

**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF
23 DECEMBER 2022 (NO. 7 OF 2022) IN THE CASE 2022.V4–NJORD**

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, the Netherlands,

versus

D. V.,

the person concerned,

counsel: A. Jumelet, LL.M.

1. The course of the proceedings

On 18 March 2022 the Disciplinary Court received from the aforementioned B.A.C. van Geest (referred to below as the Inspector) a written petition (with appendices) for disciplinary proceedings. The petition is directed against the person concerned as captain of the vessel sailing under the Dutch flag Njord.

The Disciplinary Court informed the person concerned about the petition and sent him a copy of it with annexes, referencing his opportunity to submit a statement of defence.

A statement of defence was received from counsel for the person concerned on 3 June 2022. The Inspector submitted a written response on 17 June 2022, and counsel for the person concerned submitted a rejoinder on 30 June 2022.



The President of the Disciplinary Court stipulated that the oral hearing of the case will be held at 10.30 hours on 25 November 2022 at the offices of the Disciplinary Court in Amsterdam. At the hearing held at that time, the Inspector appeared at the hearing with K. van der Wall, senior ILT inspector. The person concerned appeared, represented by counsel.

2. Grounds

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

On Thursday evening, 18 November 2021, the Njord ran aground at Bjorkaybaersground shortly after leaving Brevik, Norway. The vessel, destined for Bremerhaven, was steered by a pilot on board at the time. The pilot was using autopilot. On departure, visibility was poor. The draft forward at that time was 5.9 metres and aft 6.1 metres (summer draft 7.30 metres).

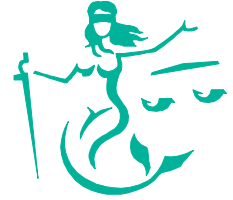
The Njord (IMO number 9349227) is a Dutch container ship, owned by Njord Shipping of Sneek.

Built in 2007, the vessel has a length of 142 metres, a width of 21 metres, and a gross tonnage of 7720. At the time of the accident, the crew consisted of sixteen people.

3. The Inspector's objection

The Inspector charges the person concerned with acts or omissions as captain of the Njord that are 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 inspector's objection against the person concerned consists of the following elements:



- (i) The departure was not postponed to adjust the route that was different from the voyage plan.
- (ii) The Parallel Index method was not used on the radar, even though the sector lights were not visible due to the fog.
- (iii) There was only 1 steering gear pump at in an area where navigation required caution due to major course changes and fog.
- (iv) The vessel was not piloted manually in an area where navigation dictated caution due to major course changes and fog.
- (v) An ECS was used on board for navigation purposes. However, that was not approved for this purpose and therefore could not serve to substitute an ECDIS.
- (vi) The ship ran aground under the command of the person concerned.

The Inspector cites as the regulations not complied with as follows, without the list being intended to be exhaustive:

- The Ships Decree 2004 Section 61 (1)
- SOLAS V Regulation 24 – Use of heading and/or track control systems
- SOLAS V Regulation 25 – operation of steering gear
- SOLAS V Regulation 34 – Safe navigation and avoidance of dangerous situations
- STCW code part A Chapter VIII – section A–VIII/2 part 2 – voyage planning
- STCW code part A Chapter VIII – section A–VIII/2 part 4 – watchkeeping at sea

The demand is to suspend the navigation licence of the person concerned for 4 weeks, 2 of which conditionally.

4. The position of the person concerned

Among other things, the person concerned argued that he had been sailing as a captain for 36 years, had not been involved in any incidents, had a pilot exemption in most of the ship's sailing areas and was involved in a

grounding precisely where he was obliged to use the services of a pilot. The person concerned believes that the policy followed by the pilot contributed significantly to what happened. In this context, the person concerned mentions the pilot's decision to sail on autopilot, despite repeated suggestions by the person concerned to switch to manual steering. The person concerned also believes that several of the objections raised by the Inspector have no causal link to the grounding. The person concerned further draws attention to the fact that the grounding did not result in personal injury, damage to the environment or other shipping but did result in a substantial financial loss for himself as the indirect owner of the ship, in particular due to lost cargo because of having to stay for weeks in the shipyard (in Szczecin) of the ship after the grounding.

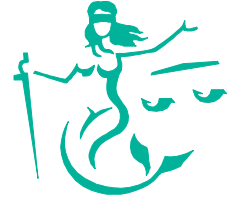
As another formal aspect, he mentioned that the Inspector did not immediately caution him in the first interrogation.

5. The ruling of the Disciplinary Court

5.1 Evidence

- A. The statement of the person concerned at the hearing, in so far as it contains the following:

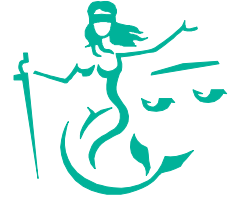
It is true that the Njord grounded at Bjorkaybaersground. That was on 18 November 2021, a little after 22.00 hours, shortly after leaving Brevik. The grounding caused a leak in the forepeak. After pumping out two ballast tanks, the ship refloated without assistance after about an hour. This was the first time I had put into Brevik. Brevik was not in the ship's fixed route from Oslo directly to Bremerhaven. Now Brevik has been added. That makes it busy. On arrival, we were supposed to take the northern route, but the pilot bringing the vessel in took the southern route. Therefore, we assumed that departure from Brevik to Bremerhaven would also follow the southern route. That departure from Brevik was scheduled for 21.00 hours. Due to problems getting the gangway in, we could only leave a little under an hour later. It had



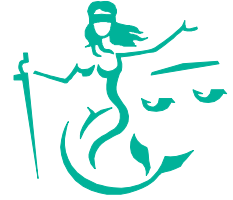
become foggy by now. As soon as we cast off and the pilot, who had been on board since 21.00 hours, reported the departure to Vessel Traffic Services (VTS) Brevik, he was told by VTS that the northern route should be taken because of the fog. However, there was no travel preparation/voyage plan based on that northern departure route. Nor was there any further opportunity to still make them. The pilot, who took over the helm after departure using the autopilot, did not see this as a problem. The northern route was in the chart but inverted 180 degrees: we were originally supposed to enter via the northern route. The southern route is simpler; the northern route involved a large number of course changes. The first turn – a bend to port – came within eight minutes. We were in dense fog at the time. The sector lights could not be seen. There was no discussion with the pilot about when and where he would initiate the turn to port. I was at the starboard radar. The chief officer was also on the bridge. I prefer manual steering, but the pilot was uncomfortable with that. The pilot started the turn too late and turned too slowly; the ship did turn, but at a rate of turn of 20 degrees, it was not fast enough. When I saw that the ship was turning too slowly, I adjusted the second steering gear and suggested to the pilot, as many as three times, to switch to manual steering. It was only on the third time of asking that the pilot agreed. By then, however, it was too late.

There was no ECDIS on board, but there was an ECS. I know it should not be used for navigation. Regarding my own role in the whole situation, I say I was responsible as captain and should have intervened. I should have overruled the pilot and gone through the course changes with him, especially as it was now foggy.

- B. An email from classification society Veritas dated 19 November 2022 to ILT that the Njord's manager had reported that the vessel had grounded the previous evening, causing a leak in the forepeak. ILT was asked for approval for a voyage leading to the shipyard.



- C. A 'Statement of facts regarding grounding of M/V Njord 18-11-2021 in Brevik' prepared/signed by the person concerned, insofar as it contains:
'Fog came up quickly, we had some delay due to problems picking up gangway. [...] After reporting to VTS Brevik, the VTS obligated us to sail the North route due to fog. [...] Alteration of route was discussed with pilot and was no problem, he knew the situation and the route. [...] Vessel is not equipped with Ecdis, but paper charts and 1 ECS which is not for navigational use. So the only means of navigation was radar and local knowledge of the pilot on board. [...] Departure 21:55 lt. Captain maneuvering from berth on hand steering, pilot taking over after departure on autopilot. Pilot asked for speed 8 knots. Informed pilot again on max rate of turn of autopilot and the possibility of hand steering with rate of turn indicator. According pilot this was not necessary, he was not comfortable with hand steering. [...] pilot did not discuss when or where to start the turn and it seems he did not had a wheel over point. For captain was not clear what was the plan of the pilot. 22:09 pilot started to make a turn to port. Captain proposed 3 times to take over on hand steering because ship was turning to slow. The third time pilot said to take over on hand steering but after 30 sec Vessel ran aground at Bjorkaybaensground on 22:12. [...]'
- D A 'Statement Brevik grounding with M/V Njord' prepared/signed by the first mate, insofar as it contains:
'We were ordered to leave Brevik at 2100. Due to issues with picking up our gangway we departed 21:55. The visibility was very poor due to dense fog. [...] The maneuvering was done by the captain [...] The pilot took over in the center and there was a discussion between the captain and the pilot about what route to take. Our vessel had sailed the southern route inbound and expected to go out the same way. The pilot explained that the VTS won't give permission to take this route in poor visibility. We didn't alter our route because the pilot said that it won't be a problem if he could keep an eye on our training ECS system. [...] He requested a speed of 8 kn and steering control on autopilot. The



captain informed the pilot about the max rate of turn setting from our auto pilot. [...] The captain noticed that the pilot was turning and suggested to take her over on hand due to the rate of turn limitation from the auto pilot. The pilot said it would be OK to keep her on auto pilot and the captain repeated himself a few times. At some point during the turn the pilot noticed our vessel wasn't turning as he thought it would and suggested to take her over on hand steering. Chief mate changed to hand steering and the captain took over. The moment the vessel was taking over on hand the captain noticed a green buoy on SB side and asked the pilot if it was OK. The pilot told it was not OK [...] and started to panic [...] The pilot ordered to give hard rudder PS. We had impact with Bjorkaybaensground. [...]

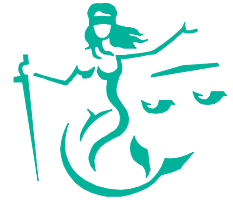
5.2 Considerations

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 Njord ran aground just outside Brevik, Norway, on Thursday evening, 18 November 2021 at around 22:12 LT. The ship had left Brevik shortly before, at about 21:55 LT, bound for Bremerhaven, and was piloted by a Norwegian pilot, using the autopilot. It was very foggy (the sector lights could not be seen through the fog). The grounding took place after the pilot initiated a turn to port at about 22:09 LT. The person concerned – who was with the chief officer on the bridge with the pilot – saw that the turn was started too late and that it was turning too slowly. He repeatedly suggested to the pilot to switch to manual steering, but the pilot was not comfortable with that. Eventually, the person concerned added the second steering gear and took over steering from the pilot, switching to manual steering. This was to no avail: 30 seconds later, the ship was grounded at Bjorkaybaersground. That grounding caused a leak in the ship's forepeak. The vessel refloated without assistance about an hour later, after pumping out two ballast tanks. There were no personal injuries. The only damage was to the ship itself. Apart from the cost of repair, income was lost over the relatively long repair period.



Since the person concerned is an indirect owner of the vessel, he suffered financially as a result.

The Inspector raised several objections against the person concerned. The Disciplinary Court's most serious finding is that the person concerned – who knew that the vessel turned slowly on the automatic pilot (operated by the pilot) and who was or should have been aware that a sharp change of course was approaching – (i) did not urgently warn the pilot of this slow turn when using the automatic pilot well before approaching/commencing that sharp turn and (ii) did not 'overrule' the pilot, by means of timely and resolute action/intervention in the absence of an adequate response from the pilot. This omission – i.e. failure to give urgent warnings and take timely action – contributed significantly to the grounding. The person concerned could also have seen/estimated earlier that, even at maximum turning speed on the automatic pilot, the turn would not be completed because of the ship's speed. It was therefore necessary to switch sooner to manual steering. Furthermore, it can be assumed that an acute need to act could have been avoided if there had been prior discussion of the altered route among the bridge team present (captain, pilot, chief officer). As things stood, the person concerned – who had not sailed in that area before – was unaware of where and how the first sharp turn to port would be taken in the dense fog. According to his captain's statement, he did not know what the pilot was doing. Such a situation should be avoided at all times. Responsibility for this rested primarily with the person concerned as commander/captain. In the given circumstances – including the thick fog and the last-minute route change in response to it, which had not been calmly prepared/discussed beforehand – he could not trust that the pilot would know how to guide the ship safely on autopilot through the winding waters of the altered route in thick fog. The claim of the person concerned that the pilot exuded self-confidence and gave the impression of knowing it all does not constitute an adequate excuse for this.



The objection concerning the omission mentioned above is contained in the sixth objection of the Inspector; see above 3 (vi). As mentioned, this omission contributed significantly to the grounding. This provides the causal link with the grounding. This link is less clear in the Inspector's other objections. However, even if such a link exists it does not give cause for a different measure from the one provided for below. For that reason, there is no further discussion of those other objections.

The negligence 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.

Finally, the invocation by counsel of the person concerned of the Inspector's failure to give a caution is rejected because the Disciplinary Court did not/will not use the statements made to the Inspector as evidence. Apart from that, disciplinary proceedings do not constitute a 'criminal charge' within the meaning of Article 6 ECHR. For that reason, but also in other cases, the Inspector was under no obligation to issue a caution when obtaining information about the grounding reported by the classification society. Either way, the omission does not give cause to disregard that information.

5.3 Disciplinary measure

The Disciplinary Court judges that the person concerned failed in his responsibilities as captain, which resulted in the grounding.

The captain as commander remains fully responsible when using a pilot, whether compulsory or otherwise. His familiarity with the local situation does not detract from this. However, the pilot can also be expected to do his job properly. That does not appear to have been the case here. It should be noted that the pilot was not heard, and nor is there any written statement



from him in the file. This is a limitation in the investigation, which should not work to the disadvantage of the person concerned; the Disciplinary Board therefore assumes the correctness of the person concerned's reading in this case. The presumed negligence of the pilot weighs in favour of the person concerned, as does the circumstance that the person concerned, as (indirect) owner of the vessel, suffered financial loss as a result of the accident.

These 'extenuating circumstances' do not give cause to refrain from the imposition of an (unconditional) measure. The focus should not be on extenuating circumstances but on the preventive effectiveness of the method used to settle the matter. A measure/signal should be chosen that is expected to be most effective in preventing the recurrence of a culpable omission, such as the one at issue here, with all the risks it entails.

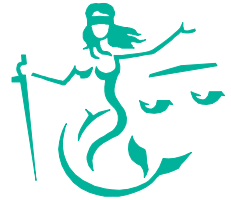
In this case, this leads to the imposition of an unconditional suspension of the navigation licence for a period to be specified for the omission attributable to the person concerned. It is in favour of the person concerned, in addition to the circumstances mentioned above, that he has shown that he has learned from what happened and that no personal injuries occurred and no damage was caused to third parties or the environment.

6. The decision

The Disciplinary Court,

- declares the objection raised against the person concerned as detailed above in 5.2 to be well-founded;
- unconditionally suspends the navigation licence of the person concerned for a period of 1 [one] week.

Duly delivered by J.M. van der Klooster, presiding judge, C.R. Tromp, R.J.N. de Haan, N.P. Kortenoeven-Klasen and A.W. Taekema, members, in the presence of E.M. Dooting, LL.M., as secretary, and pronounced by



P.C. Santema, LL.M., in public session on 23 December 2022.

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.