

**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF
5 FEBRUARY 2021 (NO. 2 OF 2021) IN THE CASE 2020.V3-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

J.M. v. E.,

the person concerned,

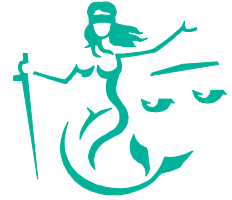
lawyer: O. Yesildag, LL.M.

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 master of the Dutch vessel Zaanborg. Twenty 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 master 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. More specifically:



(1) the person concerned left Ravenna without any proper voyage plan having been made.

(2) 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.

(3) 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 accepted that the OOW 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 six weeks, four weeks of which conditionally.

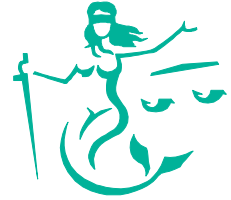
4. The position of the person concerned

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

According to him, he drew up a thorough voyage plan which complied with the *IMO Guidelines* and the *SOLAS Regulations*, including the use of nautical charts and publications for the area concerned. He claims that the fact that the incident could still occur was due to errors made by the Italian hydrographic service and the pilot's failure to provide information.

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 the first officer 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.

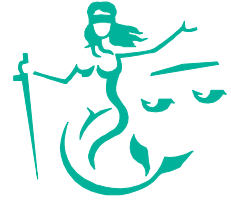
The person concerned did not dispute at the hearing that the Zaanborg had collided on 15 January 2020. That day the mv Zaanborg departed in ballast condition from the port of Ravenna, Italy. That was in the evening and the pilot disembarked within the piers. Fairly shortly thereafter, the vessel struck 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 master has stated in writing a voyage plan had been drawn up. The voyage plan was drawn up a few hours before departure. The master checked the weather forecast for the voyage plan. The weather was fine, with good visibility. The shower that came later was not forecast. The second officer completed the voyage plan manually and the master approved it.

The officer had told the master that the master should ask the pilot what the best way to drift was. Five minutes before departure, the pilot came on board and discussed the voyage with the master. It was not irresponsible to leave quickly, even though the voyage plan was not quite finished. There was plenty of time to discuss it sailing in the canal to sea. There were plenty of people on the bridge and there was plenty of time. Only the waypoints were changed.



The master replied that the voyage plan was in order until the time of leaving the pier but that time was very short. The master immediately came up against an invisible platform. He was sailing at 60% pitch, which is not fast. Mr IJssel de Schepper asked whether the master had consulted the pilot and whether they had also looked at the electronic nautical chart together. The master indicates that drifting was verbally discussed.

Mr. IJssel de Schepper asked why the master had not made any voyage plan based on drifting before the pilot came on board. The master replied that he had made preparations to drift, but the pilot advised that he had to deviate from the course.

Mr Roozendaal asked whether the master had not thought to follow his own route because when he entered Ravenna he had seen platforms on the chart which he did not see visually. The master replied that he indeed knew that there were one or more rigs on the chart that he did not see.

He thought the pilot had given sound advice. The master did not know that the platform would be half a mile out of position.

The master indicates that when the pilot left, he was sailing at 60 percent; 13 knots seems fast. He indicates that all to be seen was a great black gap. Suddenly spots appeared on the radar. It is unclear to the master what the spots were on the radar. Visibility was simply limited.

It certainly wasn't a vessel – there were no lights and no AIS – and according to the electronic chart there was no AIS target or other obstruction.

He zoomed in on the radar, which showed it was not a vessel.

He had looked outside here and saw no board lights and no lighting. He thought that was a shower.

The master indicated that he had asked the first officer why he was swerving to port. The first officer said that this was because otherwise the ship would come within 500 metres of the platform. It was not known what was still under water. The master agreed with the first officer. Article 19 of the COLREGS prescribes that a change of course to port should be avoided "as far as possible".



The master indicates that at one point he changed his mind from shower to object. They never thought it was a vessel, but rather a buoy or a fixed object. According to the COLREGS, it is permitted to swerve to port before a fixed object. Until 10 seconds before the collision, the illuminated platform could be seen further away. Mr Kuiken stated that, according to his calculations, visibility was approximately 1 cable at the time of the collision. The master could not find what he had run into with the searchlight. However, there was no light at all and no foghorn on the platform. It suddenly loomed up. In retrospect, he had doubts that there had been a shower.

The sailing speed was 13 knots. The master said he doubted whether reducing the speed would have been the right thing to do, because it would make it harder to go to starboard. A collision could not be avoided. Slowing down only softens the blow. If there is not enough speed, the vessel will not steer as quickly. Increasing speed will give you more rudder pressure, according to the master."

D.

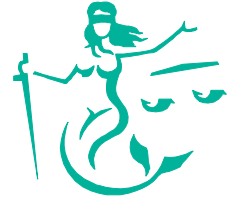
An e-mail from Wagenborg Shipping B.V. to ILT dated 16 January 2020 (appendix 3 to the application) contains the following, insofar as relevant:

"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.

The person concerned left Ravenna without any proper voyage plan having been made.

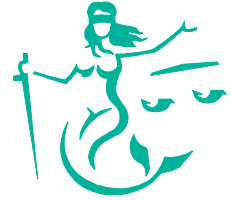
Furthermore, despite the fact that he was sailing near an area with restricted visibility and uncertainty about an echo straight ahead, the person concerned did not reduce the vessel's speed in order to have more time to better assess the situation.

B.

The Disciplinary Court considers the first and second objections of the Inspector well-founded.

The voyage plan approved by the master was mainly a "paper" voyage plan covering the voyage from the port of Ravenna to the anchorage just off the coast of Ravenna. Just before departure a decision was made ashore to drift. Subsequently, the voyage plan was slightly adapted to the new "destination" while the ship was underway, during which matters were inadequately discussed and the pilot's advice was blindly accepted. 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. Contrary to the master's opinion, this



does not necessarily mean that the vessel steers less quickly because, when sailing slowly, it is possible to quickly increase the pressure on the rudder by giving rudder and power at the same time. In this case, the additional thrust is almost entirely converted into the rotation. At low speed the turning circle of every ship is smaller, so by definition it is easier to swerve.

C.

The Disciplinary Court dismisses the Inspector's third 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.

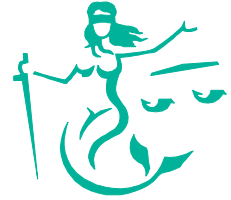
The proven conduct of the person concerned under A and B constitutes a violation of the regulation of Section 55a of the Dutch Seafarers Act in conjunction with Section 4.4 of that Act: acting or failing to act on board as master contrary to the duty of care expected of a good seaman in relation to the persons on board, the ship, its cargo, the environment and shipping.

7. The disciplinary measure

The Disciplinary Court judges that the person concerned has failed in his duty as a Ship' master. 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.

In view of the seriousness of this conduct, as set out under 6 above, the Disciplinary Court considers it appropriate to withdraw the navigation licence of the person concerned for a period of 4 weeks.

The applicant was recently fined in Italy in connection with this incident. 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 suspension shall be imposed in its entirety on a conditional basis.

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. Role of the master

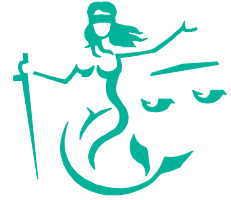
The Disciplinary Court wishes to emphasize the responsibility and "*overriding authority*" of the master. The Disciplinary Court increasingly sees the pressure of shipowners and/or charterers being exerted on the master. The master is the person who can oversee the situation on board and who takes the decisions and is responsible for them. The master must of course defend his decision with arguments to the interested parties (authorities, pilot, shipowner, etc.). The master must always bear in mind that a shipowner is not setting out to cause an accident, which will usually cost many times more than the savings that the shipowner has in mind if, for example, he presses to depart earlier from a port.

2. 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.

3. 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.

4. 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 objections 1 and 2 well-founded, as found above under 6;
- dismisses objection 3 as unfounded, as considered above under 6;
- suspends the navigation licence of the person concerned for a period of 4 (four) weeks;
- 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 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 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 P.C. Santema, LL.M., in public session on 5 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.