



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF
7 MAY 2021 (NO. 5 OF 2021) IN THE CASE 2020.V1-UAL LOBITO**

As petitioned by:

the Minister of Infrastructure and Water Management
in The Hague,

petitioner,

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

versus

A. E.,

the person concerned,

lawyer: M.M. van Leeuwen, LL.M.

1. The course of the proceedings

On 16 March 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 UAL Lobito. Eighteen 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.

On 04 August 2020 a statement of defence was received from the person concerned. The Inspector responded to the defence on 18 August 2020, after which the person concerned submitted a rejoinder on 14 October 2020.



The presiding judge has ruled that the oral hearing of the case will take place on 26 March 2021 at 11:00 hours.

The Human Environment and Transport Inspectorate and the person concerned were summoned – the latter both by ordinary and registered mail – to appear at the hearing of the Disciplinary Court.

The court hearing was held on 26 March 2021. Inspector B.A.C. van Geest appeared at the hearing on behalf of the petitioner, assisted by his colleague, inspector K. van der Wall. The person concerned took part in the hearing by video link from St. Petersburg, assisted by his counsel, who was present in the courtroom.

2. The petition

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

On the morning of 19 November 2019, aboard the ms UAL Lobito, it was established that the vessel had lost two empty containers (TEUs) in bad weather. It is presumed that this happened on 18 November 2019 at Cape Finisterre while the ship was underway from Dakar (Senegal) to Antwerp (Belgium).

This incident was reported by the shipowner to ILT on 19 November 2019.

3. Objections of the Inspector

According to the Inspector:

1. The person concerned left Nouadhibou (Mauritania) on 4 November 2019 with a GMfluid which, according to the intact stability and stability in damaged state, was of sufficient magnitude. However, the GM value was much higher than the maximum value calculated in the Cargo Securing Manual. At that time, the person concerned was not convinced whether lashing down the deck cargo containers was sufficient. The



- deck cargo consisted of 6 containers with cargo in them (total 108.3 T) and 81 empty containers.
2. The person concerned left Dakar, Senegal, on 7 November 2019 with a GMfluid, which was considered of sufficient magnitude according to the intact stability and stability in damaged state. However, that GM value was much higher than the maximum value calculated in the Cargo Securing Manual. At that time, the person concerned was not convinced whether lashing down the deck cargo containers was sufficient. The deck cargo consisted of 85 empty containers.
 3. The person concerned did not take into account the expected wind and 'green water'.

In his reply, the Inspector states that use of the Cargo Securing Manual (CSM) is mandatory. He submits that the first and second objections consist of the fact that the person concerned did not check whether the lashing of the deck cargo, with parameters deviating from the CSM, was sufficient. According to the Inspector, this is contrary to good seamanship. He takes the view that the person concerned, by sailing with a high GM value in an area with high waves, accepted that ship and cargo were exposed to excessive acceleration forces and 'green water'. According to the Inspector, this is contrary to good seamanship.

The Inspector submitted at the hearing that the disciplinary measure of a reprimand should be imposed on the person concerned.

4. The position of the person concerned

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

According to counsel for the person concerned, the Inspector's claim was not formulated with sufficient precision, and there was no causal link between the allegedly breached rules and the loss of the containers. According to



counsel, the CSM contains no mandatory rules. According to the counsel for the person concerned, the CSM prescribes no other method of lashing than using twistlocks. According to him, the correct placement of the twistlocks is always checked three times. According to counsel, the high GM value cannot be the cause of the loss of the containers. He refers to the report of Van Ameyde enclosed with the defence. That report concludes that the most likely cause for the loss of the containers was that they had been hit by heavy seas and had sustained such damage that they had eventually been lost overboard. The report states that the lost containers were in a relatively vulnerable position. The relatively low freeboard and the bad weather make it likely that the containers in question were damaged from the bottom and sides by waves. The Van Ameyde report states that no method of securing containers can withstand a rough sea hitting them.

The person concerned claims that he took all measures to avoid the loss of containers. The person concerned claims that the containers were secured using twistlocks in accordance with a standard procedure. The person concerned assumed, based on his experience on the ship, that the attachment was reliable despite the higher GM. The person concerned claims that he took account of the weather conditions at Cape Finisterre by applying a pitch of 80%. He believes that it is virtually impossible to change course there due to the heavy traffic and the presence of the traffic separation system. According to the person concerned, the loss of the two containers was due to "*forces of nature*", caused by waves on the underside of the containers.

In rejoinder, counsel for the person concerned argued that the containers had been secured in accordance with the CSM. In his opinion, securing two layers of empty containers with twistlocks should be considered seaworthy. He referred to the additional report of Van Ameyde enclosed with the rejoinder. This additional report repeats the conclusion of the first Van Ameyde report. According to the additional report, damage to the first row of containers on board smaller ships due to bad weather is a regular



occurrence. The additional report states that the loss of containers is sometimes unavoidable.

5. The assessment of the petition

A.

The following information is derived from the ship's details attached to the petition (Appendices 2 and 5 to the petition). The UAL Lobito is a seagoing vessel sailing under the Dutch flag (IMO number 9265653 and call sign PBJZ). The stability book states that the vessel has a gross tonnage of 3153 (Appendix 1C to the Petition). According to the CSM, the vessel is 89.98 metres long and 15.20 metres wide (Appendix 1B to the petition).

The ship departed Nouadhibou (Mauritania) on 4 November 2019, heading for Dakar (Senegal) (Appendix 10 to the petition). The vessel left Dakar 7 November 2019, heading for Antwerp (Belgium) (Appendix 6 to the petition). The shipping company reported to ILT on 19 November 2019 that the vessel had lost two empty containers a day earlier on the voyage from Dakar to Antwerp off Cape Finisterre (Appendix 3 to the petition).

During the ongoing investigation, the Inspector contacted the shipowner at various times requesting information. The voyage plan, photographs of the nautical chart, a copy of the ship's log of 18, 19 and 20 November 2019 and the SPOS weather report of the voyage from Dakar to Antwerp were provided to the Inspector (Appendices 6, 7, 8 and 9 to the Petition). The meteorological data for the vessel's voyage (Appendix 7 to the Petition) shows wave heights of between 2 and 3 metres for 18 and 19 November, a swell of between 1.7 and 2.7 metres and winds of between 12 and 21 knots.

The Inspector put some questions to the person concerned in the ongoing investigation, which he answered (Appendices 10 and 11 to the Petition).



B.

In response to the Inspector's questions, the person concerned stated the following (Appendices 10 and 11 to the Petition). He used a computer program for the stability calculations. The person concerned states that the ship was mainly carrying empty containers. The person concerned states that he performed calculations to lower the GM value but that it was technically impossible to achieve a GM value of 1 metre in this loading condition. Measures to reduce the GM value, such as pumping out the ballast water tanks in the bottom of the ship, would have had little effect on the GM value and would have had adverse effects on the slamming of the vessel and the risk of cavitation, according to the person concerned.

The person concerned states that sailing in the Bay of Biscay is always a challenge for a small vessel like UAL Lobito due to the low freeboard. He states that the cargo was secured before departure in accordance with the CSM. He also states that he only uses twistlocks for securing empty containers and no additional means. The person concerned states that he asked Finisterre VTS for permission to change course, but that permission was denied. He states that he normally sails at an 80% pitch and performs short leg turns to reduce resonance rolling, slamming and swell impact.

C.

The chief officer's statement (Appendix 12 to the Petition) shows that he noticed the loss of the two empty containers from Bay 01 on the starboard side on the morning of 19 November 2019 and that four bottom twistlocks were missing in the process.

D.

The Stability Book for the vessel is included as Appendix 1C to the Petition. The loading conditions from the intact stability book are shown in Appendix 18 to the Petition. The stability calculations show that the GM value for the voyage from Nouadhibou to Dakar was 2.22 metres and for the voyage from Dakar to Antwerp 2.49 metres (Appendices 13 and 14 to the Petition).



E.

The vessel's CSM (Appendices 1B and 15 to the Petition) shows that two containers can be stacked on deck at the far starboard end of Bay 01. The stowage plan for the voyage from Dakar to Antwerp (Appendix 16 to the Petition) shows that two containers are stacked on deck at Bay 01 on the far starboard side. The design of the ship is such that the containers are partly placed outboard at this position. Photographs of this position on deck without the containers are attached as Appendix 17 to the Petition.

The system for stowing and lashing containers described in the CSM assumes a maximum GM value of 1.00 meters (p. 45 of the CSM). The CSM states that: *"If for any reason, the ship is to be operated with larger GM-values, the expected acceleration will increase accordingly."*

The CSM requires in Chapter 4 that containers be secured by bottom twistlocks and twistlocks. The CSM further states that *"Additional diagonal lashings are generally required for stacks exposed to wind attack and/or the masses in that stack are to be reduced"* (p. 38 of the CSM). According to the CSM (p. 41), a higher GM value can lead to higher transversal acceleration, overloading of the lashing means for stowing and securing, and damage to the containers.

F.

At the hearing, the person concerned did not dispute that the UAL Lobito lost two empty containers on or about 18 November 2019 off Cape Finisterre while the vessel was en route from Dakar (Senegal) to Antwerp (Belgium).

G.

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

According to the person concerned, loading is carried out in accordance with a standard procedure: the containers are loaded onto the deck, onto the



twistlocks and, once the containers have been loaded, the twistlocks are closed. The person concerned assumes that the crew's report on the securing of the cargo is correct.

The person concerned stated that at the start of loading, calculations are made of the GM and the fuel and ballast present. The person concerned states that he heard that the calculated GM was higher than the reported values and that he realises that when the GM rises, so does the acceleration. However, based on 17 years of experience on this ship without incident, the person concerned assumed that the lashing with twistlocks only was reliable. The person concerned stated that en route from Dakar, near the Bay of Biscay, the weather forecast was received warning that there would be very rough seas from west, northwest. He stated that when sailing from Africa to Europe through the Bay of Biscay, it is virtually impossible to change course if the weather deteriorates. According to the person concerned, this is due to heavy traffic and the traffic flows at Cape Finisterre and the neighbouring islands. In his experience, the MRCC at Finisterre rarely gives permission to change course.

The person concerned maintains that it therefore uses special manoeuvres, first keeping to one course and then another, in order to adapt optimally to weather conditions. According to the person concerned, a pitch of 80% was used. He states that it made no sense to reduce the speed any further because that would make it difficult to steer the ship.

The person concerned stated that despite all the measures taken, two containers were still lost. This, he says, is due to forces of nature. The person concerned believes that specific forces were exerted by the waves against the underside of the containers.

The person concerned states that the fact that two containers were missing was discovered on the 19th in the morning and immediately reported to the MRCC at Finisterre.

In response to questions by Mr Oppelaar concerning the condition of the bottom twistlocks, the person concerned replied as follows.



The bottom twistlocks were in good condition. They are checked once every three months; this is noted and a record is made for the logbook. Sometimes the twistlocks are damaged or have cracks in them. The person concerned stated that if that happens, the twistlocks are replaced.

When asked, the person concerned stated that at that time he had no reason to suspect that the dovetail foundations needed repair. These parts are also checked when twistlocks are placed.

The person concerned suspects that the twistlocks were torn out of the dovetails by a powerful wave against the bottom of the containers.

When asked what the ship's speed was at Finisterre at the time of the bad weather, the person concerned replied that the speed was approximately six knots.

In response to questions from Mr. Ballieux, the master replied as follows.

According to the person concerned, the twistlocks are easy to move. He also says he is careful to ensure that left-hand locking and right-hand locking twistlocks do not get mixed up.

When asked, the person concerned replied that he had asked for a change of course at Finisterre because he was worried about slamming because the ship was short and wide. According to the person concerned, if he had altered course without permission, using his "master overriding authority", this would have been reported by Finisterre. Moreover, according to the person concerned, it is difficult to change course there because there are several ships of different sizes sailing around you at different speeds.

When asked by the Inspector, the person concerned replied at the hearing that the six containers with cargo had been additionally secured with container chains on the voyage from Mauritania to Senegal. According to the person concerned, these containers were loaded with highly dangerous substances, classification 1.1. For this reason, it was decided to secure them exceptionally well, so that no friction could take place and no sparks would come off, according to the person concerned.



When asked by the presiding judge, the person concerned replied at the hearing that after the incident he agreed with the person with whom he frequently works that they would use extra lashings in situations such as these, even if not really necessary.

The person concerned stated that he did not see the point of a reprimand. He feels that a reprimand would be morally damaging because he has been working at sea since the age of 17 and in all that time there has been no reason to criticise his actions.

H.

When asked, the Inspector replied at the hearing that he did not state anywhere that the containers were insufficiently lashed. The particular issue is how the person concerned knew that the calculation of the GM was correct, the Inspector said. Furthermore, the Inspector states that according to the logbook the ship was still sailing at 8/9 knots and therefore had not really slacked off.

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 or around 18 November 2019, the Dutch-flagged cargo vessel UAL Lobito lost two empty containers off Cape Finisterre while the vessel was en route from Dakar (Senegal) to Antwerp (Belgium).

B.

The objections referred to as points 1 and 2 are based on the fact that the person concerned had not ascertained whether the lashing of the deck cargo of containers on the journey from Nouadhibou to Dakar and on the journey from Dakar to Antwerp was sufficient in the light of the fact that the GM value was higher than the value calculated in the CSM.



In itself, it is not unseamanlike to sail with a higher GM value than that taken into account in the CSM. The standard of good seamanship does however require the person concerned to ensure that the cargo is secured correctly. Based on the case file and the statement made by the person concerned at the hearing, the Disciplinary Court does not consider it proven that the person concerned failed to ascertain whether the lashing of the deck cargo of containers on the voyage from Nouadhibou to Dakar and on the journey from Dakar to Antwerp was sufficient. The person concerned may rely on his crew's checks and notifications in this regard.

The ship's CSM requires that containers be secured on deck with bottom twistlocks and twistlocks. The CSM also states that "*Additional diagonal lashings are generally required for stacks exposed to wind attack and/or the masses in that stack are to be reduced*".

In the given circumstances, securing empty containers on deck in stacks of two with bottom twistlocks and twistlocks and securing containers with dangerous cargo with container chains is not considered by the Disciplinary Court to violate the standard of good seamanship.

The Inspector has not sufficiently underpinned his objections against the person concerned.

C.

The objection referred to as point 3 is that the person concerned did not consider the expected wind and 'green water'.

Based on the case file and the statement of the person concerned at the hearing, the Disciplinary Court does not consider it proven that the person concerned did not take the expected wind and 'green water' into account. The person concerned requested a change of course in response to a very rough sea in the Bay of Biscay, but this request was rejected. The Disciplinary Court considers a speed of 6–8 knots and 80% pitch not to violate the standard of good seamanship in the given circumstances and given the need to keep the ship manoeuvrable.



D.

The conclusion must be that the objections of the Inspector cannot be declared proven.

7. The disciplinary measure

The objections against the person concerned are unfounded; there is therefore no disciplinary measure to be imposed.

8. Practical recommendations

Irrespective of the decision in this case, the investigation into the incident on board the UAL Lobito, the Disciplinary Court offers the following practical recommendations:

- In a ship design with containers (partly) outside the hull and expected green water, it is recommended to leave the stack outside the hull free;
- Include stability calculations with higher GM values in the Cargo Securing Manual.

9. The decision

The Disciplinary Court finds that the petition is unfounded.

Duly delivered by W. van der Velde, LL.M., presiding judge, E.R. Ballieux and R.A. Oppelaar, members, in the presence of V. Bouchla, LL.M., as secretary, and pronounced by P.C. Santema, LL.M., in public session on 07 May 2021.

W. van der Velde
presiding judge

V. Bouchla
secretary



P.C. Santema
chairman

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.