



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF
20 NOVEMBER 2020 (NO. 2 OF 2020) IN THE CASE 2019.V2- 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

R. A.,

the person concerned.

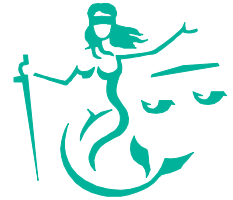
1. The course of the proceedings

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

The Disciplinary Court notified the person concerned of the petition both by registered letter and by email, enclosing a copy of the petition with appendices and notification that the person concerned would be entitled to lodge an appeal.

No reply has been received from the person concerned.

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 were summoned – the latter both by registered letter and email – 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 did not appear.

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 chief mate 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 go with the captain to the mainland and leave the Alana Evita. As a result, the vessel was left undermanned and without a watchkeeping officer.
- 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 prepare properly for the trip to Barry and back. The weather forecast was not consulted;
- the person concerned left his phone aboard the Alana Evita, making him unreachable for the remaining crew of the Alana Evita.

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

4. The position of the person concerned

No reply has been received from the person concerned.

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.

A list of questions attached to the petition of the ILT/Shipping inspector (appendix 14), contains, inter alia, the following questions:

1. Why did you leave the vessel?
5. What was the weather forecast at that time?
7. Was the crew, who remained on the vessel, aware that you went ashore?
8. Which tasks were given to them? By whom?
9. Was someone on the bridge when you left (anchor watch)?



11. Which task was assigned to this person?
14. Which intention did you have when you went into the dinghy (in Barry)?
15. What is your explanation that you ended up on Flatholm Island? The position of Flatholm Island is more than 90 different from the anchor position of the Alana Evita.

To which the person concerned gave the following answers:

1. Provision on board was almost finished, that's why captain decided to go ashore and buy additional provision. I and one AB/2 decided to help him.
5. Really we don't check weather forecast.
8. Captain instruct only watchman on bridge.
9. Yes AB/1 was on anchor watch, as I know he has OOW license.
11. Captain instructs him about anchor watch and told him if he have some doubts call him to mobile phone.
14. When we came to Barry we was already totally wet and without gas oil, that's why we decided only buy gasoil and wait high water to come back on board the vessel.
15. Captain's mobile phone was wet and out of order, also it was fog and very poor visibility, that's why we choose wrong direction.

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.

A list of questions attached to the petition of the ILT/Shipping inspector (appendix 13), contains, inter alia, the following questions:

- 3. What kind of vessel did you use to go ashore?
- 9. Was the crew remaining on the vessel aware that you were going ashore?
- 17. How do you explain the fact that you ended up on Flatholm Island?

To which the captain gave the following answers:

- 3. We used our MOB boat.
- 9. We posted AB/1 (with ship's officer's papers) on the bridge. The engineer and the cook had just gone to bed.
- 17. After sailing for an hour we realised that we had no idea where we were and secured our MOB boat to a buoy to save petrol and wait for better visibility. When Flatholm came in sight, we went there to ask where exactly we were. It then turned out there was an SAR in progress.

E.

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 go with the captain to the mainland and leave the Alana Evita. As a result, the ship was left undermanned and without an officer of the watch; of the crew left behind on the Alana Evita, only AB/1 on the bridge had been informed of the actual departure;
- did not prepare properly for the trip to Barry and back. The weather forecast was not consulted;
- left his phone aboard the Alana Evita, making him unreachable for the remaining crew of the Alana Evita.

B.

Although the captain was responsible for keeping a safe anchor watch on the bridge, in this case it has not been established that the chief mate reminded the captain of his obligation. The captain failed to ensure that a safe anchor watch was kept on his ship. In addition, the captain and the person concerned could not be reached by the seaman keeping watch the bridge for many hours.

The most serious charge is that the person concerned and captain 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.

Despite the fact that the person concerned had not taken his telephone with him and that he was therefore less reachable, the Disciplinary Court considers that it would be going too far to judge that he, too, has acted contrary to the principles of good seamanship. Instruments other than a private telephone are more appropriate for navigation and communication purposes.

7. The disciplinary measure

The Disciplinary Court judges that the person concerned has failed in his duty as a Ship's officer. 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 4 weeks of which 2 weeks 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

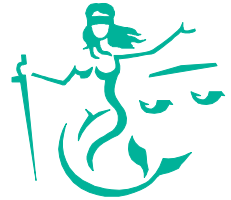
The Disciplinary Court

- declares the objections well-founded, as found above under 6;
- suspends the navigation licence of the person concerned for a period of 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, 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.