



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF  
16 JULY 2021 (NO. 11 OF 2021) IN THE CASE OF 2020.V12-OOCL RAUMA**

As petitioned by:

the Minister of Infrastructure and Water Management  
in The Hague,

**petitioner,**

represented by: B.A.C. van Geest,  
senior inspector Human Environment and Transport Inspectorate  
(ILT)/Shipping in Zwijndrecht,

versus

J.M. R.,

**the person concerned,**

counsel: T.J. Kelder, LL.M.

**1. The course of the proceedings**

On 1 December 2020, the Disciplinary Court received a written petition for disciplinary proceedings from B.A.C. van Geest against the person concerned as master of the Dutch vessel OOCL Rauma. Twenty appendices were attached to the petition.

The Disciplinary Court has notified the person concerned of the petition, enclosing a copy of the petition with appendices and informed the person concerned of the right of appeal.

On 27 January 2021, a statement of defence was received from the person concerned. The Inspector responded to the defence on 9 February 2021, after which the person concerned submitted a rejoinder on 23 February 2021.



The presiding judge stipulated that the oral hearing of the case will be held at 10.00 hours on 4 June 2021 at the offices of the Disciplinary Court in Amsterdam.

The court hearing was held on 4 June 2021. Inspector B.A.C. van Geest appeared at the hearing on behalf of the petitioner, accompanied by his colleague, ing. K. van der Wall. The person concerned appeared at the hearing, represented by his lawyer.

## **2. The established facts**

2.1. On 11 and 12 February 2020, the container ship OOCL Rauma (IMO 9462794, Call sign: PBWS), sailing under the Dutch flag, lost a total of 7 loaded containers at three different times during bad weather. The ship was sailing on the North Sea and was en route from Kotka (Finland) to Rotterdam via the Kieler Channel with 525 containers on board.

2.2. This accident was reported by the Dutch Coastguard to ILT on 11 February 2020.

2.3. During this voyage, the person concerned sailed as master of the OOCL Rauma, which was previously named MV "Elysee".

## **3. The Inspector's objection**

According to the Inspector the person concerned acted as master contrary to the duty of care that he, as a good seaman, should observe with regard to the persons on board, the ship, the cargo, the environment and shipping traffic (Section 55a of the Seafarers Act).

In particular, the person concerned, as the person with ultimate responsibility, accepted that the vessel was not loaded in Kotka in accordance with Chapter IV of the Cargo Securing Manual (hereinafter: CSM).



Especially during the bad weather en route, the loads on the containers in the higher tiers of the "open top" holds, and the loose lashing materials were therefore bigger than those accounted for in the approval of the container lashing plans.

The Inspector cites as the regulations not complied with:

- Sections 4 and 9 of the Ships Act
- Articles 343 and 359 of the Commercial Code
- SOLAS Chapter VI part A - general provisions- regulation 5: Stowage and securing
- Code of Safe Practice for Cargo Stowage and Securing (CSS code)

The demand is that a reprimand be imposed on the person concerned.

#### **4. The position of the person concerned**

The person concerned disputes the Inspector's objection. He did not know that the vessel was not loaded in accordance with the CSM. The loading plan was drawn up on shore, and the chief mate responsible did not establish any errors in it, partly because the software provided by the shipping company had limitations. The person concerned cannot be blamed individually, which makes the petition unfounded. In the alternative, a warning would suffice.

#### **5. The means of evidence**

In assessing the application, the Disciplinary Court takes the following evidence as its starting point:

A. The statement of the person concerned at the hearing, insofar as it contains the following:

I cannot clearly remember the facts of the loading in Kotka. The loading begins with the plans of the charterers who come on board. The plans are



sent to me by e-mail and I forward them to the chief mate. I did not open the plan.

The chief mate checks these plans, and if he has any reservations about them, he talks to the charterer to make adjustments. A final plan was produced, which the mate accepted and loaded the vessel according to that plan. After loading, the cargo must be lashed. In Finland, this is usually done by the ship's own crew. When the lashing is completed, the vessel is in principle ready to leave. If there are any questions or remarks from the mate during loading, he reports them to me. That is the procedure.

You ask about my own role. The master has a lot of paperwork these days. I have no role in the loading process. The working procedure is such that the mate approaches me with questions for a solution. If there are no discrepancies, he continues with his work. In this case, no details were reported as far as I can recall.

You say the Inspector accuses me of not loading according to Chapter 4 of the CSM. You ask if I agree. I can only accept the plan if I am fully aware of it at the time. I assume that if the mate informs me that the ship is loaded according to the CSM, it has been done correctly. I cannot remember if I was aware of the plan in this case. You say that the Inspector gathers from the CSM that the programme indicates an optimum load for the various containers. If you wish to deviate from this, you may not place heavier containers higher (the first charge) and the stack of the top 4 containers may not exceed 70 tonnes (the second charge).

You ask if in hindsight I think the vessel was incorrectly loaded. Yes, in hindsight.

I agree with you that I am ultimately responsible as a master and am in charge. You ask how I fulfil my role as a supervisor. I reply that I let the mate do his job. If the mate is experienced, you can trust that it will be done to the best of his ability. I do not supervise that. I trust this mate because I have known him for a long time and worked with him for a long time. That means you know how he communicates and in what cases he informs me. He has had his navigation license since 2017, and since then he has also sailed as



chief mate. He was experienced with this kind of load and had proven himself to be reliable.

You ask if he ever told me about any problems. I reply that he did, but they often had to do with other problems, such as dangerous substances that end up in the wrong place. If he notices stack loads being exceeded, this has to be changed, but I've never heard that from him. It could be that the same thing happened on previous trips.

This route was a familiar one for the OOCL Rauma. I had already sailed it several times. The containers to be loaded in Kotka usually contain paper. Those are heavy containers.

In response to questions from the Inspector, the master replied as follows. I studied the container lashing plans from the CSM (drawings) beforehand. You ask if I have not noticed that according to the container lashing plans, the containers in the upper tiers were lighter than they were in practice. I reply that I did not notice this. You ask how I normally know if the vertical weight distribution in the stacks is as it should be regarding the lashing system, not regarding the vessel's structure. I reply that the working tool is the stability programme. You say that two things must be kept in mind, the Citrix loading program that checks the maximum stack weight in relation to the ship's structure and the CSM, which looks at the forces calculated on the lashings, the containers and the cargo. You say there should be a lashing program for that and I didn't have one, so how did I know it was okay? I answer that the drawing of the CSM is the check available to you. You say that you are talking about stowage and that the stowage plan clearly shows that the upper containers are very heavy. You ask whether I noticed this and whether I ever wondered whether this is possible. I cannot answer that. You ask if I was aware of the 70-ton weight limit in the upper four layers. Yes, I'm aware of that. You ask what the chief mate checks regarding stowage of containers. You ask if the chief mate assesses whether the vertical weight distribution in the *stacks* is correct in relation to the lashing system. I can't answer that. You ask if the chief mate was aware that the maximum stack load for tier 12 or 14 was a maximum of 70 tons for 40–50 foot containers. He should know that. Yes, he does.



I changed my working methods after the incident in the sense that I am more alert and consult more often with the mate and ask what the loading situation is. I now supervise more thoroughly. On the shipping company side, it has been brought to the attention of masters and helmsmen that every ship has CSM regulations and a stability program and that these should be checked individually, as long as there is no software to check this. It can also be done manually with a pencil and paper and adding up.

B. The Cargo Securing Manual approved by Germanischer Lloyd for the MV "Elysee" reads, so far as relevant, as follows:

*"Chapter IV Stowage and Securing of Containers*

...

*4.2. Stowage and Securing Instructions*

*4.2.1. Stowage and securing plan*

...

◆ *The following plans present the principal stowage pattern under deck and on deck*

*(TC: following are the container lashing plans 20'-40', 30'-40' and 40'-45', showing that the containers in a stack are increasingly lighter from the bottom to the top.*

*One of the plans says:)*

*Note! Bays 03-29 (Open Holds), tiers 14-24 (8'6" high) resp. 12-20 (9'6" high): maximum stack weight: 70 t.*

...

*4.2.2. Stowage and securing principle on deck and under deck*

*The following text gives a brief description of the stowage and securing principle of containers under deck and on deck:*

◆ *The weight distributions for the bays and stacks stated in the manual represent the optimum under the given circumstances.*

*Every alteration has consequences to the loads of the elements involved. The following is principally valid:*

- ◆ *Alteration of the weight concentration in the stack downwards is possible.*
- ◆ *An upwards weight concentration is not possible (e.g. heavy container in the sixth tier ⇒ tilting of the stack, overstress of the foundations, twistlocks and lashings.*

...



◆ *It is generally not allowed to exceed the described stack weights.*

**Attention**, the below mentioned cases have **necessarily** to be considered, exceedings to be avoided:

- ◆ *The given weight distributions in the stack must not be exceeded.*
- ⇒ *Overstressed stowage and securing elements*
- ⇒ *Overstressed containers*
- ⇒ *Loss of containers."*

C. The petition, drawn up and signed on 1 December 2020 by B. van Geest aforementioned, in so far as it contains:

*On 11 and 12 February 2020, the OOCL Rauma lost a total of 7 loaded containers at three different times during bad weather. On 12 February 2020, the accident was reported by the shipowner to ILT.*

#### **The investigation**

*The investigation into this accident focused mainly on the loading of the containers in Kotka (Finland) in connection with the Cargo Securing Manual (CSM).*

*The sea voyage and the weather forecast were not part of this investigation.*

*The vessel was berthed in Rotterdam on 13 February 2020. I came on board with a colleague to investigate this accident. We have received copies of the following documents on board:*

- *Stowage plan bay 16 (17) and bay 20 (19)*

#### **Findings**

*The vessel was loaded in Kotka on 7 February 2020 with 525 containers; 61 x 20', 454 x 40' and 10 x 45'. Of the containers, 41 were empty; the rest contained cargo. During bad weather in the North Sea, three containers on the port side (bay 16) and four containers on the starboard side (bay 20) were lost overboard. The containers had the following contents:*

- *3 containers of paper rolls*
- *2 containers of machine parts for paper machines.*
- *2 containers of milk powder*

*The investigation of loading in Kotka focused mainly on the stacks of bay*



16 and bay 20, of which containers went overboard. Bay 16 and bay 20 are located in hold 3, a so-called "open top" hold.

Bay 16 was loaded with only High Cube containers (9' 6" high).

Position (bayrowtier) 160812 - 40' (45G0 = 9'6" high), weight 23.5 tonnes

Position (bayrowtier) 160814 - 40' (45G0 = 9'6" high), weight 23.3 tonnes

Position (bayrowtier) 160816 - 40' (45G0 = 9'6" high), weight 22.3 tonnes -  
**overboard**

Position (bayrowtier) 160818 - 40' (45G0 = 9'6" high), weight 21.6 tonnes -  
**overboard**

Stack weight of these 4 High Cube containers is 90.7 tonnes. That is more than the 70 tonnes permitted for 9'6" high in tiers 12 - 20.

Position (bayrowtier) 160612 - 40' (45G0 = 9'6" high), weight 25.1 tonnes

Position (bayrowtier) 160614 - 40' (45G0 = 9'6" high), weight 24.7 tonnes

Position (bayrowtier) 160616 - 40' (45G0 = 9'6" high), weight 24.7 tonnes

Position (bayrowtier) 160618 - 40' (45G0 = 9'6" high), weight 24.3 tonnes -  
**overboard**

Stack weight of these 4 High Cube containers is 115.8 tonnes. That is more than the 70 tonnes permitted for 9'6" high in tiers 12 - 20.

All other stacks in bay 16 also exceed the 70 tons allowed for 9'6" high in tiers 12 - 20.

The containers in the upper tier in particular are a lot heavier than the maximum permitted weight for containers in those positions on container lashing plan 20' - 40' and 40' - 45'.

Heavy above light: in the stowage plan of bay 16 I have indicated where a heavier container is placed above lighter containers. This happens three times, and the differences in weight are small.

Bay 20 was loaded primarily with High Cube containers (9' 6" high).

Position (bayrowtier) 200712 - 40' (45G1 = 9'6" high), weight 20.7 tonnes

Position (bayrowtier) 200714 - 40' (42U1 = 8'6" high), weight 21.4 tonnes

Position (bayrowtier) 200716 - 45' (L5G1 = 9'6" high), weight 26.8 tonnes -  
**overboard**

Position (bayrowtier) 200718 - 45' (L5G1 = 9'6" high), weight 24.6 tonnes -  
**overboard**

Stack weight of these 4 containers is 93.5 tonnes. That is more than the 70 tonnes permitted for 9'6" high in tiers 12 - 20.





*Position (bayrowtier) 200512 - 40' (45G0 = 9'6" high), weight 26 tonnes*

*Position (bayrowtier) 200514 - 40' (42G1 = 8'6" high), weight 14.6 tonnes*

*Position (bayrowtier) 200516 - 45' (L5G1 = 9'6" high), weight 27 tonnes - **overboard***

*Position (bayrowtier) 200518 - 45' (L5G1 = 9'6" high), weight 24.4 tonnes - **overboard***

*Stack weight of these 4 containers is 92 tonnes. That is more than the 70 tonnes permitted for 9'6" high in tiers 12 - 20.*

*All other stacks in bay 20 also exceed the 70 tons allowed for 9'6" high in tiers 12 - 20.*

*The containers in the upper tier in particular are a lot heavier than the maximum permitted weight for containers in those positions on container lashing plan 20' - 40' and 40' - 45'.*

*Heavy above light: in the stowage plan of bay 20 I have indicated where a heavier container is placed above lighter containers. This happens 12 times, and the differences in weight are small in the hold. However, above the coaming the differences are bigger, in some cases even more than 19 tonnes.*

*Conclusion bay 16 and bay 20:*

*The imperfections are mainly in the "open top" holds. These holds are mostly loaded with High Cube containers (9' 6" high).*

*Most stacks in the "open top" holds exceed the 70 tonnes allowed for 9'6" high in tiers 12 - 20.*

*The containers in the upper tier in particular are a lot heavier than the containers in those positions on container lashing plan 20' - 40' and 40' - 45'."*

## 6. The ruling of the Disciplinary Court

A. The content of the means of evidence referred to above has led to the following conclusions being drawn in this case with an adequate measure of certainty.

As the party with ultimate responsibility, the person concerned accepted that the vessel in Kotka was not loaded in accordance with Chapter IV of the Cargo Securing Manual (hereinafter: CSM).

Especially during the bad weather en route, the loads on the containers in the higher tiers of the "open top" holds and the lashing material were therefore



bigger than those accounted for in the approval of the container lashing plans.

B. Although it is common practice that the chief mate supervises the loading and the master has the final responsibility, the person concerned can also be held personally to account in this case. As he stated at the hearing, he had already made this journey several times, and he knew that heavy containers loaded with paper were usually shipped from Kotka. He was aware that the CSM imposes specific requirements on stowing and lashing heavy containers. The person concerned has not been able to make clear to the Disciplinary Court on what basis he relied on the chief mate's verification that these specific requirements had been met. In the given circumstances of this case, the person concerned should have actually fulfilled his supervisory role and should not have left it entirely to the discretion of the chief mate as to whether or not to inform him.

C. It cannot be determined whether full compliance with the CSM could have actually prevented the containers from going overboard in the very severe weather conditions en route. In any event, unnecessarily heavy loads were placed on containers in the higher tiers of the "open top" holds. The Disciplinary Court finds the objection well-founded.

D. 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 master 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**

A. The Disciplinary Court judges that the person concerned has failed in his duty as ship's master. The person concerned did not act as befits a



responsible master, as a result of which the safety of the cargo and the environment were jeopardised.

B. It should, however, be mentioned that the master managed to preserve the ship and her crew in very difficult weather conditions.

C. On the basis of the foregoing considerations, the Disciplinary Board believes it is sufficient to impose the measure of a reprimand.

## **8. Practical recommendations**

Following on from, but also separately from, the decision in this case, the Disciplinary Court sees cause to make the following recommendations:

1. As the Inspector and counsel also pointed out, the on-board computer program does not contain a module that tests the strength of the lashing system in cases where the individual weights in the stacks differ from the container lashing plans. Equipping container ships with this would make it easier to monitor compliance with CSM.
2. The chief mate should not have to keep watch on deck in port but should concentrate fully on the loading. Shipowners must facilitate this.
3. It is recommended that officers on deck share information with each other, in this case about the specific requirements of the CSM regarding the manner of stowage and lashing.
4. Important requirements should be stated in a CSM more clearly than as a "Note" in a small box on 2 of the 3 container lashing plans.

## **9. The decision**

The Disciplinary Court:

- rules that the complaint against the person concerned is well-founded;
- imposes the measure of a reprimand on the person concerned.



Duly delivered by P.C. Santema, LL.M., presiding judge, H. van der Laan, and E.R. Ballieux, members, in the presence of V. Bouchla, LL.M., as secretary, and pronounced by P.C. Santema in public session on 16 July 2021.

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.