



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF
23 DECEMBER 2022 (NO. 6 OF 2022) IN THE CASE 2022.V1 – EEMSLIFT
HENDRIKA**

As petitioned by:

the Minister of Infrastructure and Water Management
in The Hague,

petitioner,

authorised representative: B.A.C. van Geest,
senior inspector ILT/Accident investigation shipping and administrative
inspections, Zwijndrecht,

versus

D. W.,

the person concerned.

1. The course of the proceedings

On 7 February 2022, the Disciplinary Court received a written request for disciplinary proceedings from the aforementioned B.A.C. van Geest against the person concerned as captain of the vessel Eemslift Hendrika, sailing under the Dutch flag. Forty-four 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.

No statement of defence has been received from the person concerned.

The presiding judge stipulated that the oral hearing of the case will be held at 11.00 hours on 11 November 2022 at the offices of the Disciplinary Court in Amsterdam.



The court hearing was held on 11 November 2022. The aforementioned Inspector B.A.C. van Geest appeared for the petitioner at the hearing.

The person concerned also appeared at the hearing.

2. Grounds

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

On Monday, 5 April 2021, the Eemslift Hendrika was en route from Bremerhaven to Kolvereid (Norway) in stormy weather. She was sailing along the Norwegian west coast off Ålesund. On deck there were two catamarans, a yacht, a sailing yacht and a large fishing boat. The cargo in the lower hold consisted of a catamaran and six Azipod thrusters. The bad weather caused the ship to jolt and sway heavily, exerting acceleration forces on the cargo. 3 of the 6 Azipod thrusters started shifting. This eventually caused a couple of filled ballast water tanks to leak from the hold. A large amount of ballast water (120 – 300 m³) entered the bilge and moved there as a free liquid surface. The catamaran in the bilge also shifted. The free liquid surface and the sliding cargo drastically reduced stability, and the decision was made to abandon ship. The crew had to abandon the ship in stormy weather conditions. Eight of the 12 crew members were evacuated from the aft deck by a Norwegian Coast Guard SAR helicopter at around 12 noon. The captain, first mate, chief engineer and CSI (Cargo Super Intendent) remained on board to try to stabilise the situation. At about 6.30pm, it was decided that they too would be evacuated. The bad weather made it impossible to pick up these crew members from the aft deck. They had to jump into the sea, where they were picked up by the SAR helicopter. Later, the large fishing boat also broke from its lashings and slid off the deck into the sea, severely damaging items, including one of its boarding cranes. The Eemslift Hendrika was taken into tow by salvagers a few days later. This prevented an environmental disaster.



The Eemslift Hendrika (IMO number 9671486) is a Dutch general cargo vessel sailing for Amasus Shipping of Delfzijl.

Built in the year 2015, the vessel is 111.6 metres long and 16.8 metres wide and has a cargo capacity of 4200 tonnes. At the time of the accident, the crew consisted of twelve 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).

The objection against the person concerned consists of the following elements:

1. Aware of the expected stormy weather en route, the person concerned left Bremerhaven with project cargo instead of staying temporarily in port until the weather on the route had improved.
2. Once underway with project cargo and deteriorating weather, in line with the weather forecasts, the person concerned still decided against sailing inland into the Norwegian fjords or looking for a sheltered place there.
3. The above ultimately led to all crew members abandoning ship, putting them seriously at risk.
4. Also, the ship and cargo suffered significant damage.

The Inspector cites as the regulations not complied with:

- Ships Act – Article 9 (1.1)
- The Dutch Commercial Code, Article 343(1)
- SOLAS Chapter V – Safety of Navigation – reg 34
- SOLAS Chapter V – Safety of Navigation – reg 34-1
- SOLAS Chapter VI – Carriage of cargoes and oil fuels – reg 5
- CSS (Code of Safe Practice for Cargo Stowage and Securing)



- MSC.1/Circ.1228 – revised guidance to the master for avoiding dangerous situations in adverse weather and sea conditions

The demand is to suspend the navigation licence of the person concerned for 8 weeks, 4 of which conditionally.

4. The position of the person concerned

At the hearing, the person concerned refused to comment any further on the first objection. When asked about this in writing by the inspector, he explained that the first few days' weather was forecast as fair to good, so there was no reason for him not to leave Bremerhaven.

Regarding the second objection, the person concerned stated that the weather forecast gave the impression that the weather would be slightly better along the coast of Norway, and there was no reason to avoid that coast even with project cargo. Also, he felt the shipping company was pressing him to achieve the ETA.

The third and fourth objections are accepted by the person concerned.

5. The ruling of the Disciplinary Court

The evidence

- A. The statement of the person concerned at the hearing, in so far as it states: The incident did not leave the crew and me unscathed. I was thrown against a cabinet and injured. As the second from the last group, I was the only one who disembarked with injuries. I spent almost two more days in hospital.

I joined the ship in Rotterdam as captain on Thursday, 1 April 2021. I relieved my colleague. My predecessor handed over to me based on the attachment on file. Matters about cargo etc. were discussed in it. The weather was also discussed. Other than that, it was a normal handover and we expected a normal voyage. I have sailed with project cargo before. It was my third or fourth time with



the Eemslift Hendrika. Transporting vessels on deck is a different matter. The weather forecast was that rough weather was on its way, which was discussed with my predecessor and the owner. The co-owner, was also on board on departure in Rotterdam. I talked to him about the possibility of looking for a sheltered place. He pointed out that it was also possible to go inland in Norway. This was an advice, not an instruction. I had no further ideas about it. I had just arrived on board and had not yet seen the weather forecast. In Bremerhaven, there was some delay in unloading. I have no comment regarding the first objection that I did not stay at Bremerhaven until the weather improved. You say I replied to written questions from the inspector that the first few days would be fair to good, and there was no reason not to set off. I have no further comment on that.

You ask whether I had formed an impression of the cargo and how it was lashed and secured. The only thing I blame myself for is that I did not go down into the hold. If I had seen how the cargo was lashed in the hold, I would have said something about it. On deck, I did check that, and everything was as it should be.

I checked the weather forecasts. Until Sunday afternoon, the voyage went fine. Given the speed of the ship, it went almost entirely normally. I followed the *voyage planning*. We changed speed and course on Sunday night because of the bad weather. We moved more northwest and reduced speed.

I called up the weather forecast through the SPOS programme on board. Printouts show that the route and ship data were not entered. I do not know why I did not do this. According to SPOS, it would be slightly better along the coast. I had hoped we would be ahead of the storm, but that did not work out due to the delay in Bremerhaven. I do not consider myself an expert on the Norwegian coast. It was at the back of my mind that there was no pilot when I went there and that I was not given permission to enter. I could have asked if that possibility was available now, but did not. No



one on board suggested we do this. I did not ask the others what they thought of it. The weather was getting worse. Navtex messages I followed during the voyage. I do not dispute that these reports indicated that the weather forecasts for Sunday and Monday for the relevant areas of South and North Utsire and Viking kept deteriorating to GALE 9 and STORM 10.

Regarding the second objection, that once en route with project cargo I did not choose to go inland or find a sheltered place, I say that looking back I do and don't blame myself for that. In my opinion, if the thrusters had been properly lashed, no damage would have been caused, nor was there any reason to avoid the bad weather with this project cargo, despite this being mentioned in CSS code and the Amasus Cargo Securing Manual.

The Dutch Safety Board (OVV) has also calculated this. That report shows that the calculations were incorrect.

I did check the condition of the cargo on deck, but not in the hold. That was a matter of trust. The previous captain said it was all as it should be. I should have checked. I blame myself for that.

What is stated in the voyage plan is correct: 15 knots is the maximum speed of the ship. It is also correct, as I have indicated in my answers to the inspector's questions (page 128), that Amasus had already issued an ETA for the port after Kolvereid. I do not remember which port that was in. I was due in Kolvereid on 5 April as well as at the next port.

I am aware that you can make a request for SPOS Meteoconsult weather routing through the shipping company. That has never been done before. I am familiar with the wave height maps in SPOS. I don't remember clicking on them.

I am aware that weather conditions close to the Norwegian coast are such that the waves get stronger there. I did not feel that would affect us.

I felt under pressure to meet the ETA. You ask how this chimes with the co-owner's comment in Rotterdam that I could look for a



sheltered place if necessary. I reply that the operations department of Amasus exerts that pressure. They set the ETAs, not the captain. That is how Amasus works. It is not the first time they have done this. I felt pressure to achieve that ETA. The agent for the next port after Kolvereid was already sending me messages asking, "when will you be there"? Amasus said: "Just say you can be there, and we'll sort it out on Monday". I don't know how Amasus arranges things after that.

I accept the third objection, that the above resulted in all crew members abandoning ship, exposing them to significant risks. I also accept the fourth objection, as the ship and cargo suffered significant damage.

As for my personal circumstances, I reply that fortunately I have just started sailing again as a captain. I disembarked with a broken rib, a piece of my vertebrae broken off and bruised lungs. It took time to recover from that. I have not worked for almost a year since the incident. I did not have any offers of work. Financially, that dealt me a serious blow. I have not heard anything else from Amasus since then. Only two text messages, and the co-owner phoned me once. I was employed through an employment agency. I have learnt not to rely on other people. If they say the cargo is secure, I will inspect it again from now on, before and during the voyage. The weather will also play a bigger role in my decisions. I have become extremely cautious. I did not feel supported by the shipping company or the crew.

- B. An e-mail from the co-owner to ILT dated 24 August 2021 (Annex 31 to the petition), in which he replied in writing to the inspector's questions (the replies are in italics):

I understand from Amasus that you advised the captain to look for a sheltered place in the Norwegian fjords because of the upcoming bad weather.



Is that correct?

That is correct

Was that solicited or unsolicited advice?

Unsolicited advice. It was to remind him that that option is certainly allowed and can be used.

What was the weather forecast for the route at the time, as far as you know?

The weather forecast by then was poor for the Norwegian coast, increasing on Sunday and storms on Monday, Tuesday and Wednesday.

- C. An e-mail from the co-owner to ILT dated 19 November 2021 (Annex 31 to the petition), in which he in writing to the inspector's questions (the replies are in italics):

What "inland" routes do you know that are relevant to this voyage to Kolvereid?

It is possible to pick up the pilot at Feistein (Tananger) to continue sailing inland. Then, further north, it is possible to pick up a pilot almost every 60–80 miles further.

(..) So basically, the ship could go all the way inland to Kolvereid except for max. 15 miles.

Will the Norwegian authorities agree to a vessel looking for a place to shelter from the bad weather in the lee of a fjord (in your experience)?

The Norwegians always agree if you want to go inland in bad weather, that is always possible. They let you sail inland and possibly wait for the pilot if he is not available immediately.

- D. The Amasus Shipping Heavy Lift and project cargo manual (Annex 23 to the petition), in so far as it contains:
Page 69: The master should plan the voyage to avoid potentially severe weather and sea conditions. To this effect, weather reports,



weather faxes or weather routing services/ programs (e.g. SPOS) should be used(..)

The lashings are not designed to provide a means of securing against imprudent ship handling in heavy weather. There can be no substitute for good seamanship.

Page 73: If very heavy weather is expected, appropriate operational measures, such as delaying sailing or altering course or speed, should be taken to minimise the forces.

- E. An e-mail from Amasus Shipping to ILT dated 27 January 2022 (Annex 43 to the petition), in which Mr B. v. B. provided written answers to the Inspector's questions (the answers are in italics):

Which ballast tanks were damaged in this accident?

- *Ballast tank R221 SB*
- *Ballast tank R214 PS*

Which ballast water tanks also leaked?

Both tanks mentioned above

What other damage was there?

- *Crane jib, it was smashed when the fishing boat went overboard*
- *Dents and scratches*
- *Damage to cargo in bilge*
- *Damage to deck cargo due to sliding of the fishing boat.*

Findings

The Disciplinary Court dismisses the first objection.

It made sense that the person concerned decided to leave Bremerhaven; the weather for the first few days was reasonably good. He should however have adjusted his voyage planning. He should have taken a different route or sought shelter in Jutland or southern Norway, knowing they would enter severe weather in two days.



The content of the evidence referred to above has led to the following conclusions being drawn in this case with an adequate measure of certainty.

The Eemslift Hendrika ran into increasingly bad weather. NAVTEX indicated for the relevant areas: GALE 9 and STORM 10. The person concerned did not use the option to put the route and ship data into a SPOS programme. Nor does he know if he clicked on the wave height charts. He knew that weather conditions close to the Norwegian coast are such that the waves get stronger. Nevertheless, without consulting the first mate and superintendent, he chose not to sail inland in the fjords. It is important to note that he was en route with project and deck cargo whose lashings he had not sufficiently checked. The Disciplinary Court is at a loss to understand why he still thought he could get to Kolvereid before the storm. The person concerned had several opportunities to seek a sheltered place, even at a later date. That the person concerned felt pressured by the shipping company is incomprehensible. Indeed, he confirmed at the hearing that the co-owner had advised him to go inland because of the severe weather forecast.

This resulted in considerable material damage as well as exposing the crew members (who had to abandon ship by helicopter in the storm) to considerable risks.

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.

The disciplinary measure

The Disciplinary Court finds that the person concerned has very seriously failed in his responsibilities as captain.

Although the first objection is unfounded, the measure demanded by the Inspector is insufficient. As set out above, the person concerned took completely unnecessary risks. Furthermore, he has only drawn limited lessons from the incident. While he does state that he will act more



cautiously from now on, he fails to recognise that as a captain, he should not rely entirely on his own account but should also actively seek the opinions of other officers. In this case, the shipping company had even advised him to take a safe route.

In view of the seriousness of the evident behaviours a suspension of the navigation licence for the duration mentioned below is appropriate.

Since the person concerned has also suffered personal injury and has been unable to sail for a long time, the Disciplinary Court sees cause to order that the suspension of his navigation licence be partly conditional.

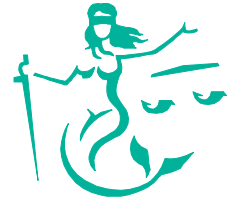
6. Practical recommendations

The Disciplinary Court refers to the report issued by the Safety Board on 5 April 2021: "Emergency situation after shifting load. Lessons from the Eemslift Hendrika incident".

7. The decision

The Disciplinary Court,

- dismisses the first objection against the person concerned;
- rules that the remaining objections against the person concerned are well-founded;
- suspends the navigation licence of the person concerned for a period of 8 (eight) weeks;
- stipulates that of this suspension, a period of 2 (two) 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 persons on board, the vessel, its cargo, the environment or shipping prior to the end of a probationary period, which the Disciplinary Court hereby sets at two years;



- stipulates that the probationary period of the suspension shall commence on the date six weeks following the date of this ruling being forwarded.

Duly delivered by P.C. Santema, chairman, T.W. Kanders, A. Aalewijnse, J.J. Spaan and S.W. Postma, members, in the presence of V. Bouchla, LL.M., as secretary, and pronounced by P.C. Santema, LL.M., in public session on 23 December 2022.

P.C. Santema
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.