

**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF  
5 FEBRUARY 2021 (NO. 1 OF 2021) IN THE CASE 2020.V4-ZAANBORG**

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

R.M. v.d. K.,

**the person concerned,**

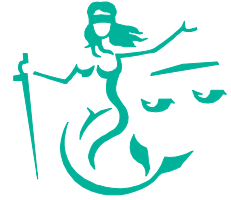
lawyer: A. Jumelet, LL.M.

**1. The course of the proceedings**

On 15 May 2020, the Disciplinary Court received a written request for disciplinary proceedings from B.A.C. van Geest against the person concerned as first officer of the Dutch vessel Zaanborg. Nineteen appendices were attached to the petition.

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

On 9 July 2020 a statement of defence was received from the person concerned. The Inspector did not take the opportunity to reply to the defence.



The presiding judge stipulated that the oral hearing of the case will be held at 11.00 hours on 11 December 2020 at the offices of the Disciplinary Court in Amsterdam. Several participants were unable to appear owing to the corona virus issue. In consultation with all participants – and making use of the option provided in Article 3.4 of the Second Emergency multi-purpose Act in response to COVID-19 – it was decided that the hearing would be held online.

The online hearing took place on 18 December 2020. Mr Van Geest, as referred to above, and Ms K. van der Wall, senior inspector Human Environment and Transport Inspectorate (ILT)/Shipping, appeared on behalf of the petitioner at the hearing.

The person concerned appeared at the hearing, represented by his lawyer.

## **2. The petition**

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

On 15 January 2020, the mv Zaanborg departed in ballast condition from the port of Ravenna, Italy. That was in the evening and the pilot disembarked within the piers. Fairly shortly thereafter, the vessel struck a fixed object (a platform). This resulted in substantial damage above the waterline, mainly to the port side of the foreship.

This accident was reported by the shipowner to ILT on 16 January 2020.

## **3. Objections of the Inspector**

According to the Inspector the person concerned acted as first officer 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. More specifically:



(1) despite the fact that he was sailing in or near an area with restricted visibility and uncertainty about an echo straight ahead, the person concerned did not reduce the vessel's speed in order to have more time to better assess the situation.

(2) despite the fact that he was sailing in or near an area with limited visibility and uncertainty about an echo straight ahead, the person concerned changed course to port. COLREG regulation 19 advises against a change of course to port in respect of a ship more luff than sheer, other than a ship that is being overtaken. When changing course, the person involved took into account the possibility that the echo was a rain shower or mist bank, but also that it could contain an object.

At the hearing, the Inspector demanded that the disciplinary measure of suspension of the navigation licence be imposed on the person concerned for a period of four weeks, two weeks of which conditionally.

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

The person concerned considers all the objections raised by the Inspector to be unfounded.

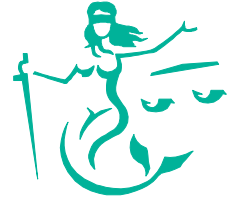
According to him, the weather was acceptable/good. Based on the information available up until the moment of the collision, there was no reason to reduce speed.

The echo was ultimately not interpreted as a sailing object and, moreover, a change of course to starboard was not the best option because he saw a drilling platform there on the electronic chart.

#### **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 Zaanborg is a seagoing vessel



sailing under the Dutch flag (IMO number 9224154 and call sign PCKW).

B. The party concerned did not dispute at the hearing that the Zaanborg had collided on 15 January 2020. That day the mv Zaanborg departed in ballast condition from the port of Ravenna, Italy. That was in the evening and the pilot disembarked within the piers. Fairly shortly thereafter, the vessel struck a fixed object (a platform). This resulted in substantial damage above the waterline, mainly to the port side of the foreship.

C.

Furthermore, the person concerned stated the following at the hearing of the Disciplinary Court:

The first officer indicates that shortly after departure he was on the bridge. The master adjusted the course in the ECDIS with the pilot. The first officer was steering alone. The first plan was to anchor and then the plan was changed, they were sailing by then, visibility was clear and there was no wind. There were several platforms visible. Visibility was over 5 miles. Just before the collision, visibility was reduced. That was about 2 minutes before the incident, the first officer said. The presiding judge stated that the first officer's statement mentions that visibility was already deteriorating when leaving the breakwaters. The first officer replied that he meant that the horizon was no longer visible because it was getting dark. Only later did it become foggy.

The speed was increased to 13 knots after reaching the "breakwaters" in consultation with the master, the first officer said.

The first officer confirms that they discussed the echo together. The echo spread out. The target was quite small and when it became spotted it was thought to be a shower. There was no reason to add the S-band because it doesn't work at close range, the first officer said. He did go to a smaller scale. After seeing the shower, he started zooming in more. He zoomed from 6 to 3 miles. The echo was not there. There was an echo on the port side. It was a dot and later spread out from port slowly to starboard and seemed to be moving, the first officer said.



At the time the first officer thought it might be a shower or mist, but not an object. If he had thought it was an object he would have turned on the other radar. The situation changed so quickly that no fixed object was thought of. The radar was set to *relative motion*. The first officer had not assumed that it was a fixed object, normally a fixed object comes straight at you through the radar. But it did not. There was no AIS to be seen in the ECDIS, the officer said. If it was a ship, it showed up on the AIS. The chart was clear at the front.

Mr IJssel de Schepper states: The first officer, in consultation with the master, went to swerve from the shower. The master could have taken the possibility of another vessel into account. On the electronic chart the first officer could have seen that, but there was nothing to see, hence he thought it was a rain shower. The first officer replied that he had swerved because he was not sure; it was a gut feeling.

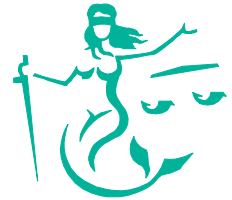
If it had been a vessel he should have seen lights in the darkness. There was no AIS either. He finds it difficult to see how it could have been a vessel. The radar picture was very good, it was strange that the platform at 2 miles did not appear. The first officer finds this strange too. If he had known it was a platform, he would not have sailed that way.

In the end it was decided that they would move aside anyway because they wanted to be on the safe side.

The first officer stated that if he had gone to starboard he would have gone close to the platform, in any case within 500 metres. That is why he had turned to port. The master agreed.

They assumed the chart would be correct. In retrospect, that assumption turned out to be unjustified. According to the chart, the platform should have been several hundred metres to starboard. The first officer could not see that and thought there was a shower. That is why the speed was not reduced. The problem is that the chart could not be trusted, said the first officer. The platform should be lit and a foghorn should be audible.

The first officer indicated that the speed remained at 13 knots until the platform came into sight. The first officer would not do that now if he'd known there was a platform.



The S-band was activated too late. That was a very stupid mistake. The first officer indicated that this had been a learning moment and that it would not happen again.

The first officer remarked that the speed should have been reduced, but that was after the event. The only option now was to go to port or astern.

D.

An e-mail from Wagenborg Shipping B.V. to ILT dated 16 January 2020 (appendix 3 to the application) contains the following, insofar as relevant:

*“I kindly like to inform you that m.v. Zaanborg departed Ravenna, Italy in ballast condition yesterday evening and collided shortly after pilot went off, to a rig.*

*The weather was rainy and fog.*

*m.v. Zaanborg seems to have damage on the PS bow and a hole into the forecastle. (..)*

*Crew is fine and no oil leakage.”*

## 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 15 January 2020, the mv Zaanborg departed in ballast condition from the port of Ravenna, Italy. That was in the evening and the pilot disembarked within the piers. Fairly shortly thereafter, the vessel struck a fixed object (a platform). This resulted in substantial damage above the waterline, mainly to the port side of the foreship.

Despite the fact that he was sailing near an area with restricted visibility and uncertainty about an echo straight ahead, the person concerned did not



reduce the vessel's speed in order to have more time to better assess the situation.

B.

Upon arrival at Ravenna, the master had already noticed that several obstacles were not correctly shown on the chart. This was one of the reasons why the speed of 13 knots was too high. When uncertainty arose about the echo straight ahead, the vessel's speed should have been reduced in order to have more time to assess the situation better, also because of the limited visibility.

C.

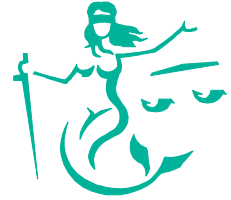
The Disciplinary Court dismisses the Inspector's second objection. In this case, there was little or no evidence that the echo straight ahead was caused by a vessel (which was not visible due to rain). In so far as a vessel approaching from ahead had to be taken into account, it was not ill-advised in this case to turn to port because of the platform on the electronic chart on the starboard side. Counsel correctly pointed out that regulation 19 of the COLREGS makes mention of avoiding a change of course to port "as far as possible".

D.

The conduct of the person concerned under A and B 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 and shipping.

## **7. The disciplinary measure**

The Disciplinary Court judges that the person concerned has failed in his duty as first officer. The person concerned failed to act in a manner befitting



a responsible officer, as a result of which the safety of the vessel and the environment were jeopardised.

The person concerned is still young and has limited experience as first officer. In connection with this incident he was recently fined in Italy. Although this may have been paid for by the shipping company, it is likely that this procedure has been stressful for him. Furthermore, he appears to have learned his lesson. In view of these circumstances, the imposition of a warning will suffice.

#### **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:

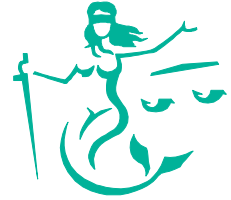
##### **1. Radar**

The Disciplinary Court advises bridge teams to use both radar systems if the vessel is equipped with an X-band and S-band. Due to the different properties of both systems, objects can come through better on the one system than on the other. This includes Racon signals and objects in a shower. Furthermore, a comparison of the two radar systems can provide a better interpretation of the data obtained from the systems.

##### **2. AIS:**

When sailing in areas such as Chinese waters, where every fishing buoy is fitted with AIS, it is tempting to think that every dangerous object is fitted with AIS. The Disciplinary Court wishes to point out that this is not a safe assumption. There are also many objects in the oil industry that have no power supply, are unlit and do not have AIS. There are also many small and even large ships around the world that do not have AIS or have AIS turned off.





### 3. CATZOC

*Category Zones of Confidence* indicates the accuracy of the hydrographic data on the chart. The CATZOC table shows the position accuracy, depth accuracy and survey quality of each ZOC value. A misconception is that buoys, drilling rigs and other obstacles are indicated with the same accuracy as the position accuracy in the ZOC table. The accuracy of these objects depends on data provided by third parties to the *UK Hydrographic Office*. Mistakes regularly creep in. A common inaccuracy is that mistakes are made with degrees, minutes, seconds and degrees, minutes and tenths of minutes. The Disciplinary Court wishes to point out that any seafarer who observes a position error of a drilling platform or any other object can report this to the *UK Hydrographic Office* by means of a *Hydrographic Note* (see NP 100, there is even a separate app developed for this: the *Admiralty H-Note*; this can be downloaded from the IOS and Android App store).

### 9. The decision

The Disciplinary Court

- declares the first objection well-founded, as found above under 6;
- dismisses the second objection as unfounded, as considered above under 6;
- imposes a warning on the person concerned.

Duly delivered by P.C. Santema, presiding judge, E.R. IJssel de Schepper, R.E. Roozendaal, C. Kuiken and N.P. Kortenoeven-Klasen, members, in the presence of E.H.G. Kleingeld, LL.M., as secretary and pronounced by Mr P.C. Santema, LL.M., in public session on 05 February 2021.

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.

