



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF
19 NOVEMBER 2021 (NO. 13 OF 2021) IN THE CASE 2021.V3- BERGFJORD**

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

A. N.,

the person concerned.

1. The course of the proceedings

On 19 March 2021, the Disciplinary Court received a written request for disciplinary proceedings from the aforementioned K. van der Wall against the person concerned as master of the vessel Bergfjord, sailing under the Dutch flag. Nineteen 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.

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 6 October 2021 at the offices of the Disciplinary Court in Amsterdam.



The court hearing was held on 6 October 2021. Inspector K. van der Wall appeared for the petitioner. The person concerned attended the hearing via a video link from Russia.

2. Grounds

The petition for a disciplinary hearing was filed in response to the accident described below.

On 7 January 2021, the vessel Bergfjord ran aground near the Norwegian island of Ytstegeita, a few dozen miles north of Bergen. As a result of this grounding, the forepeak and the port and starboard deep tanks were pierced and took in water.

The Bergfjord is a Dutch cargo vessel belonging to Fonnes Rederij AS of Delfzijl (Appendices 1A and 2 to the petition). The vessel was built in 2000, has an overall length of 87.95 metres long, a gross tonnage of 2451 GT and is propelled by a 1470 kW engine. At the time of the accident, the crew consisted of six people (Appendix 8 to the petition). The cargo consisted of steel products.

3. The inspector's objections

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:

1. Failed to conduct proper navigation.
2. Sent the lookout off the bridge to clean the windows, while he himself did not keep a lookout either.



3. After the vessel came outside the set cross-track error of the ECDIS, he accepted the alarm and changed course but did not check whether the vessel actually returned to the set course.
4. The above errors eventually led to the vessel running aground.

The Inspector cites as the regulations not complied with:

COLREG Rule 5, Look-out

Every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.

Commercial Code, second book, third title, art. 343, paragraph 1

The master is obliged to act strictly in conformity with the usual rules and the existing regulations to secure the seaworthiness and safety of the ship, the safety of those onboard and the goods on board.

Seafarers Act, article 4.3

The master shall ensure that watchkeeping personnel observe the principles of safe watchkeeping in accordance with Regulation VIII/2 of the Appendix to the STCW Convention.

STCW Code Part A, Chapter VIII, Part 4-1 Principles to be observed in keeping a navigational watch

- 24 *The officer in charge of the navigational watch shall:
 1. keep the watch on the bridge;*
- 25 *During the watch, the course steered, position and speed shall be checked at sufficiently frequent intervals, using any available navigational aids necessary, to ensure that the ship follows the planned course.*

The demand is to impose a suspension of the navigation licence for a period of 4 weeks, 2 weeks of which are conditionally.



4. The position of the person concerned

The person concerned admitted to the Inspector and at the hearing that the accident was due to his negligence and that he had made a number of serious mistakes. The person concerned admitted to the Inspector and at the hearing to the objection that he had sent the lookout off the bridge to clean the windows, while he was not keeping a lookout either because he had been distracted by his work at the computer.

During the hearing, the person concerned admitted to the objection that after the ship had moved outside the set cross-track error of the ECDIS, he accepted the alarm, changed course but did not check whether the ship actually returned to the set course. He did not check the drift, according to the person concerned at the hearing. The person concerned also admitted at the hearing that he had made a mistake with the ECDIS settings.

5. The ruling of the Disciplinary Court

The means of evidence

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

- A. The documents include a *voyage plan* signed by the master (Appendix 7 to the application). The voyage plan states that the Bergfjord was to depart from Mo i Rana (Norway) to Halmstad (Sweden) on 5 January 2021. On departure from Mo i Rana, the maximum draft of the vessel according to the *voyage plan* was 5.60 m.
- B. The documents include photographs of the ECDIS showing the route travelled (Appendix 10 to the application). This shows that the vessel missed *waypoint* 137 before running aground on the island of Ytstegeita.
- C. Photographs of the ECDIS settings are attached to the documents (Appendix 16 to the application). This shows that the shallow contour was set to 5 metres, and the depth contours were not activated.



D. The statement of the person concerned at the hearing, in so far as it states:

You ask how the voyage preparation went. I answer that it was a normal voyage for us. All preparations were made according to the checklist and the intended and customary rules. There were no particularities regarding the route. The route was followed routinely. We used this route every time we went to Norway. The route was recorded in ECDIS and had been used by us for over two years.

You ask if there was the possibility of sailing by sea, i.e. away from the islands. I reply that this was certainly possible. The weather conditions were good. I repeat that we had already sailed the route we were taking many times. I believe I have sailed this route 100 times by now. This route is also much shorter than by sea.

You ask who was in charge of the navigational watch. I answer that I was in charge of the navigational watch just before and also during the grounding. Just before the grounding, I was able to keep a good lookout. As I mentioned in my report, the weather was excellent. I had good visibility. I had no trouble keeping an eye on everything since the dimensions of the vessel and the navigation bridge are quite small. The incident happened entirely through my negligence. I was distracted by writing an important e-mail that had to do with a crew change.

You ask who entered the settings in ECDIS. I answer that the settings in ECDIS are partly entered by myself and partly by my regular relief. I have no explanation why the shallow water contour in ECDIS was set at 5 metres, while the ship's draught is 5.60 metres. This was one of the mistakes.

You ask why the depth contours were not activated. I reply that I am struggling to answer your question; so much time has already passed.

You ask how I reacted to the alarm. I reply that I have accepted and deactivated the alarm. I changed course in response to the alarm, but it turned out not to be enough. After the alarm on the 'cross-track error', there was about a 10 degree course change to get back to the course line as far as I can remember. I may be wrong. I should have turned at least 5 or 6 degrees more to starboard. I repeat here that visually it looked as if the ship had



enough space to pass the island. However, I had not checked the drift. They were very short minimal distances. When we are navigating in Norway on the inland waterways, we rely more on visual features. I also want to reiterate that I have a pilot exemption certificate for practically all of Norway.

You ask whether ECDIS also sounds an alarm when approaching a waypoint. I answer you in the affirmative. This alarm was activated as well and was accepted. The issue is just that they followed in rapid succession. With the autopilot on, it was not possible to sail in 'track mode'.

You ask whether ECDIS also sounds an alarm if the ship is already sailing outside the cross-track error. I answer you in the affirmative.

You remark that you noticed that the courses and positions from six months ago are still in the chart and ask me why I left those courses in place. I answer you that the 'tracks' were visible and are sometimes used. This information was available, and that helped us. It did not get in our way or bother us. We can remove that data at any time. You comment that this is disruptive and encourages errors. I answer that this has no bearing on this case. I was distracted and made a mistake for another reason.

You ask me how the incident has affected me and whether the shipping company has blamed me or taken any action against me. I answer that first of all, the Norwegian coastguard has suspended my exemption from piloting for one month. This suspension expired on 28 May. I have been able to use it again since then.

My contract with the shipping company was terminated by mutual consent. I do understand the situation. We decided to part company, even though our personal relations were good and I cooperated fully with repairs and investigation.

You ask me if I am sailing with another company now. I reply that I have had no opportunity to do that. I suspect that the shipping companies in Norway maintain contact with each other and pass on bad news or bad reputations to each other. No one is interested in all the good I have done or accomplished in the past; all they remember is the last incident.

You ask me about the consequences if my navigation licence is suspended. On that, I have this to say. If that suspension is pronounced immediately, it



will not seriously affect me. However, if it takes effect at a later date, it will form an obstacle to doing something new. I still hope that my good reputation and good faith will weigh more heavily. I am currently trying to find something new in Norway or 'under the Dutch flag'. The situation has affected me very seriously.

I want to stress again that I bear full responsibility. I admit my mistake. The very thing I taught others/warned them about has now happened to me. To me, this is the saddest part of everything that has happened.

E. The statement of the person concerned of 7 January 2021 (Appendix 6 to the petition), in so far as it states:

That the vessel under his command collided with the north side of the island of Ytstegeita. Weather conditions and visibility were good at the time of the incident. That the vessel was travelling at a speed of 9.0 knots. That the ship was sailing on Autopilot and the AB on duty was cleaning the windows on the outside of the bridge on the instructions of the person concerned. Through his negligence just after changing the planned course, the person concerned did not check the vessel's actual course properly. That the drift to the island was more than expected. That the person concerned was busy at the time planning the crew change in the next port. That the AB warned the person concerned when the distance to the island was still about 100 m. That the person concerned then gave "full astern" but that a collision with the island could not be prevented. As a result of the collision water entered the forepeak and both deep tanks and ballast pumps were activated to pump the water out of these tanks. That after inspection and on the owners' orders, the ship left for Bergen to be inspected by the classification society.

F. Answers of the person concerned to the inspector's questions on 12 January 2021 (Appendix 15 to the petition), in so far as it states:

The person concerned has more than fifteen years of experience as a master, largely in this area in all kinds of different (weather and other) conditions. The person concerned concedes that this might be why the accident happened. The person concerned has a *pilot exemption certificate* for almost



the entire Norwegian coast, except for the far north. That person concerned says that he was not drunk and had sufficient rest for his watch. The person concerned was busy answering his e-mail with his back to the window and did not look around. The AB was cleaning the bridge windows on the instructions of the person concerned because they were very dirty due to sea salt and rust after loading and unloading. The person concerned did not call the AB again to help him.

The person concerned used ECDIS type "Furuno" FMD-3100 and used safety settings. He used the *cross track error* (XTD limit 100m, symmetrical). He accepted the XTD ERROR alarm almost in time but changed course when he was already outside the XTD limit. He then monitored the situation for a few minutes. He was approaching the XTD limit and was sure it was enough to get the ship back on the planned route for WP#137. It appeared visually that he could pass the island at a sufficient distance. The person concerned concedes that he made a number of serious mistakes and that he regrets the incident.

Findings:

- 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. Failed to conduct proper navigation.
 2. Sent the lookout off the bridge to clean the windows, while he himself did not keep a lookout either.
 3. After the ship came outside the set cross-track error of the ECDIS, he accepted the alarm, changed course, but did not check whether the vessel had actually returned to the set course.
 4. In view of the above, seriously neglected his duties as master, causing the vessel to run aground.

- B. The Disciplinary Court finds it incomprehensible that the person in question did not enter the ECDIS settings correctly. The person



concerned thus failed to conduct proper navigation. The Disciplinary Court finds it incomprehensible that the person concerned, while being charged with the navigational watch and having sent the lookout off the bridge to clean the windows, turned his attention to working on the computer with his back to the window without looking back. The party concerned thus failed to keep a proper lookout at all times and acted contrary to Regulation 5 of the Convention on International Regulations for the Prevention of Collisions at Sea, 1972. The Disciplinary Court finds it incomprehensible that after the ship missed waypoint 137 and the alarm sounded, the person concerned did not sufficiently alter course or check the drift, as a result of which the vessel collided with the island of Ytstegeita and the forepeak and the port and starboard deep tanks of the ship let in water.

- 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 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.

The disciplinary measure

The Maritime Disciplinary Court judges that the person concerned seriously failed in his responsibilities as master, which resulted in the grounding. The person involved made serious errors with regard to navigation and keeping lookout.

In view of the seriousness of the evident behaviours a suspension of the navigation licence for the duration mentioned below is appropriate. The measure demanded is not sufficient in view of the extent to which the attitude and conduct of the person concerned played a role in the violation of the standard. On several occasions, the person concerned behaved indolently before and during the trip and did not focus sufficiently on his job. The person concerned failed to check the correctness of his actions sufficiently,



both when entering the settings in ECDIS and when adjusting the course after the alarm sounded. The party concerned also failed to concentrate sufficiently during the 'navigational watch' when he turned his attention to working on the computer instead of keeping a lookout.

In the circumstances that the employment contract between the shipping company and the person concerned has been terminated as a result of the incident and that the person concerned admitted his liability during the hearing, the Disciplinary Court sees good reason to rule that the suspension of the navigation licence should be imposed partially conditionally.

6. Practical recommendations

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

There should be an explicit instruction that with every voyage, the ECDIS settings should be (i) adjusted to the new/current voyage and (ii) checked.

7. 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 six (6) weeks;
- stipulates that of this suspension, a period of two (2) 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 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 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, presiding judge, H. van der Laan and E.R. Ballieux, members, in the presence of E.M. Dooting, LL.M., as secretary, and pronounced by P.C. Santema, LL.M., in public session on 19 November 2021.

W. van der Velde
presiding judge

E.M. Dooting
secretary

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.