



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF
21 MAY 2021 (NO. 6 OF 2021) IN THE CASE 2020.V8-EEMSHORN**

As petitioned by:

the Minister of Infrastructure and Water Management
in The Hague,
petitioner,
represented by: B.A.C. van Geest,
Senior Inspector ILT/Shipping

versus

K. B.,
the person concerned,
lawyer: J. van der Stelt.

1. The course of the proceedings

On 1 October 2020, the Disciplinary Court received a written request for disciplinary action from the petitioner's proxy (hereinafter referred to as: the Inspector), directed against the person concerned as master of the Dutch seagoing vessel Eemshorn. Twenty-four annexes were attached to the petition.

By letter dated 7 October 2020, the Disciplinary Court notified the person concerned of the receipt of the petition, enclosing a copy of the petition and its annexes. The person concerned was informed of his right to file a statement of defence.

A statement of defence was received from the lawyer of the person concerned on 14 December 2020. The Inspector replied on 6 January 2021, after which the petitioner's lawyer replied on 21 January 2021.



The presiding judge has ruled that the oral hearing of the case will take place on 9 April 2021 at 14:30.

The Inspector and the person concerned were summoned to appear at the hearing of the Disciplinary Court. Also, at the request of the Inspector, the mate J. B. and the seaman M. de B. were called as witnesses.

The hearing was held online on 9 April 2021. The petitioner was represented by the Inspector, accompanied by his colleague K. van der Wall. The person concerned was also present, assisted by his lawyer. The summoned witnesses, who were also present, were heard at the hearing.

A further message was received from the Inspector after the hearing with information about a certificate of competency. That message has been forwarded to the lawyer of the person concerned.

2. The accident – brief description

The petition for a disciplinary hearing was filed as a result of the accident described below.

On 5 November 2018, at approximately 04:50 local time, the Dutch seagoing vessel Eemshorn collided with the inner side of the storm surge barrier Oosterscheldekering. The vessel – of which the person concerned was the master – had left Yerseke and was going to sea via the sea lock Roompotsluis. At the time of the collision, only the mate was on the bridge, without a lookout. The mate has no memory of what happened in the period shortly before the collision.

The accident was reported to the ILT by Coast Guard Netherlands at 05.56 on 5 November 2018.



3. Objections of the Inspector

The Inspector accuses the party concerned – in his capacity as master/commander of the Eemshorn – of being guilty of the following:

- (i) The collision occurred during the hours of darkness. During the hours of darkness there must be a lookout on the bridge. There was no such lookout.
This is contrary to regulation 5 of the Convention on the International Regulations for Preventing Collisions at Sea, 1972, London (COLREG) and STCW Code, Chapter VIII Section A/Part 3 – 'watchkeeping at sea'.
- (ii) The Eemshorn was not manned in accordance with the crew plan. There was only one deck rating onboard instead of the prescribed two. One 'deck rating' cannot (also) serve as a lookout during all hours of darkness without violating the work and rest hours regulations.
This is in breach of COLREG regulation 5 and STCW code Chapter VIII Section A/Part 3 – 'watchkeeping at sea' and of Articles 5(2), 10, opening words and under (b) and 57, opening words and under (b) of the Dutch Seafarers' Act.

4. The position of the person concerned

With regard to the first allegation, the person concerned has argued that the normal course of events is that after departure from Yerseke there should be a lookout on the bridge during the hours of darkness at least until after the Roompotsluis sea lock. It is not clear to him why the lookout (the seaman) had left the bridge in this case. Nor does he know whether this was done with the permission of the mate. He did take note of the statement made by the mate that he could proceed without a lookout, even when passing through the Roompotsluis sea lock. The Eemshorn usually left early in the morning. The mate has the watch from 00.00 to 06.00. It is customary for the master to go on watch after the Roompotsluis sea lock. It is possible that



over time adherence to certain instructions has faded. Lessons have been learned from the incident, among other things in the sense that explicit attention is now paid to the presence of a lookout during the hours of darkness and that, in consultation with the ship's manager, an extra 'deck rating' with proficiency II/4 is on board, in addition to the requirement under the Crew Certificate (statement of defence item 19).

According to that Crew Certificate, there should indeed be two 'deck ratings' on board. The person concerned assumed that the engineer had a sufficient endorsement on his certificate of competency to (also) serve as a deck rating. According to the person concerned in response to the second allegation, this would have fulfilled the requirements of the Crew Certificate. He points out that police officers who investigated the accident reported that the Eemshorn was sufficiently manned.

The party concerned further asks the Disciplinary Court, when determining a possible disciplinary measure, to take into account the fact that a long period of time elapsed between the accident and the submission of the petition for disciplinary action; almost 1 year and 11 months, which is just short of the maximum submission period of two years stipulated in Section 55h (4) of the Seafarers Act. Until recently, it was also a matter of conjecture as to whether he would be prosecuted. He has since learned of the Inspector's communication that on 6 March 2020 he had been informed by the Public Prosecution Service that this would not be the case.

5. The assessment of the petition

A

Attached to the petition was, inter alia, a record of the hearing of the person concerned on 5 November 2018, drawn up by the Police, National Unit, Infrastructure Service, Geographical Division – South–West Netherlands, on oath/sworn statement. As a statement by the person concerned, it includes:

'I am the master of the Eemshorn. I have held that position since February 2011. [...] I have as my crew a mate, an engineer and a rating. I always sail with this crew formation. We sail with a fixed crew



in a schedule of 2 weeks on and 1 week off. We're home every weekend. [...] Last week was my week off. [...] The engineer was also off last week and started this week. Today we left Urk at around 00:15. I drove to Yerseke. The Eemshorn was moored there near Koringaweg 62. That's at the company's unloading dock. Upon arrival, we unload groceries and equipment. I then start up the bridge with the necessary equipment. The engineer takes care of the engine room. When we have switched on all the equipment, we have a meeting in the galley to go over the details. [...] On the bridge I have two radars, three positioning computers, two satellite compasses, two GPS systems, a river pilot, sea pilot, three marine radios one of which is always on channel 16 and the other on block channels. I have two sea radars, a Furuno and JRC. [...] This morning, the mate had already started up some of the equipment. I set the radars to transmit. The JRC at 0.25 nm and the Furuno at 0.5 nm. I updated the locator equipment. I turned on the navigation lights and the VHF radios on VHF 16, 10 and 68. The engines were started from the bridge by the engineer. At that time, everything was working correctly. It had been high tide at 01:25, so we had the current with us. I estimate the wind strength at NNO 3 to 4. Visibility was good. The mate's watch is from 00:00 to 06:00. I let the mate do the manoeuvres, but I stay on the bridge as an extra lookout. After leaving, I went below halfway down the Schaar van Yerseke, just after the water inlet. I went to my cabin at about 03:15 and went to sleep. Normally the crew comes on the bridge for a while, and then the rating generally remains the extra lookout. He usually stays on the bridge until after the lock to assist in the lock. [...] The agreement is that at night the watch alarm is set to 12 minutes. [There] is a sensor installed that gives an acoustic signal when there is no movement. If there is no activity on the bridge, a general alarm goes off. I do not know if the watch alarm was activated this morning. I did not check whether it was activated. I awoke to a vibration through the ship. [...] At first I thought we had hit a buoy, but straight after that I heard and felt a bang and shot forward in my



cabin. [...] I ran up to the bridge. There it was complete chaos, and I found the mate in a panic. I called for a tugboat and the Royal Netherlands Sea Rescue Institution (KNRM) on VHF18 [...] and reported that we had collided with the Oosterscheldekering. [...] I sent the crew out for life jackets and survival kits. The engineer [...] reported that there was no inflow but that the forepeak was not accessible. [...] When it turned out that we were hooked behind a high-voltage cable, I asked the KNRM to disembark my crew. At that time, it was about 15 minutes before the turn of the tide. We would go down another metre or so. With the rising tide, I managed to free the ship and sail back to the harbour. [...] When I went above only the mate was on the bridge.'

B

Also attached to the application is a report drawn up by the police, National Unit, Infrastructure Department, Geographical Division – South-West Netherlands, under an oath of office or solemn affirmation, of the hearing held on 5 November 2018 of the then nineteen-year-old mate. In it, he states, among other things:

'I am [...] mate on board the Eemshorn. [...] I have been qualified to sail as a mate since July 2018. [...] I arrived on board at 2:30 this morning. We were moored in Yerseke. At 00:00 we left by car from Urk. The master drove from Urk to Yerseke. We sail two weeks on and one week off, and every weekend we are at home. I sailed last week. I was home by 1:30 last Saturday morning. This morning before departure I started up the bridge together with the master. The engineer started up the engine room. I turned on the VHF radios, started up the navigation computers and the rudder. I also started up both radars. [...] Two separate computers form the electronic chart. These were also on. [...] from Yerseke to the sea lock is a fixed route saved on the hard disk. I had this on the starboard navigation computer. Before departure, the wind was East-South-East, it was ebb tide, about 2.5 km. It would be low tide in Neeltje Jans at 06:30. I



usually take watch from 00:00 – 06:00, so this morning I would sail. The master was present on departure. Everything was working properly. [...] The master went below near the fishing port of Yerseke. The seaman stayed until just before the Zeelandbrug and went below just before 04:00. [...] We sailed at full power with a SOG (speed over ground) of 11.5 km. Visibility was good for the entire journey. [...] I had set the watch alarm to 12 minutes. Above the helm seat there is a motion detector. If I do not move within those 12 minutes, an audible signal goes off. If I do not reset it I think an alarm will go off with the master, followed by general alarm. I always turn that alarm on, especially at night to prevent this kind of thing. I usually call the lock on VHF 18 at the level of the R22 buoy. That is 10 minutes prior to arrival. Since I'm a mate, I enter the lock on my own. If there is no one else in the lock we don't tie up and I don't call anyone to come to the bridge. In this case, I did not call anyone either. I physically saw buoy R22 flashing. [...] I had already considered calling the lock and switching the VHF radio from VHF 68 to VHF 18. I do not remember anything from that moment until the collision. When I saw that R22 buoy, I was in the helm chair with one leg on the dashboard. [...] I took the lighted passage of the Zeelandbrug. I passed the bridge [...] on the river pilot. After the bridge I changed my course to port and started [...] steering by my satellite compass. From the passage until the collision I did not change course. Following the course change after the passage of the bridge, I switched to the sea pilot. This is linked to the satellite compass. The first thing I noticed concerning the collision was a bang. I was thrown out of my chair by the impact and was very shocked and had no idea what was there. [...] I looked at the starboard navigation screen and immediately saw that I was up against the Oosterscheldekering. I reversed and sounded the general alarm. Soon after the collision and the general alarm, the master arrived on the bridge. We turned against one of the pillars at that moment. [...] We all gathered on the bridge. We ended up lying starboard side up against a pillar. Eventually, we were disembarked by the KNRM. The master



stayed behind. [...] On Sunday afternoon, I slept for an hour and a half. In the evening I stayed up. I slept from Saturday night 23:00 till Sunday morning 08:30. [...]

C

The petition is also accompanied by, inter alia, an official report of findings drawn up by the police, National Unit, Infrastructure Department, Geographical Division – South–West Netherlands, under oath or solemn affirmation. In this report, the reporting police officers write:

'[...] On Monday 5 November 2018 [...] we [...] received a report that a ship had collided with the Oosterscheldekering. [...] We arrived on-site at 07.50. [...] We heard [...] that the master of the Eemshorn had freed the vessel from the Oosterscheldekering himself, and that he had meanwhile moored at the unloading quay, located in the Binnenhaven at Neeltje Jans. [...] At 08:10 we arrived at the aforementioned unloading bay. [...] We saw that the bow of the Eemshorn was seriously damaged up to just above the waterline. Then we went on board [...]. Next, I, the reporting officer [...], took some photographs of the equipment on the bridge. [...] Photo 1 shows the watch alarm installed on the starboard side of the dashboard. We noticed that this watch alarm was switched to the selection 12 minutes and was not currently active and that the indicator light was on "Off". We saw that the key was in the ignition and that the "Power" indicator light was on. [...] Photo 6 shows the radar screen. [...] We saw on this image the track of the route taken. We saw that this track was unbroken without any changes from the Oosterschelde in one straight line up to the Oosterscheldekering. [...]

Photos 7 and 8 are photos of the ship's log. We saw that the departure time from Yerseke was 03:15 and that the Zeelandbrug was passed at 04:10. We also saw that the aforementioned crew members had come on board at 02:30. [...] Photo 9 is a photo of the work schedule. We saw this work schedule hanging on the door to the galley. [...] We saw



that according to this schedule, the mate is on watch from 00:00–06:00. We also saw that the helmsman should be on watch until 04:00. We also noticed that between 04:00 and 06:00 no one from the crew besides the mate was mentioned in the watch. We asked to be shown a number of certificates. [...] According to the crew list, the crew consisted of:

Master

Chief Mate

Engineer

Rating

A check of the crew mentioned above showed that they possessed sufficient sailing qualifications, valid medical examinations and valid seaman's books. Based on the certificates of competency and the required crew according to the Minimum Safe Manning Certificate, we concluded that the Eemshorn was sufficiently manned. [...]'

D

The petition is also accompanied by a 'Report of findings Shipping incident Motor vessel Eemshorn vs Oosterscheldekering', drawn up under oath of office, dated 2 January 2019 by the Police, National Unit, Team Traffic Specialists. The findings of the investigators/reporting officers as noted in this report included:

'[...]

2. Investigation of the accident site

[...]

2.2.1 Traffic measures on site

To protect the Oosterscheldekering storm surge barrier and as a safety measure for shipping traffic in the vicinity of the barrier, the area east of the barrier was closed to shipping traffic. For this purpose, yellow barrels had been placed in the fairway between the eastern point of the southern harbour dam at the Roompotsluis in southerly direction up to the coast of Noord-Beverland.



[...]

2.3.2 Traces found at the accident site

Scratch marks and shear marks were found on and in the surface of a pillar of the Oosterscheldekering and a beam between two pillars. In some places, more serious damage in the concrete of the pillar and beam was visible. These traces were probably caused by the collision of the Eemshorn with the barrier. A cable duct installed along the road surface on the east side of the barrier was partially bent. This damage was probably caused by the top of the rear mast of the Eemshorn hooking behind the edge of the cable gully. [...]

3. Vessel inspection

[...]

3.1.8.1 Damage

The vessel's bow was compressed entirely from a height of approximately 1.70 m above the waterline to the top of the bulwark. The material of the ship's hull had been pushed inwards by at least 1.50 m at this location. At approximately 0.90 m above the waterline, the bow's hull was torn horizontally. Above this, the ship's hull was folded to a height of approximately 1.70 m and pushed inwards. See photos 6, 7 and 8. The forepeak was almost entirely compressed. The material of the foredeck had bulged and compressed over a distance of at least 2 m, measured from the front of the ship. The anchor lockers were destroyed. The foredeck hatchway of the entrance to the forepeak was deformed. Welds on fittings attached to the anchor gear on deck had been torn loose, and parts had broken off. See photos 9 to 12. The ship's foremast had been pushed backwards. See photo 13.

[...]

4. Further investigation

[...]

4.3 Radar images

The images provided by Verkeerspost Wemeldinge were video recordings in A VI format. [...]



At the start of the recording, the Eemshorn was located south of buoy SvC 8. According to the data on the radar image, the vessel was travelling at a speed of 11 miles an hour on a course of 269°. On [...] the vessel was in front of the Oosterscheldekering. The [...] course at that time was 274° and the speed 11 miles an hour.

[...]

6. Interpretation and analysis

6.1 Probable cause

On Monday 5 November 2018 [...] the Eemshorn passed buoy SvC 5 in a westerly direction on the Oosterschelde. From [...] that point [...] the ship was sailing on an average course of approximately 269°. At about 03.43 [the Disciplinary Court understands: UTC] the vessel passed the buoy R20 at a short distance. As of 03:45 [UTC, addition TvdS] until the most probable time of collision with the Oosterscheldekering, 03.51 [UTC, TvdS], the ship's average course was about 272°. During the entire journey described above, the Eemshorn sailed at a speed of approximately 11 miles an hour (about 20 km/h). This speed was maintained until the moment of the collision. The destination of the Eemshorn was a location in the North Sea. For this reason, they first had to pass the Roompotsluis lock. To reach the outer harbour of the Roompotsluis lock, the course of the Eemshorn should have been changed approximately 30 degrees to a northerly direction by 03.45 [UTC, TvdS] at the latest. [...]

In his statement, the mate stated that he had engaged the sea pilot after passing the bridge Zeelandbrug [...]. The operation of the sea pilot is based on autonomously maintaining the preset compass course. [...] The ship then continues on the set course until the sea pilot is switched off or a new course is set [...].

We were unable to determine conclusively whether the watch alarm in the wheelhouse of the Eemshorn had been activated during the voyage across the Oosterschelde. Data from the backtrack of the AIS showed that the Eemshorn had passed buoy R20 at 03.40 [UTC, TvdS]. The most likely time of the collision was determined to be 03:51 [UTC,



TvdS]. The time-lapse between the two times was 11 minutes and could therefore fall within the 12-minute warning interval set by the watch alarm. [...]'

E

The person concerned stated the following at the hearing of the Disciplinary Court:

'The statement I made to the police at the time is the whole story. I don't see it any differently now. It is true that on Monday morning, 5 November 2018, I left Urk for Yerseke just after midnight together with the mate, the rating and the engineer. In Yerseke we boarded the Eemshorn. After departing with the Eemshorn towards the North Sea I stayed on the bridge for about half an hour. It is true that at the time I assumed that there was a lookout, in the person of the rating. The standing order was that the deck rating was present on the bridge as a lookout until at least after the Roompotsluis.

Lessons have been learned from the accident. We now leave the port of Yerseke or another port where we are moored on Monday morning at 07.00. We now also have one man above the crew of four. We are also now guided by a special maritime-related agency for ISM and ISPS. This agency carries out internal audits to check that everything is in order on board. Since then, everything has been going very well. It is correct that the watch schedule stated that there should be a lookout until 04.00, but the 'standing order' was that there should be a lookout until after the passage of the Roompotsluis.

According to the engineer's current certificate, he is indeed only an engineer. At the time of the collision he also had the competence of 'deck rating'. I signed him on at the time as an engineer because he was operational in that capacity. It is true that because he was not signed on as a 'deck rating' there was a formal violation of the crew regulations.



F

As a witness at the hearing of the Disciplinary Court, the mate stated, in essence, that he maintained his police statement, that it was (therefore) correct that the rating left the bridge just before 04:00, just before the Zeelandbrug, and that in the period before the collision there was indeed not always a lookout on the bridge during the hours of darkness (in addition to the officer of the watch/master).

G

The rating testified at the hearing of the Disciplinary Court, among other things, that it is true that on the day of the collision he left the bridge just before 04.00 and went below to sleep. According to him, he was off duty as a lookout. He was a seaman at that time. The working hours for this position were from 06.00 to 18.00. In the time before the collision, when he was on board the Eemshorn, there was to his knowledge hardly ever a lookout.

H

Annex 12 to the petition concerns the 'Minimum safe manning document' relating to the Eemshorn. This states that there must be two deck ratings on board with a certificate (STCW reg.) II/4.

After the hearing, the Inspector received the message that written inquiries at KIWA had revealed that the engineer was indeed in possession of two valid certificates of competency on 5 November 2018 and that one of them carries an endorsement II/3 (mate on coastal voyages with limits). This qualified him to serve as a duty seaman.

6. The ruling of the Disciplinary Court

6.1 In view of the investigation data presented above under 5, inter alia, the following is assumed in this disciplinary case.

6.2 On Monday 5 November 2018, at approximately 04.51, the Dutch seagoing vessel Eemshorn collided with a pillar on the inner side of the



Oosterscheldekering at a speed of approximately 20 km/h. The ship's mate at that time was J. B. He was alone on the bridge; there was no lookout. The person concerned was master/commander of the Eemshorn. Together with the mate and two other crew members – the engineer and the seaman/'deck rating' – he had left Urk on 5 November 2018 just after midnight for Yerseke, where the Eemshorn was moored. The person concerned was driving. They arrived on board at around 02.30, after which they prepared the ship for departure to a work destination in the North Sea. After leaving Yerseke, the person concerned went below to sleep when the vessel was near the fishing port of Yerseke. It was about 03:15 at the time. At that moment, the rating was still with the mate on the bridge. Just before 04.00, approaching the Zeelandbrug, he went below as well, leaving the mate alone on the bridge. After the Zeelandbrug, the Roompotsluis had to be passed in order to reach the North Sea. According to the mate, he changed the course of the Eemshorn to port after passing the Zeelandbrug bridge, and then switched over to the Eemshorn's sea pilot (connected to the satellite compass). After that, he made no course changes. The course on which the Eemshorn sailed against the Oosterscheldekering was approximately 272°. When the buoy R20 was passed at around 04.43, the average course was (still) 269°. To reach the outer harbour of the Roompotsluis lock, the Eemshorn's course had to be changed by approximately 30° in a northerly direction by 04:45 at the latest. Seated in the helm chair, with one leg on the dashboard, the mate did physically see the buoy R22 and the lights of Roompothaven. He had already thought of calling the lock and changing the VHF channel. He remembers nothing about what happened next, up to the impact of the collision, which threw him out of the helm chair. That time period spans about 11 minutes.

6.3 Fortunately, there were no personal injuries. However, the Eemshorn was severely damaged. Apart from this damage, there were scratch marks and shearing marks on pillars and a beam of the Oosterscheldekering and a cable gully was bent. Several measures also had to be taken, including a cordon.



6.4 As far as the cause of the collision is concerned, the first thing that comes to mind is – according to his own statement – the perfectly healthy mate falling asleep/nodding off, also according to Mark Berkers, Shipping Enforcement Inspector of ILenT, who was on board the Eemshorn on 5 November 2018 (Annex 7 to the petition).

The mate had also sailed the previous work week, returned home at 01:30 on Saturday morning, and, prior to his night shift on 5 November 2018, had last slept for an hour and a half on Sunday afternoon, 4 November 2018. No more after that. There was indeed a watch alarm on board, but if this was already activated, it is possible that the time that the mate was 'away' exactly coincides with the 12-minute warning interval of that alarm. Whatever else may be the case, the collision would not have happened if there had been a lookout on the bridge alongside the mate on the route from Yerseke/Zeelandbrug to the Roompotsluis lock.

6.5 That lookout should have been there too (according to the regulations). That is also the opinion of the person concerned. His position/defence is that it was reasonable for him to assume that, even if he was not on duty but asleep, the crew member signed on as 'deck rating' would be present on the bridge during the hours of darkness as a lookout. He mentions a 'standing order' in this context. However, to the extent that such a standing order existed, it was not in writing and did not correspond with the watch schedule, stating that the mate's watch ran until 04.00.

Based on the mate's police statement, the presence of a lookout was not a practice that was enforced on board the Eemshorn; there is no indication of any protest from him against the rating going below and he was used, apparently also during the hours of darkness, to entering the lock independently, if no one else was there, without calling someone up to the bridge. He confirmed at the session that in the period before the collision a lookout was not always present during the hours of darkness.

According to his statement, the rating himself was not aware of the role of lookout assigned to him in addition to his regular (deck) duties during the



day from 06.00 to 18.00. He often sailed on the Eemshorn, and to his knowledge there was hardly ever a lookout.

Against this background, it cannot reasonably be considered that the person concerned, as master of the Eemshorn, has sufficiently fulfilled his responsibility to comply with the regulation to keep an adequate lookout during the hours of darkness. This responsibility includes ensuring (i) awareness and familiarity of the crew with the relevant regulation (a clear allocation of duties to each) and (ii) adequate supervision of compliance. This was lacking, which is why the Inspector rightly accuses the person concerned of a violation of the relevant regulations from the COLREGs and the STCW Code in combination with Articles 4 and 55a of the Seafarers' Act.

6.6 Formally, it is also correct that the Inspector's second accusation was that the requirements as set out in the 'Minimum safe manning document' of the Eemshorn had not been met. Although in the meantime it has been confirmed that the engineer, who was signed on as an engineer, also held a certificate of competency at the time which provided a basis for employment as a seaman (of the watch), the fact remains that the engineer was not signed on in that capacity, as a result of which the Eemshorn was formally undermanned or at least not correctly manned.

7. The disciplinary measure

The collision on 5 November 2018, which prompted this disciplinary case being brought, clearly demonstrates the importance to safety of proper compliance with the regulations governing keeping a proper lookout. This compliance and supervision was lacking onboard the Eemshorn. As master of the Eemshorn, the person concerned is subject to disciplinary action. His responsibility as commander for compliance with safety regulations does not end when he leaves the bridge to go to sleep. That he did not know about the practice mentioned by the mate, whereby the mate was alone on the bridge at night and did not call anyone up, has not been proven. Moreover, even if he did not know about it, that does not exonerate him, because he



has not succeeded in clarifying why he could not and should not have known about it if he had been sufficiently alert to the observance of the safety regulations. In this regard, compare the measures taken in the meantime to ensure proper compliance, listed below.

In view of the seriousness of the culpability for not having/keeping a proper lookout, a measure in the form of an unconditional suspension of the navigation licence for the duration initially proposed by the Inspector is, in principle, appropriate and proper. On the other hand, it may weigh in favour of the person concerned that the incident took place a long time ago and, importantly, that lessons were learned from it, among other things in the sense that explicit attention is now paid to the presence of a lookout during the hours of darkness and, in consultation with the ship's manager, (i) an extra 'deck rating' with competency II/4 is on board (defence document item 19) and (ii) sailing is started in the morning, as a result of which the mate can start work better equipped. Also, a specialised agency has been engaged to organise internal audits and provide guidance on compliance with safety regulations. These circumstances give the Disciplinary Court reason to impose – following the Inspector's proposal – a partial conditional disqualification.

Although the failure to comply correctly with the crew regulations applicable to the Eemshorn is also considered proven, in this case that allegation does not justify the imposition of a more severe or different measure because, materially speaking, the prescribed second 'deck rating' was indeed present.

8. The decision

The Disciplinary Court,

- upholds the Inspector's objections as set out in paragraphs 6 and 7 above;
- imposes the measure of suspension of the certification for a period of four (4) 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 (2) years;
- stipulates that the probationary period of the suspension shall commence on the date six (6) weeks following the date of this ruling being forwarded.

Duly delivered by J.M. van der Klooster, presiding judge, C.R. Tromp and O.F.C. Magel, members, in the presence of E.M. Dooting, LL.M., as secretary, and pronounced by J.M. van der Klooster, LL.M., in public session on 21 May 2021.

J.M. van der Klooster
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.