



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF
20 November 2020 (NO. 3 OF 2020) IN THE CASE 2020.V2-VLISTDIEP**

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

A.J.J. de V.,

the person concerned.

1. The course of the proceedings

On 15 April 2020, 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 Vlistdiep. Twenty-three appendices were attached to the petition.

The Disciplinary Court notified the person concerned of the petition by e-mail of 29 April 2020, enclosing a copy of the petition with appendices and notification that the person concerned would be entitled to lodge an appeal.

On June 3, 2020, the person concerned sent an email to the Secretariat of the Disciplinary College stating that he is not submitting a protest and will not be present at a hearing.



By e-mail of 5 June 2020, the person concerned was informed by the Secretariat that the law prescribes that an ILT petition is dealt with at a public hearing and that he is obliged to respond to a summons to appear.

The presiding judge stipulated that the oral hearing of the case will be held at 13.30 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 on the request of the latter by e-mail only – to appear at the hearing of the Disciplinary Court.

The court hearing was held on 22 September 2020. Ms K. van der Wall and B. van Geest, senior inspector ILT/Shipping appeared for the petitioner.

The person concerned has stated that he will not be able to appear and he has been declared to be in default of appearance.

2. The petition

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

On 9 May 2019, the Dutch flagged cargo ship Vlistdiep had a collision with the anchored ship Copenhagen, flying the flag of Antigua Barbuda, on leaving the port of Georgetown in Guyana.

This accident was reported by the shipowner to ILT on 10 May 2019.

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. In particular:



- the person concerned made the departure plans. Although the bow thruster was out of order, this did not affect his departure plans;
- under pressure from the agent, the person concerned left at once. Because the ship had to leave so quickly it was not possible to make use of one or more tugboats;
- on departure, the person concerned relinquished command of the ship to the (senior) pilot.

When asked, the Inspector clarified at the hearing that the first and second objections were to be viewed in their mutual relation, i.e. a non-operational bow thruster and the pressure of time that caused a hasty departure, while there was little room to manoeuvre.

The third objection is to be interpreted in such a way that it accuses the captain of having transferred the command to the (senior) pilot and that it does not directly blame the captain for the manner of manoeuvring which led to the collision.

The answer to the question put to the Inspector about what is to be understood by 'relinquishing command' is that the captain relinquished the final responsibility for the manoeuvre to the pilot.

The Inspector's demand is to impose on the person concerned a two-week suspension of his navigation licence.

4. The position of the person concerned

In his e-mail of 3 June 2020 the person concerned writes:

“With regard to the "collision" with Mv Copenhagen, I accept the 2-week suspension of the navigation licence. I will not submit a protest or appoint legal counsel. Nor will I be present at a money-wasting hearing for a case of superficial damage”.



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 Vlistdiep is a seagoing vessel sailing under the Dutch flag (IMO number 9414187 and call sign PHLX).

B.

A Statement of Facts appended to the petition (appendix 4 to the petition), drawn up and signed by the person concerned and the Chief Officer, includes, where relevant:

“MV Vlistdiep

Georgetown 09–May–2019

19.25 Lt Pilot on board

Vessel cast off at 19.35 Lt

On the 9th of May 2019 during departure from Georgetown (Guyana) the vessel was going astern from the berth in order to swing around over port side.

Ch. Officer was steering the wheel and Capt. handled the engine, by instruction of the pilot.

During going astern, the vessel was pushed to the middle of the channel due to left handed effect of the propeller and Easterly winds The vessel bow thruster not working due to shaft generator failure.

Nu [sic] tugboat available on short notice.

MV Copenhagen was on anchorage close to the berth in the channel.

Mv Vlistdiep hit Mv Copenhagen on het starboard forward at. 19.40 Lt.”

C.

A list of questions attached to the petition of the ILT/Shipping inspector (appendix 9), contains, inter alia, the following questions: “2. Before leaving Georgetown, Guyana were you aware that the bow thruster was not working due to the defective shaft generator?

3. If so, did this affect your plans for departure?

5. Was the pilot aware that the bow thruster was not working?



9. In the SOF you write that no tugboat was available at short notice. Was there pressure from the shipping company to leave and not wait for the availability of a tugboat? 12. Were you in charge during the departure, with the pilot as an advisor?

D.

In response to written questions from the inspector (appendix 9) the person concerned replied as follows by e-mail of 17 February 2020 (appendix 11 to the petition):

2. During the Georgetown departure I was aware of the malfunctioning bow thruster due to the defective shaft generator

3. No, this did not affect my plans

5. The pilot was aware that the bow thruster was not working.

9. There was pressure from the agency (John Fernandes) to leave immediately. I was informed about this three quarters of an hour before departure. That is why there were no tugs available.

12. No, the pilot was in charge. That is normal procedure in Georgetown.

Filled in truthfully,
the captain”

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).

On 9 May 2019 the Dutch flagged cargo ship Vlistdiep had a collision with the anchored ship Copenhagen on leaving the port of Georgetown in Guyana.

In particular:



- the person concerned made the departure plans. Although the bow thruster was out of order, this did not affect his departure plans;
- under pressure from the agent, the person concerned left at once. Because the ship had to leave so quickly it was not possible to make use of one or more tugboats;
- on departure, the person concerned relinquished command of the ship to the (senior) pilot.

B.

In the opinion of the Disciplinary Court, it is not in itself unseamanlike to leave with a broken bow thruster and without tugboats. Even without outside pressure, this is not necessarily irresponsible.

Under certain circumstances (currents, wind, proximity of other ships, etc.) this may be the case, but other circumstances have not been described sufficiently precisely by the Inspector in her objections to the party concerned.

C.

However, the person concerned as captain has acted or failed to act in breach of the care that he should exercise as a good seaman towards the persons on board, the ship, the cargo, the environment and shipping traffic by relinquishing control – in the sense of final responsibility – of the ship on departure. Not only does the captain remain ultimately responsible for navigation within the meaning of the law; he must also monitor whether manoeuvring is safe in practice. In this case he controlled the propulsion and did not appear to have a sufficient overview of the safety of the manoeuvre himself.

7. The disciplinary measure

The Disciplinary Court is of the opinion that the person in question has failed in his duties as captain in one section (6.C.). The person concerned did not in



that case act as befits a responsible officer, as a result of which the ship in particular and shipping in general were 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 1 week.

8. Practical recommendations

Following the decision in this case, the Disciplinary Court makes the following practical recommendation:

Because of his or her knowledge of the situation at the location, the pilot advises the captain on how to navigate. In many ports it is customary for the pilot to give the commands. However, the captain remains ultimately responsible and should fulfil this responsibility by keeping a clear overview of manoeuvring so that he can intervene immediately if necessary.

9. The decision

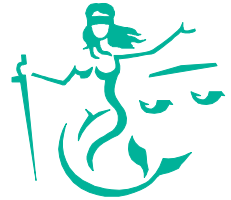
The Disciplinary Court

- declares the objections unfounded, as found above under 6; B.,
- declares the objection well-founded, as found above under 6. C.
- suspends the navigation licence of the person concerned for a period of 1 (one) week;

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., in public session on 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.

