days. My contract was renewed shortly after the collision. After that, after a year, my contract was not renewed. After the collision, I literally had a screaming captain in front of me. They sent me back to the ship. Fortunately, I had some help on board. People blamed me. I was reminded of the accident almost every day. After that I joined another vessel owned by Anthony Veder, and I was treated very well there. My father is a seafarer himself. I found it strange that my second year contract was not renewed, also given the positive feedback from the captain and chief mate on that other ship. I accepted that and joined Shell. To this day, I worry about what the consequences will be. I've learned my lesson. I'm afraid it will affect my career if the verdict is in accordance with the demand.



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 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.
- the two points mentioned above were mentioned to the chief mate and not to the captain himself. In addition, he did not request any additional instructions and/or resources (extra lookout). He more or less accepted 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 till discovery, action could have been taken earlier and well in time.

B. In the opinion of the Disciplinary Court, the captain should have taken a clearer lead with regard to both the switching off of the radars during purging and the manning of the bridge under the conditions (night, no radar, significantly worsening weather conditions). However, as a third mate, the person concerned should also have realised for himself that switching off the



radars without additional measures was potentially dangerous under the circumstances and was obliged to inform the captain of this in accordance with the Master's Standing Orders. The fact that the person concerned did not expect the captain to listen to him did not absolve him of that obligation. 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 the unlit Trueborn (1.23 nautical miles in the first hours of the watch) could not be observed; indeed not with the naked eye but with the AIS via the ECDIS. His assertion that the captain himself had seen that the radar screens were blacked out is disputed by the captain and in any case does not apply to the evening prior to the collision, because according to the shipping company's report the radars were largely on at that time (from 17.20 to 21.53 hrs; see pages 14/51).

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 the following circumstances, the Disciplinary Court sees reason to impose only a warning as a measure. The captain failed to adequately 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 claims that he has learned from this incident, which occurred early on in his career. In view of this limited experience, it should also be noted in a positive sense that he acted adequately after the 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 a warning on the person concerned.

Duly delivered by P.C. Santema, 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.