



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF
21 DECEMBER 2020 (NO. 5 OF 2020) IN THE CASE 2020.V5-JYDEN**

As petitioned by:

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

petitioner,

authorised representative: K. van der Wall,
senior inspector ILT/Marine accident investigation and administrative
inspections, work location Zwijndrecht, the Netherlands;

versus

J.F. K.,

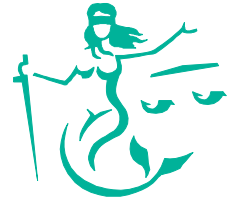
the person concerned,

lawyer: R.P. Groot, LL.M.

1. The course of the proceedings

On 15 June 2020, the Disciplinary Court received a written request for disciplinary proceedings from ing. K. van der Wall, senior inspector ILT/Marine accident investigation and administrative inspections (referred to below as: the Inspector), directed against the person concerned as master of the Dutch vessel Jyden. Seventeen 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 13 July 2020 a statement of defence was received from the person concerned. The Inspector responded to the defence on 28 July 2020, after which the person concerned submitted a rejoinder on 30 July 2020.

The presiding judge stipulated that the oral hearing of the case will be held at 11.00 hours on 6 November 2020 at the offices of the Disciplinary Court in Amsterdam.

The inspector appeared at the hearing, accompanied by senior inspector B.A.C. van Geest. The person concerned appeared at the hearing, represented by his lawyer. The lawyer made use of a written summary of oral arguments that he had submitted at the hearing. The Inspector also submitted written notes.

Four passengers aboard the Jyden, also appeared at the hearing. They were given the opportunity to speak and availed themselves of that opportunity.

2. The petition

The Inspector's request relates to a collision between the Dutch m.s. Jyden and the m.s. Celina, sailing under the flag of Antigua and Barbuda. The collision took place on Friday 22 March 2019 in dense fog in the run-up to IJmuiden, at the entry to the piers. Twelve passengers were on board the Jyden with the person concerned as the master, his son and an assistant. The collision caused damage to both vessels and manoeuvring problems arose on board the Jyden. There were no personal injuries.

The incident was reported to the ILT by one of the passengers as well as by the Dutch Safety Board.



3. Objections of the Inspector

According to the Inspector the person concerned acted and failed to act 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. He is also accused of not being in possession of the correct papers. More specifically, the allegations contain the following elements.

1. The person concerned deliberately chose to register his vessel with various authorities as a pleasure craft or for recreational use, despite the fact that he intended to operate it commercially.
2. The person concerned deliberate chose to sail with paying passengers without a valid navigation certificate.
3. The person concerned chose to use the ship commercially without the proper ship's papers, i.e. a national safety certificate and a crew certificate.
4. The person concerned chose to take an 'assistant' on board, without any maritime qualifications.
5. The person concerned did not carry out the 'tight turn around the south pier' despite communicating his intention to do so with the radar station.
6. The person concerned did not sail at a constant speed in the almost ten seconds before the collision, and even changed course significantly ten times. Through this behaviour, he created a situation where a collision could occur.
7. As a result, the person concerned seriously endangered himself, his son, his assistant (Mr Snijder), twelve passengers and the Celina.
8. Moreover, both the Jyden and the Celina suffered material damage as a result.
9. The person concerned did not report the collision to the ILT.
10. In the period after the collision, the person concerned made a conscious decision to continue offering commercial activities, even though he was aware that he did not have the correct papers for this. Also, the Jyden was not in a seaworthy condition.



4. The position of the person concerned

The position of the person concerned is apparent from the defence he has submitted, from his lawyer's written summary of oral arguments and from what he put forward at the hearing. In essence, the person concerned takes the view that – after he had called in to enter the port of IJmuiden on channel 61 – the IJmuiden traffic control centre gave him incorrect positions for the Celina and an incoming Urk fishing cutter. He also takes the view that the traffic control centre failed to provide guidance before and after the collision: it would have been better if he had been instructed to wait until the Celina had entered. Apart from that, he further argues that the instruction to turn as tightly as possible around the southern pier was complied with: in his opinion, there was no question of ignoring that instruction. In addition, he feels that the Celina was sailing far too fast and wrongly failed to give him priority, and questions what steps have been taken against that ship. He denies that he himself navigated incorrectly and created a collision situation. He further denies that the Jyden was being operated commercially, that he did not have the right papers and that he continued his business after the collision.

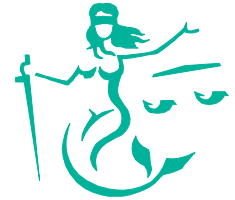
5. The assessment of the petition

A.

An 'application for registration of pleasure craft' attached to the application shows that the person concerned submitted an application for registration with the ILT on 26 October 2018 for the Jyden, whose home port is IJmuiden.

B.

The petition shows a photo of the Jyden, with the entry on the back: www.jandesportvisser.nl, IJmuiden' and also showing the Dutch flag. The website stated at the time of the collision that the motorboat Jyden could be rented for € 900 for a day for recreational fishing, including the fishing equipment. This could be rented by arrangement with the skipper, whose e-mail address was given: the e-mail address of the person concerned.



C.

An extract from the Commercial Register of the Chamber of Commerce attached to the application shows that at the end of March 2019 the company was registered as a sole proprietorship: 'Sportvisser Jyden', with the activity description: providing fishing trips. The home address of the person concerned and his son, mentioned in the opening words of this judgment, is given as the visiting address.

D.

The application was accompanied by an e-mail message containing a statement (or representation of a statement) by one of the Jyden's passengers. The statement contains information including the following: 'went sea fishing yesterday (22 March 2019). With family. My sons were with me, too. It was misty on the fishing day. [...] It happened during the journey back to the port of IJmuiden. The small boat we were away with (the Jyden of 15 metres) had what was virtually a head-on collision with a ship of 104 meters in length. This almost caused the Jyden to capsize. Fortunately no one was hurt, but it was a terrible shock. The Jyden was severely damaged and could not [...] return to the port unassisted. Apparently the radar had broken down. [...] Fortunately, a pilot boat arrived within a few minutes and escorted us back to the port.'

The petition states, as an observation by the Inspector, that, in the passenger's view, it is simply not true that the person concerned, as he stated, sounded an audible signal every minute on his way back.

E.

A master's report of the master of m.s. Celina is attached to the petition. This includes the following [verbatim] information [in English].

'At 15.00 on the 22th of March 2019 GPS position 52-29-583 N 004-24.865 E, in full readiness for passage through narrows the ship approached to IJmuiden Pilot Station with final destination Amsterdam. [...] At 15.30 [...] the pilot [...] arrived on board by pilot boat [...] and the ship continued on her voyage to Amsterdam. [...] At about 15.47 the pilot received a call from

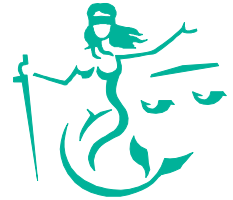


Ijmuiden Port Control [...] that a small craft is very close to us. He ordered hard to port which was repeated by me as Master to the helmsmen who followed up immediately. A few seconds later I felt and heard a bang. [...]

F.

The radar images and associated sound recordings received from the Port Operations Centre (HOC), Port of Amsterdam, show that the following communication took place between the Jyden/involved party (J), the Celina (C) and the Ijmuiden Traffic Control Centre (V). The time indications are those of the film made from the radar images (by the person concerned).

- 0:04 J: Ijmuiden harbour, recreational fishing vessel Jyden
- 0:12 V: Ijmuiden harbour, go ahead
- 00:42 J: Yes good afternoon, we're just under a mile south of the south pier and we'll be entering in a moment
- 0:50 V: Yes, that's understood. There is one outbound vessel from the middle lock now, heading towards the piers. And two incoming vessels. There is a coaster at a mile and a half (1:00), heading for the middle lock. And coming from the south there is another fishing cutter at 2 miles. Also heading for Ijmuiden, the fishing port.
- 01:10 J: Yes, received. We'll try to round the pier as soon as possible and then keep to the south side heading to the Marina
- 1:19 V: Recreational fishing vessel Jyden, harbour, yes that's understood
- 1:24 J: OK
- 1:27 V: Celina, Ijmuiden harbour
- 1:31 C: Port, Celina
- 1:33 V: Celina, Harbour, there is a recreational fishing vessel half a mile south of the pier. He is also coming in, going very tightly around the pier and heading for the Marina
- 1:42 C: He's going tightly around the pier, yes, okay



- 7:40 V: Recreational fishing vessel Jyden, IJmuiden harbour, over
7:46 J: Yes, Jyden here
7:50 V: You are entering the piers now?
7:53 J: Yes, I'm turning into the piers in now
7:56 V: Yes, that's understood
8:29 V: Recreational fishing vessel Jyden, IJmuiden harbour, turn in now
and keep
as far south as possible
8:55 V: Recreational fishing vessel Jyden, IJmuiden harbour, you still
have a seagoing vessel
approaching by a few cables
9:02 J: Yes, okay, I'm turning
9:06 V: Celina, harbour
9:10 C: Yes, where's he heading now?
9:13 V: Yes, that Jyden was supposed to go tightly around the pier, but
apparently that didn't work out.
10:08 V: Recreational fishing vessel Jyden, harbour
10:30 V: Jyden, recreational fishing vessel Jyden, IJmuiden harbour
10:38 V: Celina, harbour
10:42 C: Yes, we've collided with him here
12:09 J: Here the Jyden, IJmuiden harbour, I've had a collision,
with that coaster
12:51 J: I'm trying to enter now. My radar is down.
And I'm trying to enter on the chart plotter right now. I'm now
at
13:03 J: towards the south pier, or eh, north pier
13:33 V: Jyden, harbour, the pilot tender Aquila is very close to you. If
you could just do nothing, they will escort you to the piers
13:41 J: Yes, well, I'll reduce headway a bit. Because I think the
rudder is damaged as well.



G.

When replying, the Inspector submitted a list of times, positions, courses and speeds obtained from the Port of Amsterdam (as appendix 1). Combining the data from this list with that from the (filmed) radar images shows that: (i) the collision took place at approximately 15.48 hours (9:49 a.m. time of the film) (see master's report under E); (ii) that the Jyden sailed at varying speeds shortly before the collision and frequently changed course significantly; (iii) that the traffic control centre correctly transmitted the positions of the Celina and the UK95 to the Jyden at 15.39 hours (1:00 a.m. time of the film) – i.e. just under 9 minutes before the collision – and (iv) that the Jyden, which had shortly before transmitted the distance to the south pier, misjudged its position.

Furthermore, it has emerged that after the pilot had boarded the Celina, the Celina sailed at a constant speed of about 10 knots on a fixed course of about 97°, which is (roughly) on the line of lights. This is the line (indicated on paper sea charts) on which the high and low lighthouses are observed directly below each other when calling at the port. That line is maintained on radar and/or on the electronic nautical chart. That takes vessels neatly into harbour between the piers. The collision took place a little south of that line, just before the passage between the piers.

H.

At the hearing, the lawyer stated (see the written summary of the oral arguments) that the person concerned had a fishery certificate SW5, which he had had converted into a Large Pleasure Craft Fishery Certificate II.

I

The Inspector submitted a certificate issued by an employee of Kiwa Register B.V. confirming, among other things, that a person sailing as an officer on a fishing vessel has been required to have a valid certificate since 2004. The conversion of an old fishery certificate into a navigation certificate was subject to a so-called '3 months supernumerary' rule: one had to sail on a ship for 3 months on a supernumerary basis.



<https://wetten.overheid.nl/BWBR0012790/2014-05-03/0/Hoofdstuk4/Paragraaf1/Artikel21/informatie>.

J.

The Ships Decree (Section 6) and the Regulations on the Safety of Seagoing Vessels (Section 3(a)) contain requirements concerning the requirement for a national safety certificate. The obligation to have a valid crew certificate on board is laid down in the Seafarers' Act (Section 5 and Section 56).

The Ships Act (Section 9) obliges the master, upon entering a Dutch port, to notify the Shipping Inspectorate of the accidents which have occurred on the past voyage.

K.

By letter dated 8 May 2019, the Inspector issued a 'detention notice' to the Jyden. This is because the person concerned continued to offer sea fishing trips via the website www.jandesportvisser.nl. This was followed by a detention on 7 June 2019. The website was then definitively removed, after which the ship was released (13 June 2019).

L.

At the hearing, the person concerned stated among other things: that he had put into the port narrows of IJmuiden many times before; that he did not have separate navigational charts on board; that he navigated via/on his mobile phone (on that phone he said he followed the chart); that he did not have a separate GPS installation on board, but a radar, which according to him was at a range of 2 miles. He says he did not see the Celina on the radar. As he sees it now, the Jyden had been swept away by the current.

M.

The photos of the damage attached to the petition show that the damage to the Celina appears to be on the port side.



N.

The passengers of the Jyden present at the hearing confirmed that they had paid for the hire of the Jyden/day of sea fishing. They stated that the Jyden was offered commercially and market rates were charged.

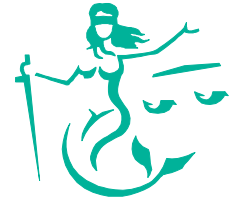
6. The ruling of the Disciplinary Court

A.

On the basis of the information, findings, explanations and regulations noted/represented under 5 above, the following can be assumed – with a sufficient degree of certainty – in this case.

The cutter Jyden sailed out of its home port of IJmuiden in the morning of 22 March 2019 for a day of sea fishing. The Jyden complied with the rules for flying the Dutch flag. Fifteen people were on board: twelve participants and another person as master, his son and an assistant. The fee stipulated for this activity had been paid by at least some of the twelve participant/passengers.

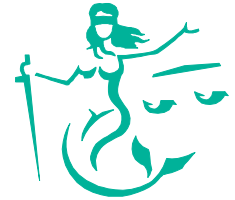
On the return trip in the afternoon of 22 March 2019, the person concerned reported to the IJmuiden traffic control centre when approaching from the southern direction of the port. It was very misty at the time. An officer of the traffic control centre informed him at about 15.39 hours that there were one outbound and two inbound vessels, including a coaster – the m.s. Celina – at a distance of one and a half miles. The person concerned responded by saying that he had heard and understood and that he was trying to round the (south) pier as quickly as possible and then to hold the south side to Marina Seaport. The traffic control centre then alerted the Celina to the Jyden arriving from the south side, adding that she would go very shortly around the pier, in the direction of Marina Seaport. Several minutes later the Jyden was called by the traffic control post with the question: “You are entering the piers now?” to which the person concerned replied: “Yes, I’m turning into the piers now”, after which the traffic control centre added: “turn in now and



keep as close to the south as you can" and after that: "you have another vessel approaching by a couple of cables", to which the person concerned responded (again) with "Yes, OK, I'm turning". Shortly afterwards the Jyden collided with the Celina, which ship, at a course of 97° was roughly following the line of lights that led to the middle of the water between the piers. The collision took place at approximately 15.48 hours. That is almost 10 minutes after the person concerned was first pointed out to incoming Celina by the traffic control centre.

The position data provided by the Inspector, combined with the radar images, show that the collision took place almost on, or at least slightly south of the line of lights of the water running between the piers, in any event not near the south pier, which the Jyden was to round as quickly as possible. And not between the piers either, but well before that. Contrary to what the person concerned states, it is not the case that he turned as tightly as possible around the southern pier. The Jyden did not turn around the south pier at all. The position data also shows that the Jyden sailed at variable speeds and widely divergent courses shortly before the collision. This is denied by the person concerned. More generally, he also contests the correctness of the position data presented and calculations made by the Inspector, but this denial/disputation is not accompanied by an even remotely plausible alternative scenario and is also insufficiently substantiated, which is why it has been set aside.

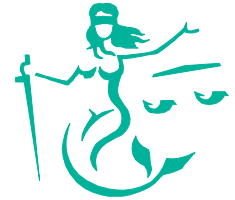
In view of, among other things, (i) the changing course of the Jyden sailing at variable speeds in short succession and (ii) the location of the collision, which was at a considerable distance from the south pier, towards the line of lights, it is held that the person concerned – who at around 15.39 hours had said that he would try to round the pier as quickly as possible and minutes later said 'I'm going to turn into the piers now', while there was (as yet) no sign at all of a turning around the piers, or a real starboard direction towards and around the south pier – did not know what his position was and what course he had to follow to sail close to the south pier.



B.

The fact that the person concerned was insufficiently aware of the position of the Jyden and the course to be followed may have been related to the fact that he was navigating on his mobile phone, which, if only because of the other messages that may come in, is not a safe means of navigation (not an approved means of navigation for maritime navigation). Furthermore, the (strong) current and the mist cannot be an excuse for the navigation behaviour of the person concerned; even if – which has not been shown to be the case – the Jyden initially set a tight course around the south pier, but was moved away by the current, he should have known, even with the mist, course and position, that he was not turning in at the south pier, but was on collision course with the Celina. It is also objectionable that the person concerned did not constantly check the positions of other shipping traffic and in particular those of the incoming coaster Celina, which, despite its size, he did not notice at all on the radar. Not only did he fail to take measures to avoid a possible collision with that ship – compare in this respect Regulation 8 of the Convention on International Provisions for Preventing Collisions at Sea, 1972, which states that a succession of minor changes of course and/or voyage must be avoided – but he also, by reaching a considerable distance from the southern pier, created a collision situation. By acting thus, he endangered the lives of those on board the Jyden.

It is also objectionable that the person concerned denies his responsibility for this and makes accusations against others, the traffic control centre and the Celina. After all, the person concerned is at all times first and foremost responsible for his own navigation behaviour, even in dense mist and with strong currents. Moreover, the traffic control centre alerted him on a number of occasions to the other shipping traffic and gave him an instruction to hold to the southern pier as closely as possible, which was, also the stated intention of the person concerned. The person concerned subsequently did not at any time indicate to the traffic control centre that he had altered this intention or was unable to implement it. Nor did he draw this to the attention of other shipping traffic, give other signals, or call for help in good time.



And as for his reproach regarding the Celina: she sailed a fixed course, which it was reasonable to expect that the Jyden would not cross. The accusation by the person concerned that the Celina sailed too fast in the given circumstances is insufficiently substantiated, also taking into account the northerly current. Irrespective of that, in the present case it is only the disciplinary culpability of the acts or omissions of the person concerned that is at issue.

C.

Furthermore, a sufficiently plausible case has been made that on 22 March 2019 the Jyden became commercially operational. Through the website mentioned above, the person concerned offered the Jyden for hire for recreational sea fishing, which offer was taken up by twelve participants that day. The fact that they will have had pleasure in the beginning does not make the activity for the person concerned a pleasure cruise or the Jyden a pleasure craft. The Inspector therefore rightly took the view that the person concerned should have a valid (merchant navy/fishing) certificate and the other ship's papers required. This was not the case. It is also correct that the person concerned had an obligation – which he did not fulfil – to report the collision to the ILT.

D.

The conduct alleged against the person concerned, as evidenced above, constitutes a violation of the regulation of Section 55a of the Seafarers Act in conjunction with Section 4 (4) of that Act: an act or omission by the master contrary to the care which he, as a good seaman, is required to observe in respect of the persons on board, the ship, the cargo, the environment and shipping traffic. With regard to not having the correct papers and not filing the accident report, reference is also made to the regulations referred to in 5.J. above.

The fact that, in the period after the collision, the person concerned did not comply with the agreement to cease to offer the Jyden for sea fishing is blameworthy and testifies to a nonchalant attitude, against which action was

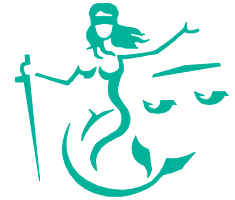


rightly taken, but does not give rise to any additional charges under disciplinary law.

7. The disciplinary measure

The Disciplinary Court judges that the person concerned has seriously failed in his duty as master. The person concerned did not act as befits a responsible master, thereby seriously endangering in particular the safety of the passengers and other persons on board the Jyden. In view of the seriousness of the proven conduct, the Disciplinary Court considers a fully unconditional fine of €2,500 to be appropriate, as well as a conditional revocation of the navigation licence for the period of time stated below. Where the latter measure is concerned, the fact that the person concerned does not currently hold, and may no longer be able to obtain, a valid navigation licence does not constitute sufficient reason to refrain from imposing the suspension.

It should also be noted that the measures to be imposed would also be appropriate and necessary for dangerous navigation behaviour alone. In this sense, the other offences have not aggravated the penalty. This does not detract from the fact that a measure would also have been imposed for only the other violations.



8. The decision

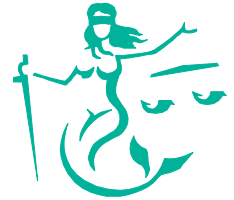
The Disciplinary Court:

- declares that the objections raised against the person concerned are well-founded, as set out in point 6 above
- imposes as a measure a fine of € 2,500 (twenty-five hundred euros), stipulating that this fine must be paid within one (1) year of today's date
- suspends the navigation licence of the person concerned for a period of six (6) months
- stipulates that this suspension 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 seaman in respect of the people 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 (2) years
- stipulates that the probationary period of the suspension shall commence on the date six (6) weeks following the date of this ruling being forwarded.

Duly delivered by J.M. van der Klooster, deputy presiding judge, C.R. Tromp and S. Kramer, members, J.K.J. Bout and T.W. Kanders, deputy members, in the presence of E.H.G. Kleingeld, LL.M., as secretary and pronounced by J.M. van der Klooster, LL.M., in public session on 21 December 2020.

J.M. van der Klooster
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.