



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF
20 NOVEMBER 2020 (NO. 1 OF 2020) IN THE CASE 2019.V1 – ALANA EVITA**

As petitioned by:

the Minister of Infrastructure and Water Management in The Hague,
petitioner,

authorised representative: K. van der Wall,
senior inspector ILT/Safe Mobility–Administrative Inspections and Marine
Accident Investigation, Zwijndrecht;

versus

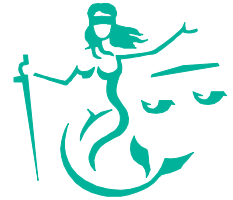
P. V.,
the person concerned,
lawyer: J. de Boer

1. The course of the proceedings

On 9 October 2019, the Disciplinary Court received a written request for disciplinary proceedings from K. van der Wall against the person concerned as captain of the Dutch freighter Alana Evita. Twenty-one appendices were attached to the petition.

The Disciplinary Court notified the person concerned of the petition by letter of 16 October 2019, enclosing a copy of the petition with appendices and notification that the person concerned would be entitled to lodge an appeal. A statement of defence was received from the lawyer of the person concerned on 5 February 2020.

The presiding judge stipulated that the oral hearing of the case will be held at 10.30 hours on 22 September 2020 at the offices of the Disciplinary Court in Amsterdam.



The Human Environment and Transport Inspectorate and the person concerned and his lawyer were summoned – the latter both by ordinary and registered mail – to appear at the hearing of the Disciplinary Court.

The court hearing was held on 22 September 2020. The aforementioned Ms K. van der Wall and B. van Geest, senior inspector ILT/Safe Mobility–Administrative Inspections and Marine Accident Investigation, Zwijndrecht, appeared for the petitioner.

The person concerned appeared at the hearing, represented by his lawyer.

2. The petition

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

In the night of Wednesday 20 March to Thursday 21 March 2019, an incident took place in which part of the crew of the Dutch freighter Alana Evita left the vessel on the lifeboat/MOB boat and went to the mainland (Barry-UK). In an attempt to return to the vessel they became lost and were eventually found after a SAR operation by the British Coast Guard. Because these crew members left the vessel, the vessel was understaffed and there was no one on board with powers such as an Officer of the Watch (OOW). The Chief Engineer was the only officer on board.

The incident 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 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. More specifically, the person concerned chose to leave the vessel, together with others, including the chief mate.



- As a result, the vessel was left without a crew or an officer of the watch.
- Of the remaining crew on the Alana Evita, only the AB on the bridge had been informed of the actual departure.
- The person concerned did not ensure that the conditions for keeping a safe anchor watch on the bridge were met.
- The person concerned did not prepare properly for the trip to Barry and back. The weather forecast was not consulted;
- the person concerned tried to sail back on the MOB boat to the Alana Evita in the dark, in the mist and without navigational aids. In so doing, he put the other crew members at risk.

The Inspector's demand is to impose on the person concerned a two-month suspension of his navigation licence, one month of which conditionally.

4. The position of the person concerned

The person concerned acknowledges the facts and the objections and accepts responsibility for them.

5. The assessment of the petition

A.

The following information is derived from the ship's details attached to the petition (appendix 2 to the petition). The Alana Evita is a seagoing vessel sailing under the Dutch flag (IMO number 9356529 and call sign PBRU).

B.

At the hearing of the Disciplinary Court, the person concerned declared, inter alia, that

“In reply to your question as to why I left the ship with the chief mate and an AB, I answer that we went to run an errand in Barry. The ship was left



undermanned. We met the *"safe manning"* requirement and that was all. Formally, no one was permitted to leave the ship. The seaman who stayed behind for the watch did have a foreign ship's officer's certificate, but he was on board as an AB. He was a capable AB, but was not a watchkeeper. He was not legally qualified as an officer of the watch.

What you say about our only informing the seaman of our departure is true. The engineer had already turned in. I told the seaman that if the engineer woke up, he could tell him that we had left. But we thought we'd be back by then.

With regard to the objection that I had not properly prepared the trip to Barry and back and your request for further explanation, I answer as follows. It is true that I did not check the weather forecast. I acted very impulsively. It was getting dark when we left. My phone was still working on departure and I used it to navigate. We had estimated it was less than an hour's sailing. However, the current of 4 to 5 knots was not with us, and there were three of us in the MOB boat. Halfway there, my phone stopped working. It was either empty or it had been sprayed with water. We then realised that it was quite far, but we felt it was too late to go back, also because the fuel was running out. It took us just over an hour. Then we ran out of petrol. We beached the MOB boat. There was no mist at the time.

In Barry we slept for about three hours in a hotel. We thought we had to be back at the MOB boat at four in the morning to catch the tide. Then the police came to the hotel. With the help of the police, who took us via the petrol station back to the MOB boat, we arrived just in time to catch the tide. We decided to go back to the ship, even though we were unsure if we had enough petrol. Otherwise, the crew would be worried. We thought we could see our ship at anchor across the harbour, but that turned out not to be our ship but a different, incoming ship. That's why we took such a strange course. We followed the lights. It was misty. My phone was not working and the chief mate did not have a phone with him. At the buoy next to the island



we waited a couple of hours for the mist to lift, because the petrol had run out. We were so far away from the ship that the island lighthouse keeper had called the RNLI, the English KNRM. Then the helicopter arrived.

I answer Mr Tromp's questions as follows. The chief mate prepared the sea voyage. We had lain at anchor for some time and knew there was a current. The MOB boat had a 25 HP engine. The boat did not make enough headway. The MOB boat was unable to make even 10 knots. With only the two of us in the boat, he would have made it. When we had realised on the outward journey that it was taking quite a while, we decided not to go back because the petrol was running out and the distance to return to the ship would have been longer. The MOB boat used a lot more fuel than we thought it would. The tank was three-quarters full when we left. It was not possible to contact the ship from the hotel, we had to go back to the ship quickly and did not know the phone numbers by heart. The navigation system on the mobile phone was Google Maps."

C.

A statement by AB/1, attached to the petition (appendix 7), contains, inter alia, the following:

"I was giving order's by the captain to take watch of their absence during the night of March 20, 2019 around 8 P.M. evening because they went ashore together with chief officer and AB/2. When midnight past I started thinking why they are not back yet still I waited for few hours. Suddenly coastguard inform us that they conducting search and rescue. We tried to call captain phone number but no response. We tried to look for AB/2 and chiefmate phone number but we cannot found. Also I notice that AB/2 and chiefmate phone was in their cabin."



D.

An e-mail exchange of 3 July 2019 between the aforementioned inspector K. van der Wall and R. Mastenbroek, Licensing issuing officer, Kiwa Register B.V. (appendix 19 to the petition) contains, inter alia, the following:

“(Inspector’s question:) Has Kiwa issued a navigation certificate recognition for AB/1?”

(Kiwa's answer): There are no applications or issued documents for this person.”

6. The ruling of the Disciplinary Court

A.

The content of the documents referred to above has led to the following conclusions being drawn in this case (with an adequate measure of certainty).

In the night of Wednesday 20 March to Thursday 21 March 2019, an incident took place in which part of the crew of the Dutch freighter Alana Evita left the vessel on the lifeboat/MOB boat and went to the mainland (Barry-UK). In an attempt to return to the vessel they became lost and were eventually found after a SAR operation by the British Coast Guard. Because these crew members left the vessel, the vessel was understaffed and there was no one on board with powers such as an Officer of the Watch (OOW). The Chief Engineer was the only officer on board.

The person concerned:

- chose to leave the vessel, together with others, including the chief mate. As a result, the ship was left unmanned and without an officer of the watch; of the crew left behind on the Alana Evita, only the AB on the bridge had been informed of the actual departure;
- did not ensure that the conditions for keeping a safe anchor watch on the bridge were met;



- did not prepare properly for the trip to Barry and back. The weather forecast was not consulted;
- tried to sail back on the MOB boat to the Alana Evita in the dark, in the mist and without navigational aids. In so doing, he put the other crew members at risk.

B.

The captain failed to ensure that a safe anchor watch was kept on his ship. Furthermore, he and the chief mate could not be contacted for many hours by the seaman keeping the bridge watch.

The most serious charge is that the person concerned and chief mate failed to prepare the trip with the MOB boat to the mainland, as a result of which they endangered themselves and the third person on board. As well as the weather, they had also misjudged the current, the distance to shore and the weight of the boat, as a result of which they had insufficient fuel on board. Moreover, because they were not equipped with adequate navigation equipment, they lost their way and the authorities were compelled to carry out a search and rescue operation.

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.

7. The disciplinary measure

The Disciplinary Court judges that the person concerned has seriously failed in his duty as captain. The person concerned failed to act in a manner befitting a responsible officer, as a result of which the safety of some crew members was jeopardised.



In view of the seriousness of this conduct, as set out under 6 above, the Disciplinary Court considers it appropriate to withdraw the navigation licence of the person concerned for a period of 8 weeks. Since the person concerned has been dismissed as a result of this incident and as a young captain appears to have learned his lesson, four of the eight weeks are imposed conditionally.

8. Practical recommendation

Aside from the decision in this case, the fact that the captain, the chief mate and a seaman of the Alana Evita lost their way prompted the Disciplinary Board to make the following practical recommendation:

When using a lifeboat/MOB-boat it is important to ensure that the boat is equipped with a compass, life jackets, a radar-reflector, a flashlight, a medical kit, bailing instrument, etc. in accordance with SOLAS.

In practice, this equipment is usually kept outside the open MOB boat to protect it from the weather. However, this equipment must be on board on each occasion that the boat is used.

9. The decision

The Disciplinary Court

- declares the objections well-founded, as found above under 6;
- 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, presiding judge, C.R. Tromp and E.R. Ballieux, members, in the presence of V. Bouchla, LL.M., as secretary, and pronounced by P.C. Santema, LL.M., at the public session held on Friday 20 November 2020.

P.C. Santema
presiding judge

V. Bouchla
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.