



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF
11 NOVEMBER 2022 (NO. 3 OF 2022) IN THE CASE 2022.V2-BEAUMAIKEN**

As petitioned by:

the Minister of Infrastructure and Water Management
in The Hague,

petitioner,

authorised representative: K. van der Wall,
senior inspector ILT/Accident investigation shipping and administrative
inspections, Zwijndrecht, the Netherlands,

versus

P. V.,

the person concerned,

lawyer: J.M. de Boer.

1. The course of the proceedings

On 16 February 2022, the Disciplinary Court received a written request for disciplinary proceedings from the aforementioned K. van der Wall against the person concerned as captain of the vessel Beaumaiden, sailing under the Dutch flag. Forty-six 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.

On 30 March 2022, a statement of defence was received from the person concerned.



The presiding judge stipulated that the oral hearing of the case will be held at 11.00 hours on 16 September 2022 at the offices of the Disciplinary Court in Amsterdam.

The court hearing was held on 16 September 2022. Inspector Ing. K. van der Wall as named above and B.A.C. van Geest, senior inspector ILT/Accident investigation shipping and administrative inspections, Zwijndrecht, appeared at the hearing for the petitioner.

The person concerned appeared at the hearing, represented by counsel.

2. Grounds

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

On Monday, 18 October 2021, at about 3:27 am LT, the ship *Beaumaiden* ran aground near the Danish island of Bornholm. The shipping company reported this grounding to the Inspectorate on the same day (Annex 5 to the petition). The vessel was fully loaded with fertiliser and had a maximum draught of 5.50m.

The person concerned was on watch on 17 October 2021 from 20:00 to 24:00. There was no lookout on the bridge during this period. Between 19:00 and 21:00, the person concerned drank about a litre of wine. Around 23:40, he went to the toilet in his cabin. He then lay down on his bed and fell asleep. He did not call the 3rd mate to wake him for his watch from 00:00 to 4:00. The ship sailed for about four hours with an unmanned bridge, on autopilot, before grounding off Bornholm, at a speed of 10 knots.

The *Beaumaiden* (IMO number 9401257) is a Dutch General Cargo vessel owned by Valparola *Beaumaiden* B.V., managed by shipping company Vertom.



Built in 2008, the vessel is 88.6 metres long and 12.5 metres wide and has a cargo capacity of 3,800 tonnes. At the time of the accident, the crew consisted of seven people in total.

3. The Inspector's objections

According to the Inspector, the person concerned acted as captain 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).

More specifically:

1. the person concerned consumed a large quantity of alcohol, both prior to and during his watch; this amounted to approximately one litre of wine;
2. the person concerned did not provide a proper lookout during the hours of darkness, neither during his own watch nor during the other watches during the hours of darkness;
3. the person concerned had switched off the BNWAS, or left it switched off because it is "annoying having to press a button every few minutes";
4. the person concerned left the bridge unmanned on at least two occasions during his watch;
5. the person concerned did not return to the bridge the last time, leaving the vessel sailing for about four hours with the bridge unmanned;
6. the grounding at Bornholm finally took place as a result of the situation described above;
7. the person concerned falsely completed the work and rest hour lists of the lookouts;
8. the person concerned committed forgery in the *Statement of Facts* he prepared;
9. the person concerned did not complete the ship's logbook during his watch;



10. the person concerned was unable to properly perform the listening watch on VHF channel 16 as he was listening to music at very high volume on the radio.

The Inspector cites as the regulations not complied with:

- COLREGs, regulation 5 – Lookout
- SOLAS Annex Chapter IV. Radio communications, Article 12. Radio watches
- Seafarers Act, Section 4.5
- Seafarers Act – Article 59b
- Ships Act – Article 4(1k)
- Ships Act – Article 9(2)
- Transport Working Hours Decree, article 6.4:2, paragraph 1
- Commercial Code, second book, third title

The demand (amended at the hearing) is to impose a 9-month unconditional suspension of the navigation certificate and 6-month conditional suspension of the navigation certificate on the person concerned and to enforce the outstanding 4-week conditional suspension of the navigation certificate imposed on the person concerned in case 2019.V1.

4. The position of the person concerned

At the hearing and in the statement of defence (Annex 6 to the petition), the person concerned acknowledged all the objections raised by the inspector, except for the objection concerning forgery in the *Statement of Facts* written by him.

It is unclear to the person concerned to what extent he performed his duties after taking over the watch. According to the person concerned, the grounding of the *Beaumaiden* resulted from a failure to navigate. At the time of the grounding, he was in his cabin. He had not woken his relief. The person concerned assumes that he lost his orientation due to drinking.



The person concerned asks that account be taken in the ruling of the fact that he followed a treatment programme for his alcohol problem when he returned home and that he has since completed that programme.

Counsel for the person concerned indicated that he felt compelled to draw additional attention of both the Disciplinary Court and the inspector to "the deliberate indifference of a large segment of the maritime sector to legal requirements, such as posting a lookout and activating the watch alarm".

Counsel for the person concerned further argues that putting "what is expected" in writing and signing for "truthfully completed" and "agreement" is commonplace. According to counsel, "people (at all levels) feel compelled to deliberately commit forgery because the culture on board requires it (via the culture in the industry)".

Counsel for the person concerned asks the inspector to use the present case to draw attention to this situation within his own ranks and suggests that the Disciplinary Court should do so through rulings and publications.

5. The ruling of the Disciplinary Court

The means of evidence

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

- A. The admission of the person concerned under 4. and his statement at the hearing, in so far as it contains: "I was on the bridge until after 23.30 hours, monitoring the radar. I was mostly on the phone with all sorts of people because I was drunk. I can't tell you much else about that watch. I was alone on the bridge. The seaman with the watchkeeping duties was in bed. The watch alarm was switched off. I listened to the VHF channel. Channel 16 was on standby. The TSS was probably also on standby (the Disciplinary Court understands that VTS is meant here). Music was playing. While making phone calls, its volume must have been low, otherwise, you can't make calls. I remember going downstairs to the toilet a little after 23.30 hours. I



know this because I spoke to a friend at the time. After that, I don't remember anything.

I did not fill in the logbook because I was drunk.

At first I thought I had called the third mate. Then I changed my mind and concluded that I had not called him.

I find it shocking and embarrassing that after the case with the Alana Evita, I am now facing the Disciplinary Court again. I completely changed course last October. I am now a different person and have been substance-free for a year. I don't drink, I don't smoke and I started cycling fanatically, including three-and-a-half months to Santiago de Compostella and back again. I contacted addiction services and followed a treatment programme.

I am not working at the moment. I was approached by an general doctor who said I should see a medical examiner. The medical examiner withdrew my health certificate and I was not allowed to sail for a year. I threw myself fully into recovery, which was necessary. The rehab programme has come to an end. I had been in regular contact with my treating practitioner during my trip to Santiago, and I still attend AA every week. That will continue all my life. Everything was voluntary, and I stand fully behind it. Strangely enough, I now feel better than ever. Especially physically. I'm just clear-headed now.

I have not heard anything more about the prosecution in Denmark.

My health certificate was withdrawn, which means you cannot sail. I didn't get to sail for a year. I did however need that time for recovery.

When I landed at Schiphol Airport, alarm bells went off in my head because I had to pay the mortgage. I then applied for a service book for inland navigation. But now I can see the absurdity of that. I don't have a certificate of competence for large vessels. If need be, I will work as a seaman.

I never felt there was too little crew on board. This is because it is common that there is no watchkeeper on board. If you don't have a watchkeeper, you do have enough people (the Disciplinary Court understands that lookout is meant here).



I did not report to the shipowner that there were not enough people because it has been like this since the beginning of my sailing career. It is business as usual. Something that is normal is not going to be reported.

I signed for the *Master's Standing and Night Orders* on board the *Beaumaiden*. I have seen the manual. It was a huge stack. I didn't go through all the documents. Normally, it is one page A-4 mounted on the bridge. On *Beaumaiden*, it was quite a package.

On board, I have never used drugs. In my spare time, I did. On board, I drank alcohol and fell into my old pattern at home. I think I drank two or three times a week on board.

You read a statement from a crew member. I do not know whether I'm unpleasant when I drink. I'm always very full of myself. I am not aware of that. I thought they always thought it was fun on board, but apparently not.

Contrary to what I stated, I had only channel 16 on, not TSS (the Disciplinary Court understands that VTS is meant here). I was confused.

I visited the medical examiner twice. I have agreed with him that I will contact him again after this hearing. It depends on the verdict of the Disciplinary Court whether I will apply for a new health certificate and undergo a medical examination. I am now wholly sober and will remain so. It wasn't easy at first, but I am fully behind it, and I keep working on it and go to AA every week. I also followed online meetings during my trip when I was cycling. It went pretty smoothly, but you have to stay alert as an addict. Attending meetings online is going well. I am not afraid of being tempted again. I lived in a kind of haze for years. I only went to the pub. Now I am clear-headed and active and doing sports. I won't go back to the way it was.

The programme at Castle Craig has been completed. A fortnight ago, we had the last email exchanges and it ended. They said if you have any questions, you can always email. Back in May, they said I could go cycling because they had told me everything they wanted to tell me



and that I picked up everything very quickly and cooperated fully. We emailed a few times while cycling, and I had a YouTube channel they followed. At the end of May, they said I no longer needed to come every two weeks. I had two group meetings and one individual meeting. This stopped in May.

My drinking is unrelated to the shipping industry. My drinking increased when there were no longer Dutch people on board, but I always drank.

After being dismissed, I received sickness benefits and started working on my addiction problem. That will stop because now the treatment process is at an end. I had burnout symptoms related to no longer using. Being sober, I started to realise more and more what had happened. I now live in uncertainty. I don't know what I will do when I stop receiving sickness benefits. I hope to sail again, but I don't know what form that will take yet. If the demand is accepted in full, I will have to look for other work. I had hoped it would be a fine. I still have to pay the mortgage. The house is my pension."

- B. Respondent's *Statement of Facts* dated 18 October 2021 (Annex 10 to the petition), which reads: "I drunk about 1 litre of wine between 19:00lt and 21:00lt. This is the main reason of the accident.17/10/2021
20:00lt My bridge watch started
18/10/2021 24:00lt End of my watch, and let the phone ring twice of 3rd mate and went directly to sleep without waiting for him
18/10/2021 03:15lt Chief engineer is the one who noticed something was wrong and found an empty bridge and the vessel aground
18/10/2021 03:30lt 3rd officer wake me up.
18/10/2021 03:45lt first contact on vhf with shore
18/10/2021 04:15lt all soundings completed
18/10/2021 06:00lt Police came on board and conducted alcohol test



18/10/2021 06:30lt I disembarked with the police to give blood and give a statement about the events mentioned above.

18/10/2021 12:00lt back on board”

- C. De *Statement of Facts* of the Chief Engineer, dated 18 October 2021(annex 11 to the petition), which reads: “During night time I feel some knock and immediately went to the poop deck for check what happened, after looking around I found that the ship is grounded and propellor working full ahead. After that I went to the bridge and I found nobody was there, I changed the position of handle pitch from full ahead to zero. Then proceed with calling the chief officer and inform him that the vessel is aground. Later I inspected and sounded all fuel tanks in engine room for any damages and leakage and I changed Electric power supply from shaft generator to auxiliary engine. After that I went to the bridge and noticed that the time was 03:45LT 18/10/2021 (before I didn’t look at the clock and didn’t know what time the ship got grounded). Master, Chief Officer, Third Mate was on bridge when I come back from engine room. 18/10/2021 at 04:00LT I stopped Main Engine.”

The *Statement of Facts* of the Chief Officer dated 18 October 2021 (Annex 12 to the petition), which reads:

“17/10/2021 20:00 LT After completed watch was handover to the Master and leaved the bridge

17/10/2021 21:30 LT going to sleep

18/10/2021 03:20 LT Chief Engineer knocking and call me in my cabin, I following to the Bridge but nobody find on watch and observed the vessel is aground. After that calling Third Officer for going to the bridge and together with AB and OS we are sounding all ballast tanks and deep around the vessel

18/10/2021 03:35 LT All Crew wake up.



18/10/2021 03:45 LT first contact with shore on channel 16 after ch. 04

18/10/2021 04:15 LT soundings: all ballast tanks bilges and around the vessel completed. (...)"

D. The *Statement of Facts* by Third Officer, dated 18 October 2021 (Annex 13 to the petition), which reads:

"17/10/2021 16:00LT Finished with my watch was handover to Chief Officer and leaved the bridge.

17/10/2021 17:00 LT Changed Chief Officer on the bridge for a few minutes for him to eat his dinner

17/10/2021 17:25 LT Chief Officer came back to the bridge and I leaved him after in the bridge.

17/10/2021 20:00 LT I went to sleep

17/10/2021 24:00 LT I didn't heard any telephone call ringing from the bridge because Captain always call me 10-15 mins before my watch. I had a deep sleep.

18/10/2021 03:15 LT We went aground Bornholm Island. Position: 55° 08.89' N 014° 41.82' E

18/10/2021 03:35 LT Chief Officer knocked on my door and also all crew waked up.

18/10/2021 03:45 LT first contact with shore on channel 16 after ch.04

18/10/2021 04:15 LT soundings: all ballast tanks bilges and around the vessel (...)"

E. The email dated 26 October 2021 containing questions from the inspector and the answers from the person concerned (Annex 38 to the petition):

1. What time did you eat in the evening? 17:30
2. Did you eat in the company of other crew members? yes
3. If so, with whom? Third officer
4. Were alcoholic drinks consumed during dinner? no



5. In the *'Captain's Statement'*, you write that you drank about 1 litre of wine between 19.00–21.00h. Is that correct? approximately, it was an opened 3 litre pack of wine, it may have been a bit more
6. Did you consume other alcoholic beverages in addition? If so, which and how many? no
Your watch started at 20.00 hours.
7. Where did you drink wine between 19.00–20.00 hours? cabin
8. How was the transfer of watch between the first mate and yourself? smooth
- a. Among others, What information did you exchange? position, ships around us, radar settings, that was about it
9. Did you take the (bottle of) wine with you to the bridge? no, I still had a poured glass in my cabin
10. And did you drink any wine during your watch (between 20.00–21.00h)? I picked up that poured glass at 20:05, I still drank it, estimate it was empty around 2100hrs
11. Was there a lookout on the bridge at the end of the first mate's watch? After all, it gets dark as early as around 18.00 hours LT. no
12. If so, who?
13. Was there a lookout on the bridge during your watch? no
14. If so, who?
15. If not, why not? We never have a lookout on the bridge, only on paper, if we did it officially there would be no time for maintenance.
16. How would you describe the interaction between the various crew members (including yourself)? Not unpleasant, everyone did their job. But it wasn't exactly fun.
17. Did you have the bridge watch alarm (BNWAS) on? If not, why not? it was unfortunately off, purely for the reason that it is annoying to press a button every few minutes
When you had called the 3rd mate to wake him up for his watch, you left the bridge without waiting for his arrival.
18. Why didn't you wait until he was on the bridge? I didn't call him. I went to the toilet in my cabin around 23:40 and got into bed drunk.



19. Was there any other shipping traffic in the area when you left the bridge? a few vessels sailing in the same direction

20. What are your Master standing orders / Master night orders on board the Beaumaiden? That was quite a big book, I had never seen anything like that before.

21. What did you do / what actions did you take after being woken up by the 3rd mate (after grounding)? try 100% reverse for about a minute. Then engine off and we went to do soundings
You were taken off board after the grounding by Danish police to undergo a blood test for alcohol.

22. Did the Danish authorities take any action against you? under arrest then released again I was ashore between 06:00 and 12:00. A charge was brought against me but I denied it

23. If so, which one? see above"

- F. The email dated 9 November 2021 containing questions from the inspector and the answers the Chief Officer (Annex 26 to the petition):
- "1. In the statement of the third officer I can read that he took over your watch, so you could have your dinner between 17.00–17.25h. Is that correct? // Yes!
2. Did you have your dinner in company of other crewmembers? // Yes!
3. If yes, who? // with Chief Eng., AB, OS and Master

At 20.00h you handed over the watch to the captain and you left the bridge. In the captain's statement, he writes that he drank wine between 19.00 and 21.00h. That means: before and also during his watch.

4. When you handed over the watch, did you notice that the captain had drunk wine / alcoholic drinks? // No alcohol smelled. Captain was in adequate condition, because I spoke to him during hand over of the watch

5. Did you see whether the captain had brought a bottle of wine (or other alcoholic drinks) to the bridge? // No, I didn't see that he bring some alcohol on the bridge



6. At 20.00h, it is already dark. Did you have a lookout on the bridge?
// yes, additional lookout was on the bridge
 7. If yes, who? // lookout watch keeping performed by AB/Cook
 8. And at what time did the watch of this lookout end? // from 16:00 till 20:00 (during dark time)
 9. If no lookout, why not? // n/a
 10. Was the BNWAS–system activated during your watch? // Bridge Navigation Watch alarm system was not in use
 11. Have you noticed whether other crewmembers, besides the captain, also took alcoholic drinks? // No, nothing recognised from my side
 12. The Chief Engineer woke you up, when he found out the vessel was grounded and the bridge was unmanned. Do you know why he woke up you, instead of waking up the captain? // maybe C/E trust me more instead of Captain
 13. You woke up the 3rd Officer. Why did you not wake up the captain?
// because it was watch of third Officer and I was afraid something was wrong with him
 14. When you came on the bridge, after the grounding, did you hear any alarms? // Yes, alarm sounds from VHF, ECDIS and Radars. The music on Bridge found on full volume
 15. If yes, which ones? // VHF, ECDIS and both Radars
 16. How was the relation on board between the crewmembers (incl. captain)? // friendly atmosphere o/b”
- G. The email dated 9 November 2021 with questions from the inspector and the answers from Mr Rachok, Chief Engineer (Annex 27 of the petition):
- “You were the first one who took action after the grounding. You went to the poopdeck and later to the bridge.
- In your statement you have written that you went to bed at 23.45h.
1. What did you do earlier that day and evening? Please, describe as detailed as possible, what you remember of that day and evening. // below the jobs during the day:



17.10.2021:

(...)

12:00 I have lunch with Master and Chief Mate.

From 13:00 to 17:00 I was in Engine Room and condition room and make daily jobs.

17.20 I have lunch but I do not remember who was there. After lunch, I was in cabin.

20:00 I go to engine room for start separator

22:00 I go to stop fuel separator, when I go to engine room I meet Third mate and I noticed that he has red eye.

23:45 I go to sleep.

Maybe in this day I prepare report to Superintendent about Main Fire pump, it can be checked in ship mail.

2. Have you accompanied the captain on the bridge during his watch from 20.00–

24.00h? // No.

3. If yes, during which time? // n/a.

4. Did you know the captain drank wine just before/during his watch that evening?

// No.

5. Have you noticed whether other crewmembers also took alcoholic drinks? // No.

6. When you found the bridge unmanned (after the grounding), you woke up the Chief Officer. Why did you not wake up the captain? // Because Captain's cabin door was open and I expected him already on the bridge (usually everybody will close his cabin door once he will take rest)

7. When you came on the bridge, did you hear any alarm? // yes, VHF, Radar, ECDIS alarms. Bridge Radio was on (full volume).

8. If yes, did you accept them, to turn them off? // only VHF alarm switched off.

9. How was the relation on board between the crewmembers (incl. captain)? // friendly.”



- H. The email dated 9 November 2021 containing questions from the inspector and the answers from 3rd Officer (Annex 28 to the petition):
- “1. At what time did you have your dinner? // at 17:30h
 2. Did you have your dinner in company of other crewmembers? // No
 3. If yes, with who? // n/a
 4. Did you drink alcoholic drinks during dinner? // No
 5. And the other crewmembers? // No
- In the captain’s statement, he writes that he drank wine between 19.00 and 21.00h.
- In your statement, you write you went to bed at 20.00h.
6. Have you noticed that the captain drank wine or other alcoholic drinks? // Yes, I recognized that he is drinking wine
 7. Do you normally have a lookout on the bridge during your watch from 00.00–04.00h? // Normally not
 8. If yes, who? // n/a
 9. If no lookout, why not? // System of the vessel and the Captain decide without Look out
 10. Have you noticed whether other crewmembers, besides the captain, also took alcoholic drinks? // No
 11. The Chief Officer woke you up, when he found out the vessel was grounded and the bridge was unmanned. Do you know why he woke up you, instead of waking up the captain? // No
 12. In the captain’s statement, he writes that you woke him up. Did you decide yourself to wake up the captain? // Yes
 13. Or did you receive an order to do so? If yes, from who? // No
 14. How was the relation on board between the crewmembers (incl. captain)? // During normal days when Captain is not drinking alcohol it is ok. Not like in a very good relationship but in general everything is going well o/b (relation between Captain and Crew member). Sometimes the Captain is shouting (groundless), for him it’s a joke but of course some crew member are afraid and surprised about this behavior.



What is really annoying for everyone is that he is drinking above the limit of what his body can carry and then he is trying to knock everyone on their cabins just to drink with him and most of the time the crew don't like to join him. The relationship between Crew and Captain is great until captain starts drinking again. No conflict between the crew member."

- I. The email dated 25 November 2021 with additional questions from the inspector and the answers from the person concerned (Annex 41 to the petition):
- "1. Have you discussed with Vertom that there is insufficient crew on board to perform all tasks (such as maintenance and lookout)? No that has not been discussed
2. If so, what response have you received?
3. If not, why not? Because from my point of view, there was never any feeling that there was insufficient crew.
By administratively registering the lookout on the bridge but not having one in reality, you are committing forgery.
4. Why did you do that? I never realised this
5. Did Vertom instruct you to do this? No
6. Or are there other reasons? If so, which? No
- The first mate replied that he had a lookout on the bridge, namely the cook/AB.
7. Can you explain why the first mate gave this answer? If so, how?
No I can't explain that
8. Since when did you sail on the Beaumaiden? 03 September 2021
9. Was this your first voyage on the Beaumaiden, or had you sailed on this vessel before? First voyage
10. Do you have any further comments / want to explain anything further to this grounding?"
- J. The incompletely filled-in ship's log dated 18 October 2021 (Annex 18 to the petition).



- K. The Inspector's email of 18 October 2021 with questions to the shipping company and the email of 19 October 2021 with the shipping company's answers to these questions (Annexes 6 and 7 to the petition) in which the following is described:

"2. Who was the officer of the watch?"

"2. It was the watch of the 3rd officer (unfortunately he didn't wake up. Means the bridge was unattended)"

"3. Who was the lookout?"

"3. NIL"

"4. Where any other persons on the bridge? If yes, who?"

"4. No"

- L. The Report of Inspection of the Danish Maritime Authority in which the following is written (Annex 21 to the petition): "According to interview with crew bridge watch lookout was often sent down for rest. Rest hour sheets do not reflect this statement."

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"Rest hour sheets for the crew do according to interview not reflect the actual working hours."

The considerations

The Disciplinary Court starts by stating that the person concerned has an exemplary role as captain and must therefore refrain from consuming alcohol before and during watchkeeping and navigation of a ship. He must comply with legal regulations and the shipping company's regulations aimed at preventing accidents such as grounding. Under Section 59b of the Seafarers Act, a captain is – in short – prohibited from performing his duties under the influence of alcohol. Shipping company Vertom's *Integrated Management Manual* (Annex 30) contains information about the alcohol policy on board: "It has to be strictly adhered to the Vertom Bereederungs GmbH & Co. KG rule that once being on watch zero alcohol is contained in blood volume".



In this case, the following has been shown (with a sufficient degree of certainty).

The person concerned drank about a litre of wine before and during his watch on 17 October 2021. The person concerned did not have the BNWAS on because he found it annoying to press a button every few minutes. The person concerned was talking on the phone and listening to music, which prevented him from adequately performing the listening watch on VHF channel 16. The person concerned failed to post a proper lookout during the hours of darkness. The person concerned left the bridge unmanned on at least two occasions during his watch. The last time he left the bridge he did not return but went to his cabin and fell asleep there. He did not wake up his relief. As a result, the Beaumaiden sailed for about four hours in busy waters with an unmanned bridge and eventually ran aground near the island of Bornholm on 18 October 2021.

Furthermore, the work and rest hour lists of the lookouts were incorrectly filled in and the ship's logbook was not completed during the watch of the person concerned.

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 captain 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.

By not keeping watch and not navigating due to drunkenness, the person concerned seriously endangered the safety of those on board and shipping traffic and left the vessel and cargo to their fate. Had the ship and another vessel approached each other on intersecting courses, this could have had disastrous consequences even before grounding.

Counsel for the person concerned sought to argue that the person concerned acted in this way because he felt compelled to do so by "the culture in the industry", but there is no evidence of this.



The Disciplinary Court understands that counsel wants to broaden the case and draws attention to the correlation between crew size, watchkeeping, lookout and rest hour records. In this regard, counsel points to the "indifference of a large segment of the maritime industry to legal requirements". According to counsel, "it is more the rule than the exception that the lookout is posted on paper but is not present in practice". The inspector also refers in the petition under "Consideration of responsibilities" to the Transport Working Hours Decree (article 6.4:2 paragraph 1 keeping time sheets) and to the Commercial Code (second book, third title article 343 paragraph 2 adequately manned vessel).

The Disciplinary Court does not address that issue because in this case there was no violation of the safe manning regulations (even according to the person concerned), but rather a drunken captain who failed in his duty to keep a proper lookout.

The relevant objections by the inspector in this regard (which are all objections except objection number 8) are well-founded.

Objection number 8 is unfounded. The person concerned falsely stated in the *Statements of Facts* based on the log of 17 and 18 October, the day of the grounding, that he called the third mate at the end of the watch of the person concerned. However, the person concerned acknowledged in his statement dated 26 October 2021 that he did not call the third mate. The Disciplinary Court considers the inaccuracy in the first statement, also given the circumstances in which the person concerned gave that first statement, adequately rectified in his statement of 26 October 2021.

The disciplinary measure

The Disciplinary Court finds that the person concerned has been extremely seriously negligent in his responsibilities as officer of the watch and his duties as captain, resulting in grounding.

Through his extremely blameworthy behaviour as officer of the watch and captain while the ship was in busy waters and the grounding it caused, the



person concerned put his crew, the ship, the cargo, shipping traffic and the environment in great danger.

The measure demanded is not sufficient in view of the extent to which the attitude and conduct of the person concerned played a decisive role in the violation of the standard. As a result of the drunkenness of the person concerned prior to the grounding during his watch, in violation of the law and the rules of the shipping company, he failed to properly perform his duties and responsibilities as an officer of the watch, if at all, resulting in a grounding. The person concerned, as captain, should set a good example to the crew. The consumption of alcohol by the person concerned in his role as captain led to an unsafe social climate on board for at least some of the crew, even before the incident. In view of the seriousness of the conduct of the person concerned the Disciplinary Court considers it right and proper to suspend his navigation certificate for two years.

The Disciplinary Court notes that the person concerned may still be prosecuted in Denmark. It also takes into account the fact that the person concerned has been dismissed from his job and the fact that the person concerned followed a course of treatment for his alcohol addiction after the incident.

Since the person concerned has, before the end of a probationary period, which was set at two years by the Disciplinary Court in case 2019.V1 (Alana Evita) on 20 November 2020, once again behaved contrary to his duty of care as a good seaman towards those on board, the ship, the cargo, the environment or shipping traffic, the Disciplinary Court imposes unconditionally the conditional four-week suspension of the navigation certificate still outstanding from that case.

It is good to hear that the person concerned has completed rehab. However, the Disciplinary Court does not see this as a reason to rule otherwise in view of the seriousness of the conduct, the fact that the person concerned was at fault again after the measure imposed on him in the Alana Evita case, and the



dangers to which the person concerned exposed the crew, ship, cargo, environment and shipping traffic as a result of his conduct.

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:

1. The safety of the ship and its crew requires social safety on board. Shipping companies must make it possible for crew members to report complaints, if necessary outside the captain, to a trusted person or the Inspectorate. They must inform crew members of this possibility, as prescribed in Standard A5.1.5 *On-board complaint procedures* of the Maritime Labour Convention. It is recommended that this complaints procedure be visibly posted in places on board accessible to all crew members.
2. The legal prohibition against performing duties on board while under the influence of alcohol in connection with the safety and security of the ship and the protection of the marine environment must be respected. It is recommended that shipping companies adopt a policy of not allowing alcohol consumption on board even outside the performance of these duties, or only to a very limited extent.

7. The decision

The Disciplinary Court,

- declares objection number 8 raised against the person concerned to be unfounded;
- declares the remaining objections well-founded;
- suspends the navigation certificate of the person concerned for a period of two years;



- orders the enforcement of the decision of 20 November 2020 in case 2019.V1 (Alana Evita) suspending the navigation certificate for a period of four weeks.

Duly delivered by W. van der Velde, presiding judge, T.W. Kanders, R.E. Roozendaal, C.R. Tromp and A.J. de Heer, LL.M, members, in the presence of Mr V. Bouchla, LL.M., as secretary, and pronounced by P.C. Santema, LL.M., in public session on 11 November 2022.

W. van der Velde
presiding judge

V. Bouchla
secretary

P.C. Santema
presiding judge

V. Bouchla
secretary

An appeal against this ruling, except for the execution of the previous ruling, can be lodged within six weeks of the date of forwarding with the Dutch Trade and Industry Appeals Court ('College van Beroep voor het Bedrijfsleven'), Prins Clauslaan 60, 2595 AJ The Hague, P.O. Box 20021, 2500 EA The Hague, the Netherlands.