



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF
30 JULY 2021 (NO. 12 OF 2021) IN THE CASE 2021.V1 – EEBORG**

As petitioned by:

the Minister of Infrastructure and Water Management
in The Hague,

petitioner,

authorised representative: K. van der Wall,
senior inspector Human Environment and Transport Inspectorate
(ILT)/Shipping in Zwijndrecht

versus

L. W.,

the person concerned,

counsel: A. Jumelet, LL.M.

1. The course of the proceedings

On 06 January 2021, the Disciplinary Court received a written request for disciplinary treatment from ing. K. van der Wall, aforementioned, against the person concerned as second mate of the Dutch vessel Eeborg. Twenty-one 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.

The petitioner did not make use of this option.



The presiding judge stipulated that the oral hearing of the case will be held at 11.00 hours on 18 June 2021 at the offices of the Disciplinary Court in Amsterdam.

The court hearing was held on 18 June 2021. Ing. K. van der Wall, aforementioned, appeared at the hearing on behalf of the petitioner, accompanied by her colleague senior inspector B.A.C. van Geest. The person concerned took part in the hearing by video link from China, assisted by his counsel, who was present in the courtroom.

2. The established facts

2.1. On 6 October 2020, at around 03.50 LT (=UTC+2), an incident took place on board the Eeborg. The person concerned was officer of the watch. The ship was sailing in the Vessel Traffic Service (VTS) area Storebelt at that time. They had just crossed the bridge Storebeltbrug. The person concerned went to the toilet. By taking this action he left the lookout alone on the bridge, who had no command of the English language and therefore could not understand what was being said over the VHF radio. A collision almost occurred with the ship Flag Mette (Maltese flag).

2.2. At the time of the incident, the person concerned was sailing as second mate the seagoing vessel Eeborg, sailing under the Dutch flag (IMO number 9568328, call sign PCNL). The Eeborg is a general cargo ship with a length of 144.56 m, width 15.87 m and a gross tonnage of 7680.

2.3. This incident was reported to ILT by the Danish maritime authorities on 6 November 2020.



3. Objections of the Inspector

According to the Inspector the person concerned acted as second mate 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).

According to the Inspector:

1. the person concerned left the bridge as OOW to visit the toilet for approximately 10 minutes.
2. he left the bridge 15 to 20 minutes before the end of his watch.
3. he did not call for a replacement on the bridge.
4. he only looked at the radar a few minutes ahead. As a result, he did not notice the Flag Mette.
5. he remained in the toilet much longer than he had thought he would beforehand. Even then he did not inform and/or instruct the lookout on the bridge.
6. due to his absence from the bridge, the ship passed the next waypoint and deviated from the planned route.
7. as a result of the above, the person in question has seriously neglected his duties as OOW and the near-miss situation arose.

The Inspector cites as the regulations not complied with:

- provisions 5, 7(a), 8 (a, d and f) and 16 of the COLREGS
- STCW Code Part A, Chapter VIII, Part 4-1 Principles to be observed in keeping a navigational watch.

The demand is to impose a suspension of the navigation licence for a period of 8 weeks, 4 weeks of which are conditionally.

4. The position of the person concerned

The person concerned denies that he seriously neglected his duties as OOW. It is not always possible to give an AB or replacement detailed instructions in such circumstances. Moreover, the person concerned did not leave the bridge



because the toilet was adjacent to the bridge. The STCW Code also takes account of a certain human dimension, namely that leaving the bridge for a short period should be possible under certain circumstances. The petition should be dismissed. In the alternative, it is requested that no unconditional suspension be imposed.

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 was second mate acting as officer of the watch and I left the bridge for a toilet visit of about 10 minutes.

I wanted to go to the toilet earlier, but I put it off because I arrived at the bridge Storebeltbrug. There came a point where I could wait no longer, and I went to the toilet. I had diarrhoea.

It is true that the end of my watch was 15–20 minutes later. That was also the reason I hadn't called anyone in as a replacement.

At the moment I went to the toilet, I checked for oncoming shipping traffic.

That shipping traffic was still a long way off. For that reason, I thought I could leave the bridge. You ask me what 'very far away' is. I don't remember exactly. You ask me if I saw the other shipping traffic visually or by radar. I wasn't paying precise attention. It was a very long distance. I couldn't tell from the radar. The radar was set to 3 miles off-centre.

I told the lookout I was going to the toilet. I think I also told him to pay attention and to warn me if anything came into sight.

I followed the waypoints. You ask me if I followed all of them. When I returned to the bridge, we had just passed one waypoint.

The moment I sat on the toilet, I was afraid things would go wrong. I took no action because I didn't know how long I could stay away. It is correct that the



toilet is on the bridge. If I had called the lookout, he would have heard. I did not do this, however. We had the VTS/VHF sound turned off because there were so many reports coming in. For that reason I did not hear the VTS messages while I was on the toilet. It is true that I stayed on the toilet longer than I thought I would. It is also true that I was sailing in VTS territory. There is indeed a good chance that there will be other shipping traffic there. It was a winding route. It is true I was afraid things would go wrong. The reason I did not take action had to do with the following. At the time I left the bridge, there was no traffic visible, or at least I didn't notice any. Perhaps because it was a winding route I missed something, which made me think I could leave safely.

When I returned to the bridge I saw that there was a call on Vessel Traffic Services (VTS) and that the ship was approaching Flag Mette. The system was on autopilot. Via the autopilot I first tried to steer to starboard, but that was not enough. I then manually corrected the course and answered the call via VTS.

It is indeed dangerous to go to the toilet when there are all kinds of bends in the route. I certainly would not do this again. I can assure you that I would arrange for a replacement. I would call the captain and look further ahead. On the bridge there was indeed a Bridge Navigational Watch Alarm System (BNWAS). We usually have this system on, but not at that time."

B. Response of the person concerned to the Inspector's two subsequent written questions (Exhibit 16 to the Petition):

"4. Before leaving the bridge, did you notice how far it was until the next waypoint to change your course?

Yes.

5. If yes, how much (distance and time)?

I remembered it was about 10 mins to next waypoint".

C. An email message from the *Danish Maritime Authority* dated 6 November 2020 to ILT-Shipping (Annex 3 to the petition), stating:



"The Danish Maritime Authority would like to inform you, that EEBORG (IMO 9568328) was involved in a near miss incident on October 6, 2020 in the BELTREP area. Please find enclosed AIS tracks."

The attached AIS tracks (appendix 4) in combination with the list of waypoints which is attached to the voyage plan (Annex 13) shows that the Eeborg passed the next waypoint after Storebeltbrug and deviated from the planned route.

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.

The person concerned:

1. left the bridge as OOW to visit the toilet for approximately 10 minutes.
2. left the bridge 15 to 20 minutes before the end of his watch.
3. did not call up a replacement on the bridge.
4. only looked at the radar a few minutes ahead. As a result, he did not notice the Flag Mette.
5. He remained in the toilet much longer than he had thought he would beforehand. Even then he did not inform and/or instruct the lookout on the bridge.
6. due to his absence on the bridge, sailed past the next waypoint and deviated from the planned route.
7. due to the above, seriously neglected its duties as an OOW and the near-miss situation arose.

B. The Disciplinary Board finds it incomprehensible that the person concerned did not see Flag Mette before leaving for the toilet. Both visually and by radar, that ship must already have been visible. It was certainly a busy and winding waterway. It was therefore irresponsible to go to the toilet at that moment. It is equally incomprehensible that the person concerned did not arrange for a replacement when it became apparent that he would be



unable to keep watch for a longer period. Of course, it can happen that the officer of the watch urgently needs to go to the toilet, but personal inconvenience should not be at the expense of safety at sea. In this case, a shipping disaster came very close.

C. To the extent that counsel sought to argue that some of the objections are unfounded because person concerned did not actually leave the bridge, that defence fails. Although Appendix 17 to the petition makes it clear that the toilet is located on the bridge itself, the implication is that a person has left the bridge if he is behind a closed toilet door in that space. After all, presence on the bridge means that someone is able to observe other shipping traffic and VHF/VTS visually and audibly and is able to act in person. The person concerned was not capable of doing so, or only to a very limited extent. The objections of the Inspector are therefore all 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 mate 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 second mate. The person concerned did not act as befits a responsible officer, resulting in a life-threatening situation.

B. It is in the favour of the person concerned that he accepted responsibility at the hearing and learned from this incident.

C. All things considered; the Disciplinary Board deems the measure demanded by the Inspector appropriate.



8. Practical recommendations

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

1. If an officer on watch absolutely must go to the toilet, he must ensure in advance that it is safe to do so and that an adequate watch is maintained during his absence.
2. If an officer of the watch is unable to carry out his duties (temporarily) due to illness, he must immediately arrange for a replacement.

9. The decision

The Disciplinary Court

- rules that the complaints against the person are 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 P.C. Santema, presiding judge, E.R. Ballieux and J. Berghuis, members, in the presence of E.M. Dooting, LL.M., as secretary, and pronounced by P.C. Santema, LL.M., in public session on 30 July 2021.

P.C. Santema
presiding judge

E.M. Dooting
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.