



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF
20 July 2022 (NO. 2 OF 2022) IN THE CASE 2021.V5– STAVFJORD**

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

R.S. T.,

the person concerned.

1. The course of the proceedings

On 08 November 2021, the Disciplinary Court received a written request for disciplinary proceedings from the aforementioned B.A.C van Geest against the person concerned as Chief Officer of the vessel Stavfjord, sailing under the Dutch flag. Twenty-five annexes were attached to the petition.

The Disciplinary Board subsequently notified the person concerned of the application, enclosing a copy of the petition and annexes. In English, and informing the party concerned that he had the opportunity to submit a defence. The petitioner did not make use of this option.

The presiding judge of the Disciplinary Court has ruled that the oral hearing of the case will take place on 25 May 2022 at 13:00 hours.



The Inspector and the person concerned were summoned to appear at the hearing of the Disciplinary Court. The summons of the person concerned was sent both by registered letter and by ordinary mail.

The court hearing was held on 25 May 2022. B.A.C. van Geest, as named above, hereinafter referred to as: the Inspector, appeared on behalf of the petitioner at the session.

The person concerned, although duly summoned, did not appear. Leave was granted to proceed in default of appearance against him.

2. Grounds

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

On 16 May 2021 at 04.34 ST the northbound motor vessel Stavfjord collided with the Danish fishing vessel Buster off Skagen. The Stavfjord sustained a few scratches on the starboard side of the hull. The Danish Buster was escorted to a shipyard; this ship had a leak on the bow. The Stavfjord anchored at Skagen roadstead pending an investigation by the Danish authorities. In the evening of 16 May 2021, the Stavfjord was allowed to sail again.

The accident was reported to ILT by the ISM manager and by the Danish Maritime Authority (DMA).

The Stavfjord (IMO number 9321380) is a Dutch Multi Purpose General Cargo vessel, belonging to Scheepvaartonderneming Stavfjord B.V. The ship was built in 2005, is 114 metres long and 15 metres wide. At the time of the accident, the crew consisted of nine people in total.

3. The Inspector's objections

According to the Inspector, the person concerned acted as Chief Officer on watch on board the Stavfjord 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:

- did not keep a proper lookout;
- despite the fact that he was obliged to give way, he did not follow the relevant rules of the COLREG;
- no measures were taken to prevent a collision;
- after the collision, did not reduce speed or turn around to reach the fishing vessel involved in the collision as quickly as possible.

The Inspector cites as the regulations not complied with:

- COLREG part B rule 5 – Look-out
- COLREG part B rule 7 – Risk of collision
- COLREG part B rule 8 – Action to avoid collision
- COLREG part B rule 15 – Crossing situation
- COLREG part B rule 16 – Action by give-way vessel
- COLREG part B rule 18 – Responsibilities between vessels
- STCW code part A Chapter VIII – section A PART 4 – WATCHKEEPING AT SEA.

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

4. The position of the person concerned

The applicant did not put forward any defence against the disciplinary charge made against him. He did make a statement at an earlier stage. It is quoted below.

5. The ruling of the Disciplinary Court

5.1 The means of evidence



- A. The statement of the person concerned dated 16 May 2021, in so far as it states:

"Around Voyage 424, underway from Kolding to Jelsa, I saw FV Buster from our stbd. side & was moving around 5 knots speed. I was keeping track on the radar and ECDIS. I was checking her coming fast & I was signalling her using daylight signal. I expected her to pass our stern (...). Unfortunately, around 0430H vessel collided with F/V Buster. Around 0435H I called her but they didn't respond. I'm in tense, & decided to call Capt. I received a call from Lyngby radio on VHF ch.16. and inform the situation and turned around to assist her. There was a communication between Danish Coast Guard & Danish Maritime via VHF. Capt. ordered to lower the MOB ready for rescue. Around 0510H we approach FV Buster and saw Danish Pilot orange vessel is assisting her. Communication was maintained. We waited for further instructions. At 0520H saw FV Buster & Danish Pilot boat are heading to shore. At 0555H, we are advised to proceed to Skagen anchorage by Danish maritime and wait for further notice."

- B. *Master's statement dated 16 May 2021, comprising: "The Ch. Mate called me from the bridge around 04:35 and asked me to come on the bridge immediately. When I came on the bridge, he explained to me that he was in contact with a small fishing vessel named Buster, 5 min before and the fishing vessel was sending out the Mayday. I tried immediately to make contact with the vessel but no response. I was in contact with the Lyngby radio and told them that we were going to assist the vessel in distress. Approximately 05:12 we were alongside the F/V Buster, we were ready to lower the MOB to the sea, but at the same time a fast craft rescue vessel arrived the F/V Buster with extra pumps. 05:45 we were informed that the F/V Buster was underway to the shore and the slipway, by his own engine, followed of the rescue vessel."*



- C. *The answers given by the party concerned to questions put by the Inspector, in so far as they contain:*
You saw fv Buster from your stbd.side (...)? – Yes I did.
(...)
What was the distance to the fv Buster when you first started plotting her? – Around 5nmiles.
Did the fv Buster change course and/or speed after the time that you plotted her first? – I don't think so ... But she was fast.
(...)
Was there except you, a lookout at the bridge? – It's just me when that happened.
(...)
Why did you not just give (fv Buster) way in time? – My stomach is aching at that time (...) Maybe I'm too over fatigue and tired at my stomach is aching.
(...)
Have you left the bridge before the collision, e.g. to visit the toilet? – Yes but not for so long. And I've told you I fell asleep maybe for 10 minutes that didn't get updated with what happened.
If Yes, how long did you stay at the toilet? – Around 3 to 5mins.
- D. *The master's answers to questions from the Inspector, in so far as they contain: "Was there a look out (AB) on the bridge during the collision? – There was no look out on the bridge during the collision.*
If not, why not? – He [TC: the "look out"] was sent down by the Ch. Mate to do some other duties and it was close to sunrise and daylight.
Was the Bridge Navigational Watch Alarm System (BNWAS) switched on? – (...) it was on when I left the bridge at 24:00 that night. Unfortunately, somebody switch it off, and I don't know who did it. (,,) I don't know, why it was off.
(...)
The Ch. Officer took over watch duty from the 2nd officer on May 16 at 04.00. Just about 35 minutes before the collision.



How was his physical condition like, that day and the days or weeks before, did he suffer from something as far as you know? – His physical condition was good, as far as I know. (...) When I came on the bridge, it was good visibility and not so much traffic around our vessel, the Ch. Off did not reduce the speed and continue with the same course and speed as before the collision. When I got the information about the collision and the Mayday from the fishing vessel, I immediately turned the vessel around and heading against the fishing vessel with full speed. I asked the Ch. Off why he didn't reduce the speed and why he didn't turn the vessel, but he couldn't answer it at that moment."

- E. *The answers of the Buster's skipper to questions by the Inspector, insofar as they contain: "1. Do you have a statement for me describing the events preceding the collision? – No, but there is a report in the Danish Maritime Authority says:*
- Course of events.*
- In connection with trawling, the trawl got stuck in an anchor hole, the owner raised the trawl, then he went into the wheelhouse and saw that was about 11 nautical miles to land, but due to restrictions from the Danish Fisheries Agency, the fishing vessel had to arrive only about 2 hours later to Strandby harbor, the ship's speed was adjusted so that the ship would arrive at Strandby harbor after the aforementioned time frame approx. 5–6 nautical miles per hour and nests orientated themselves on plots in a northerly and southerly direction, which are located in the wheelhouse. During flushing and cleaning of catch, the skipper was on deck in that connection he had a clear view to the north in case he had to go the way of other ships, similarly oriented also heading south, however, only superficially as northbound ships had to give way to him and he was in the process of cleaning the catch, so a little extra time passed this work before he got to see the plotter, which is located in the wheelhouse. During this time the ship collided with northbound cargo ship. As he assumed the stern had gone about him, but this was not the case and the bow of the ship struck the cargo ship*



- slightly in front of the centre starboard side. The mv Stavfjord was approaching from your port side.*
- 2. Have you plotted her on your radar? – Yes and on the AIS*
 - 3. If yes, what distance was there between the mv Stavfjord and the fv Buster when you start plotting her? – I don't remember*
 - 4. If you plotted her, what was the CPA and TCPA? – I didn't use CPA or TCPA – The OOW from the mv Stavfjord thought that the fv Buster would pass his stern.*
 - 5. Was the situation first like that, that you would pass the stern? – No*
 - 6. Have you changed course and/or speed some certain time before the collision? – No*
 - 7. From what distance have you kept course and speed before the collision to the moment of collision? – All the time*
 - 8. What speed did the fv Buster have when she kept her speed until the collision? – 7.1 to 7.4 kn from the AIS view.*
 - 9. Have you had radio contact with the mv Stavfjord before the collision? – No (...)"*

5.2 Considerations

1. 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.

At 04.00 ship's time the person concerned took over the watch from the second mate. The vessel was sailing on a virtually northerly course. At approximately 04.10 ST the person concerned saw the fishing vessel Buster approaching on the starboard bow. The person concerned was monitoring the Buster on the radar and the Ecdis. When the Buster was about five miles away, they began to plot. The person concerned thought that the Buster was doing about five knots and assumed that the Buster would not change course. The person concerned expected Buster to pass behind the Stavfjord.



The Buster had got caught up in the fishing net. After pulling up the net, the Buster was about eleven miles offshore. The Buster was due to arrive in Strandby Harbour about two hours later, so the speed was adjusted to five to seven knots. The Buster maintained a west-southwest course for at least 12 minutes before the collision until the collision occurred. The skipper was on deck at the time cleaning the catch. He had a clear view to the north, in case he had to give way to other ships from that direction. He looked superficially to the south, because ships from that direction had to give way to him.

At approximately 04.34 ST the Buster struck the Stavfjord with her bow on the starboard side, fore amidships. No lookout was posted on the bridge at that time. The person concerned was suffering from abdominal pain and had gone to the toilet before the collision and stayed there for three to five minutes. He fell asleep for ten minutes. When the master came on the bridge after the collision, the Stavfjord was still sailing the same course and speed as before the collision. The Stavfjord did not go round to offer assistance until 04.47 ST.

2. As the chief officer on watch, especially with the fast-moving Buster in sight, the person in question should have kept a good lookout, given way, taken measures to prevent a collision and, after the collision, gone round to give assistance to the Buster. He has been negligent on all these points. After the collision, he did not reduce speed or provide immediate assistance to the fishing vessel.

This incident confirms again that keeping a good lookout and continuing to follow the started radar plot are a must. The absence of a navigator on the bridge is to be avoided at all times during close encounters. The 'Colregs' regarding the duty to divert should also be strictly adhered to, even in case of any doubt or tight CPAs (closest point of approach).

3. The conduct/negligence of the person concerned – which has not been shown to be unattributable, constitutes a culpable 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 Chief Officer contrary to the duty of care expected of a good seaman in relation to the persons on board, the ship, the cargo, the environment and shipping traffic. That action was taken contrary to the international rule cited by the inspector has also been sufficiently established.

5.3 The disciplinary measure

The Disciplinary Court judges that the person concerned seriously failed in his responsibilities as Chief Officer, which resulted in the collision. These are gross errors; reckless sailing behaviour and a gross disregard of the responsibilities as an officer of the watch.

In view of the seriousness of the conduct observed, a suspension of the navigation licence for a period to be indicated and a fine of the amount indicated are appropriate. This penalty is more severe than the one proposed by the Inspector. This is linked to the seriousness of the omissions. The fact that no personal injuries occurred and that the damage was limited was one of the factors taken into account in favour of the party concerned.

Furthermore, the answers given by the person concerned to the questions posed by the Inspector show that he is aware of the error of his ways.

6. The decision

The Disciplinary Court,

- rules that the complaint against the person concerned is well-founded;
- suspends the navigation licence of the person concerned for a period of 6 weeks;
- imposes a fine of € 2,000.00 on the person concerned, with the stipulation that this fine must be paid within three months from today.

Duly delivered by J.M. van der Klooster, presiding judge, C.R. Tromp,



H. van der Laan, members, in the presence of V. Bouchla, LL.M., as secretary, and pronounced by J.M. van der Klooster, LL.M., in public session on 20 July 2022.

J.M. van der Klooster
presiding judge

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.