



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS 20
NOVEMBER 2020 (No. 4 OF 2020) IN THE CASE 2019.V3-DINTELSTROOM**

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

R. K.,
the person concerned.

1. The course of the proceedings

On 11 December 2019, the Maritime Disciplinary Court received from K. van der Wall, inspector at the Human Environment and Transport Inspectorate (ILT)/Shipping in Rotterdam, a written petition for a disciplinary hearing of the case against the person concerned as the captain of the Dutch tugboat Dintelstroom. Sixteen 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.

A statement of defence was received from the lawyer of the person concerned on 26 March 2020. The statement of defence raises the question of whether Inspector Van der Wall is authorised to petition the Disciplinary



Court on behalf of the Minister of Infrastructure and Water Management. On 17 April 2020, the Disciplinary Court received from the inspector an amended mandate. On 29 April 2020, the Disciplinary Court forwarded this amended mandate to the counsel of the person concerned. In the statement of defence, counsel requested a preliminary investigation into the gyrocompass pursuant to Section 55i of the Seafarers Act. Counsel requested that attempts be made to reach an amicable settlement. The inspector responded to this by letters dated 6 and 17 April 2020. The presiding judge the Disciplinary Court rejected both of counsel's requests and informed the counsel and the inspector by letters dated 21 April 2020.

The presiding judge stipulated that the oral hearing of the case will be held at 11.00 hours on 25 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 25 September 2020. Mr B. van Geest, Inspector ILT/Scheepvaart, appeared at the hearing for the petitioner. The person concerned appeared at the hearing, represented by his lawyer.

At the end of the hearing, in consultation with the person concerned and the inspector, the date of the decision was set as today's date.

2. The petition

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

On Monday 17 September 2018 an industrial accident took place in which the chief mate of the Dutch tugboat Dintelstroom was seriously injured. During the rewinding of a new towing wire, this towing wire suddenly 'whipped' over



the towing pin and struck the chief mate. He sustained serious injuries (e.g. dislocated knee, perforated lung and broken ribs).

The incident was reported by the shipping company to ILT.

3. Objections of the Inspector

According to the Inspector:

- the person concerned chose not to hold a toolbox meeting prior to the work;
- the person concerned chose to steer the vessel using the autopilot, knowing that the gyrocompass was malfunctioning;
- despite the fact that three-quarters of the towing wire had already been wound up, the person concerned had not yet made any preparations to switch to manual steering, even though he had thought in advance that he would have to control the last 200 to 300 metres (more than a quarter of the wire) manually;
- the person concerned did not switch to manual steering until the autopilot alarm sounded, but when he did so he failed to ascertain the rudder angle for manual operation;
- the person concerned did not make any clear agreements about who was in charge of the work on the aft deck;
- as a result of the above, the person concerned endangered the other crew and the chief mate was seriously injured.

4. The position of the person concerned

The statement of defence raises the question of whether Inspector Van der Wall is authorised to petition the Disciplinary Court on behalf of the Minister of Infrastructure and Water Management. Subsequently, counsel for the person concerned argues that in these disciplinary proceedings, general standard laid down in article 4 paragraph 4 and paragraph 5 of the Seafarers Act plays a role, but that the same does not apply to the specific standards



laid down in article 4.1c of the Ships Act and article 61 of the Ships Decree 2004 (nor to the standards laid down in Regulation 16 Chapter V SOLAS). Counsel for the person concerned states that the provisions of the Ships Act and the Ships Decree 2004 referred to above do not apply in this case because it would not be a case of 'undertaking a voyage'.

In summary, the person concerned argued that the accident could not be traced back to a breach by the person concerned of the standard of good seamanship, but, on the contrary, to an unfortunate combination of circumstances which the person concerned could not have foreseen even as a good seaman. Counsel for the person concerned argues that the mere fact of the absence of a toolbox meeting cannot be considered to be cause of the accident. He highlights, among other things, the specific nature and location of the work carried out in the light of the weather conditions, the fact that a toolbox meeting had been held a few days earlier, the experience of the crew, the fact that a verbal consultation had been held prior to the operation on 17 September 2018 and the fact that there was not yet a defined procedure for winding the cable. Regarding the supervision on deck, it is argued that the marine officer had a supervisory role but that he paid less attention to that because of the experience of the chief mate. With regard to the use of the autopilot, the person concerned argues that after consulting a fellow captain the use of the autopilot had no other purpose than to promote safety, that the moment of switching to manual steering had no independent significance under disciplinary law and that the switch to manual steering was an intuitive rather than conscious reaction. Finally, it is argued that too much importance is attached to a (possible) malfunction in the gyrocompass. In his defence, the counsel of the person concerned requests primarily that the petitioner's petition be declared inadmissible; in the alternative, that the petition be rejected and, in the further alternative, that if a disciplinary measure is regarded as appropriate, it should be limited to a warning, or a reprimand or fine, or – in so far as a suspension of the navigation licence is to be regarded as appropriate – that it be imposed entirely conditionally.



5. The assessment of the petition

A. The inspectors of the Human Environment and Transport Inspectorate are authorised to bring proceedings before the Disciplinary Court pursuant to Article 21(1) and (2) of the Infrastructure and Water Management (Organisation and Mandate) Decree, in conjunction with Article 2(1) of the Decree establishing the Human Environment and Transport Inspectorate and Article 8(b) of the Mandate Decree on the Human Environment and Transport Inspectorate 2020.

B. The petition contains the following information.

The Dutch-flagged tug Dintelstroom of shipping company Van Wijngaarden Marine Services BV has a gross tonnage of 309 and has a permanent operational area in the Falklands.

The inspector received the investigation report drawn up by the shipping company in response to the accident. This report is set out in Appendix 5 to the petition. During the ongoing investigation, the inspector contacted the shipowner at various times requesting information. The report of an interview between the shipowner and the inspectorate is set out in Appendix 6 to the petition. Following this report, the following additional information was supplied by the shipowner, added as Appendices 7 to 12 to the petition:

- Copy of the Crew List;
- General plan;
- Procedure for Wire Handling and Spooling (drawn up after the accident);
- Procedure concerning the safety committee;
- The completed form of the toolbox meeting for spooling the towing cable from the reel on 12 September 2018;
- Photographs showing the position of the ship at the time of the accident.

The captain, chief mate and marine officer were questioned on 15 October 2019 at the office of the shipping company. Two representatives of the



shipping company and a lawyer were also present. The records of these hearings are set out in Appendixes 13, 14 and 15 to the petition. A copy of the navigation certificate of the person concerned is attached to this petition as Appendix 16;

C. During the questioning by the inspector (Appendix 13 to the petition), the person concerned stated that a toolbox meeting had been held a few days before the accident when spooling the wire from the reel onto the winch. The person concerned explains that it was his tacit idea that all dangers had been discussed at the time and everyone was aware of them. The person concerned states that on 17 September he did hold a verbal consultation with the chief mate and the marine officer, during which the procedure was discussed. However, the dangers were not discussed again, according to the person concerned. No written report was made of this oral consultation. The person concerned declares that he would now organise a separate toolbox for each change from previous work. It is also apparent from the statement made by the person concerned (Appendix 13 to the petition) that he did not have a view of everyone on deck. The person concerned states that he did not say that the crew had to stay out of the blind spot because he assumed that what he regarded as the experienced crew knew where they had to stand. The person concerned also states that there is not enough space on the bridge for two people to manoeuvre and operate the winch at the rear console at the same time. According to the person concerned, in view of the lack of space, a one-man operation is the normal procedure in this type of situation. The statement of the person concerned (Appendix 13 to the petition) also shows that, on the morning of the accident, he had noticed that the gyrocompass deviated by about 10° from the magnetic compass and that this compass was replaced after a few weeks. Regarding the use of the autopilot, the person concerned stated (Appendix 13 to the petition) that he had heard from a colleague that he switched to autopilot when spooling the cable and that this was the first time that the person concerned had carried this out on autopilot. The person concerned states that when the autopilot sounded the alarm he saw that the



rudder angle was 45° to starboard (Appendix 13 to the petition). According to the person concerned, to accept the alarm, you have to walk to the front console. At that moment, the person concerned felt that this was too dangerous because work was being done on the aft deck and he would lose his overview. Another way, according to the person concerned, was to turn off the autopilot and switch to manual steering. The person concerned chose the latter option. According to the person concerned, immediately after switching to manual steering, the rudder went from 45° starboard to midships. According to the person concerned, as a result of this the vessel made an abrupt turn to port and forward, causing the towing wire, which was under tension, to slip over the towing pin and strike the chief mate. The chief mate's statement (Appendix 14 to the petition) shows that, as a result of the accident, he is unable to return to his former work.

D. The accident report drawn up by the shipping company (Appendix 5 to the petition) states that on 17 September 2018 an accident occurred on board the Dintelstroom which resulted in serious injury to the Chief Mate. This report concludes that none of the crew proposed a toolbox meeting prior to winding the cable. As a result, according to the shipping company's report, no agreements were made about communication and no dangers and risks were defined and managed. The report also concludes that it was unclear who was in charge of supervision on deck and that there was insufficient communication between the crew on deck and the person concerned. It is further concluded that the view of the person concerned on deck was additionally obstructed by the fact that the crane was not pointing towards the stern of the ship. The shipping company informed the inspectorate about the layout of the bridge (Appendix 6 to the petition). The layout of the bridge is designed for 1-man operation. According to the shipping company, the VHF is foot operated, the winch can be operated with one hand and when steering manually, this is done by means of a hoist.

E. At the hearing, rendered in summarised and concise form, the person concerned made the following statement:



The person concerned stands by his statement of 15 October 2019. The person concerned has been a tugboat captain for fourteen years, of which the last six years on the Dintelstroom. He does not regard spooling a cable under tension as an everyday routine operation. According to the person concerned, he did not discuss the risks involved with the crew prior to paying out and spooling the cable. According to the person concerned, the cable was spooled without autopilot on the last occasion. According to the person concerned, he had once heard from a fellow captain that it was possible to use the autopilot when spooling the cable. With regard to the gyrocompass, the person in question argued that before the spooling operation he saw that the gyrocompass had a larger deviation than normal, but that he did not pay any further attention to it. About switching to manual steering, the person concerned argues that this was his first reaction to disable the loud alarm beep. According to the person concerned, it is possible to switch the controls on the back console to manual to stop the alarm sound. According to the person concerned, he did not communicate the switch to manual steering with the crew on deck because it was all done in such a short time. It was a matter of seconds. About the leadership on deck, the person in question argues that the marine officer is always in charge there, because the person concerned cannot see everything and cannot contact people directly, other than via the radio and the intercom. The person concerned also argues that the role of the chief mate normally involves working on deck (maintenance and technical) and being able to keep a watch. The chief mate is also the eyes and ears of the captain, but according to the person concerned that was more the task of the marine officer. When asked, the person concerned answers that it would have been easier if the winch had been controlled on deck. According to the person concerned, there were no cameras present at the time of the accident. The person concerned has no explanation for not turning the crane to point aft. The person concerned did not ask if the chief mate had ever done this before. When asked, the person concerned replied at the hearing that the incident has had a serious impact on him. According to the person concerned, the chief mate can no longer work in his previous



capacity. The person concerned claims that he feels responsible for the incident as captain.

6. The ruling of the Disciplinary Court

A. Pursuant to Article 55a of the Seafarers Act (Wet Zeevarenden) the Disciplinary Court assesses whether the acts or omissions of the person concerned are contrary to the care that he, as a good seafarer, should observe towards the persons on board, the ship, the cargo, the environment or shipping traffic. Pursuant to Article 4 (4) of the Seafarers Act, the captain and ship's officers shall behave on board in a manner befitting a good seaman in relation to the persons on board, the ship, the cargo, the environment and shipping traffic. The standard of good seamanship is an open standard for which guidance can be found in treaties, laws and decrees for shipping. The restrictions in the areas of application of the SOLAS Convention, the Ships Act and the Ships Decree on, inter alia, the gross tonnage and the sailing area of a ship do not affect the applicability of the standard of good seamanship as referred to in the Seafarers' Act on ships covered by the Seafarers' Act. The Seafarers' Act applies to Dutch ships (Article 2 paragraph 1 of the Seafarers' Act). The Seafarers Act does not apply to ships that sail exclusively on Dutch inland waters or waters within, or closely adjacent to, sheltered waters or areas where Dutch port regulations apply (Article 2(2)(a) of the Seafarers Act). According to the explanatory memorandum to this provision, this wording means that seagoing vessels such as port tugs and other vessels which sail exclusively on Dutch inland waters and the adjacent port areas fall outside the scope of this Act (*Parliamentary Papers II 2010–2011*, 32 534, no. 3). The limitation in the scope therefore only applies to Dutch inland waterways and ports. The Dintelstroom sails under the Dutch flag in foreign waters and therefore falls under the scope of the Seafarers' Act and the standard of good seamanship included therein.



B. The content of the documents referred to above and the statements of the person concerned at the hearing have led to the following conclusions being drawn in this case (with an adequate measure of certainty).

On Monday 17 September 2018 an industrial accident took place in which the chief mate of the Dutch tugboat Dintelstroom was seriously injured. The accident occurred while the towing wire was being paid out and rewound. The towing wire suddenly 'whipped' over the towing pin and hit the chief mate. The person concerned did not hold a toolbox meeting with associated risk analysis prior to the spooling, although there was a need to do so in view of the risky nature of the work. The person concerned chose to carry out the spooling operation for the first time using the autopilot, but had not prepared this method sufficiently and did not discuss it sufficiently with the crew. The person concerned did not make clear agreements about who was in charge and supervising the work on the aft deck. The crew's experience does not detract from the importance of such agreements. When the autopilot alarm sounded, the person concerned should have responded adequately by switching to manual steering immediately and communicating this to the crew. Instead, he gave priority to stopping the alarm sound as soon as possible. The person concerned thus endangered the other crew members and the chief mate was seriously injured as a result. The chief mate cannot return to his former duties.

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 captain/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 Maritime Disciplinary Court judges that the person concerned failed in his responsibilities as captain, which resulted in the accident. The person



concerned did not act as befits a responsible captain when spooling the towing cable, thereby endangering the safety of those on board. Given that the person concerned feels responsible for the accident and has learned lessons from what happened, the Disciplinary Court sees good cause to impose the measure on a partly conditional basis.

8. Practical recommendations

Irrespective of the decision in this case, the investigation into the accident on board the Dintelstroom, the Disciplinary Court offers the following practical recommendations:

- Risky activities such as spooling a new towing cable are always subjected to a Job Safety Analysis, followed by a Risk Assessment, a possible Last Minute Risk Assessment and a Toolbox talk. The topics covered are: the management (overall and at the specific location), division of tasks, communication, visual contact, no-go areas and agreements on when an operation will be stopped. The snap-back zones must be defined before commencing activities involving towing cables under tension.
- If an alarm sounds, the first step is to neutralise the hazard and then check the alarm and communicate to the crew.
- In the case of risky activities such as spooling a towing cable, visual contact must be maintained at all times from the bridge with the crew members on deck. Objects that obstruct the view should be removed or turned away as much as possible. Remaining blind spots that make work on the bridge difficult are resolved with the aid of cameras.
- The person in charge on deck should keep the overall overview on deck and communicate with the bridge.
- In the case of one-man operation on the bridge, the winch should preferably be operated on deck during spooling so that the captain can focus on manoeuvring.



9. The decision

The Disciplinary Court:

- declares the objections against the person concerned as stated under point 5 to be well-founded;
- 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 W. van der Velde, LL.M., deputy presiding judge, H. van der Laan, member and J. Berghuis, A.J. de Heer, LL.M. and A. Aalewijnse, substitute members, in the presence of V. Bouchla, LL.M., as secretary, and pronounced by

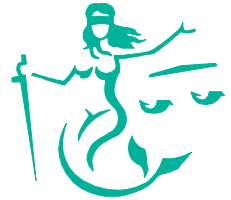
Mr P.C. Santema, LL.M., in public session on 20 November 2020.

W. van der Velde
presiding judge

V. Bouchla
secretary

P.C. Santema
presiding judge

E.H.G. Kleingeld
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.

