



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF
29 DECEMBER 2023 (NO. 11 VAN 2023) IN THE CASE OF
2023.V10-NOORDERLICHT**

As petitioned by:

the Minister of Infrastructure and Water Management
in The Hague,

petitioner,

authorised representative: ing. B.A.C. van Geest,
senior Inspector at the Human Environment and Transport Inspectorate
(ILT)/Shipping in Zwijndrecht

versus

J.W.A. T.,

the person concerned,

counsel: J. Klompé (Loosdrecht).

1. Course of the proceedings

On 5 June 2023, the Disciplinary Court received a written request (with appendices) for disciplinary treatment from ing. B.A.C. van Geest, aforementioned (hereinafter the inspector), against the person concerned as captain of the Noorderlicht vessel sailing under the Dutch flag.

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 to submit a statement of defence.

On 20 September 2023, the inspector sent a supplement to the dossier to the Disciplinary Court. The Disciplinary Court sent this supplement to the person concerned.



A statement of defence was received from (counsel for) the person concerned on 4 September 2023.

The presiding judge of the Disciplinary Court stipulated that the oral hearing of the case will be held at 10.30 hours on 16 November 2023 at the offices of the Disciplinary Court in Amsterdam.

In a letter of 14 November 2023, the inspector provided the Disciplinary Court with additional, relevant legislation. This letter was provided to the counsel for the person concerned at the oral hearing.

The court hearing was held on 16 November 2023. The Inspector and his colleague inspector Ing. K. van der Wall appeared at the hearing for the petitioner.

The person concerned appeared at the hearing together with his counsel.

2. Grounds

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

On Thursday, 23 March 2023, the Noorderlicht sailing vessel was underway from Trondheim to the more northerly located Rørvik (both in Norway). There were 26 persons on board, including 9 crew and 17 passengers: trainees in the Mastership educational programme, aged 14 to 18 years. The vessel was motorised. The route passed close to fjords and islands, as well as between the islands. During this voyage, the Noorderlicht ran aground on the (rocky) ground on the northern side of the small island of Auken, at 02.40 hours LT. This was due to the Noorderlicht correcting its course close to a narrow strait at the island, and sailing too far south. The first officer was the ship's OWW at the time. There was a lookout, but he was below deck at that point. All persons on board were evacuated following the grounding, with the



exception of the person concerned and engineer. They used the dinghy to access the dry part of the island. There, they were picked up by a cargo vessel. They were then transferred by the local lifeboat from the cargo vessel to a passenger vessel, which transported them to Lauvsnes. The Noorderlicht was re-floated with the aid of a tug during the rising tide, at around midday. By 15.00 hours LT, the vessel was moored to a floating jetty in Lauvsnes. There were no personal injuries and only limited damage. The vessel did not make water.

The Noorderlicht (IMO number 8650813) is a Dutch passenger/sailing vessel, sailing for Swan Expeditions in Akkrum. The ship was built in 1910, is 46.2 metres long and 6.6 metres wide.

3. The Inspector's objections

3.1 According to the Inspector, the person concerned acted or failed to act 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 accusation consists of the following elements:

1. The person concerned did not ensure effective and comprehensive voyage preparation for the Trondheim – Rørvik voyage.
2. The person concerned did not communicate effectively with the first officer regarding preparation of the voyage from Trondheim – Rørvik.
3. An ECS, not compliant with the IMO Performance Standards for ECDIS, was used as the primary navigation tool.

3.2 The Inspector cites as regulations that have not been complied with:

Ships Decree 2004- article 61 paragraph 1



The captain of any ship with which a voyage is made shall ensure that prior to the voyage and during the voyage the regulations and requirements of chapter V of the SOLAS Regulation are observed.

SOLAS V Regulation 34 – Safe navigation and avoidance of dangerous situations

1 Prior to proceeding to sea, the master shall ensure that the intended voyage has been planned using the appropriate nautical charts and nautical publications for the area concerned, taking into account the guidelines and recommendations developed by the Organization*.

* Refer to the Guidelines for Voyage Planning, adopted by the Organization by resolution A.893(21).

2 The voyage plan shall identify a route which:

- .1 takes into account any relevant ships' routing systems;
- .2 ensures sufficient sea room for the safe passage of the ship throughout the voyage;
- .3 anticipates all known navigational hazards and adverse weather conditions; and
- .4 takes into account the marine environmental protection measures that apply, and avoids as far as possible actions and activities which could cause damage to the environment.

RESOLUTION A.893(21) – Guidelines for voyageplanning

adopted on 25 November 1999

1 Objectives

1.1 The development of a plan for voyage or passage, as well as the close and continuous monitoring of the vessel's progress and position during the execution of such a plan, are of essential importance for safety of life at sea, safety and efficiency of navigation and protection of the marine environment.

STCW Code Part A /Chapter VIII/ Part 2 – Voyage planning Planning prior to each voyage



5 Prior to each voyage, the master of every ship shall ensure that the intended route from the port of departure to the first port of call is planned using adequate and appropriate charts and other nautical publications necessary for the intended voyage, containing accurate, complete and up-to-date information regarding those navigational limitations and hazards which are of a permanent or predictable nature and which are relevant to the safe navigation of the ship.

Verification and display of planned route

6 When the route planning is verified, taking into consideration all pertinent information, the planned route shall be clearly displayed on appropriate charts and shall be continuously available to the officer in charge of the watch, who shall verify each course to be followed prior to using it during the voyage.

STCW Code Part A /Chapter VIII/ Part 4 – Watchkeeping at sea

Coastal and congested waters

The largest scale chart on board, suitable for the area and corrected with the latest available information, shall be used. Fixes shall be taken at frequent intervals, and shall be carried out by more than one method whenever circumstances allow. When using ECDIS, appropriate usage code (scale) electronic navigational charts shall be used and the ship's position shall be checked by an independent means of position fixing at appropriate intervals.

Resolution A.817(19) – Performance standards for Electronic Chart Display and Information Systems (ECDIS)

Adopted on 23 November 1995

1.2 ECDIS with adequate back-up arrangements may be accepted as complying with the up-to-date charts required by regulation V/20 of the 1974 SOLAS Convention.



Resolution MSC.232(82) – Adoption of the revised performance standards for electronic chart display and information systems (ECDIS)

adopted on 5 December 2006

1.2 ECDIS with adequate back-up arrangements may be accepted as complying with the up-to-date charts required by regulations V/19 and V/27 of the 1974 SOLAS Convention, as amended.

In his letter of 14 November 2023, the inspector also referred to the so-called Blue rules of the Register Holland and the Rules for Commercial Cruising Vessels (CCV). Insofar as these permit the use of an electronic sea chart, this concerns ECDIS and not ECS.

The 'performance standards' for ECDIS are given in SOLAS chapter V, as referenced by the introduction to CCV chapter 8.

3.3 The inspector demands: a reprimand and a conditional suspension of the navigation licence for a period of two weeks.

4. The position of the person concerned

At the hearing, the person concerned acknowledged the first two points of the inspector's objection. However, the person concerned disputes the correctness of the accusation that an ECS was used as the primary navigation tool. According to the person concerned, navigation took place by sight, the radar and the paper chart (which was located below deck). The ECS was an auxiliary navigation tool. This is not contrary to good seamanship, in the opinion of the person concerned.

5. The ruling of the Disciplinary Court

5.1 The means of evidence



The Disciplinary Court bases its assessment of the inspector's objections regarding the acts or omissions of the person concerned on the following means of evidence:

- A. The statement of the person concerned at the hearing, insofar as it contains the following, in concise form:

I believe that the voyage preparation was extremely marginal, and that there could also have been better communication with the first officer. I am unsure whether that would actually have prevented the eventual grounding. I do however believe that following effective voyage preparation, in which this passage at Auken would have been clearly plotted and discussed in detail, there is a good chance that the Noorderlicht would have passed through without damage. I therefore blame myself for that.

I believe I particularly failed in the voyage preparation at those locations where I should have informed the first officer to wake me. The three of us, or in any case the two of us, could then have chosen whether or not to navigate the narrow straits, considering the local conditions.

I plotted a route in the electronic chart and the first officer was responsible for the paper version.

The ECS is the only chart visible from the steering position, of which you can actually see your position. We occasionally go below deck to check the paper charts, and we track a position in the chart every hour, but that is not nearly sufficient in Norway, as there are so many changes of course required there. An extra person is needed if you want to track every course change and position in the chart. All those course changes should have prompted us to navigate the narrow straits together, whereby one person would be below deck to check the paper sea chart. That is also the reason why I blame myself for not noting in my watch orders, that I wished to be woken on approaching such a narrow strait.



I wish to emphasise that the grounding of the Noorderlicht has made a lasting impression on me and has affected me deeply both professionally and personally. I am very aware of my shortcomings and have taken them very seriously. In other words: I have learned from this situation and will do everything possible to prevent a repetition.

B. De Standing (night) watch orders:

'In addition to the logbook standing orders insert

- Always keep a safe speed
- Fill in the ships logbook every hour
- Put ships position on the map every hour
- Call me if in doubt'

C. The questions by the inspector (included in appendix 39 of the petition) and the answers from the lookout:

'Why were you (by OOW) sent down in the navigation room to look at the chart?

I was asked to zoom in on the screen [...]

Did you look at the paper chart or ECS?

I looked at the electronic sea chart we have on the screen'

D. The questions by the inspector (included in appendix 40 of the petition) and the answers from the first officer:

'6, Who drew up the voyage plan from Trondheim to Rørvik?

I drew up the voyage plan. The captain plotted the courses.

7. Did you discuss the voyage plan from Trondheim to Rørvik with the captain and why were you satisfied with the voyage preparation?

The voyage was discussed before departure, but not in detail. At midnight, at the change of the watch, the captain informed me of 2 narrow passages which we would pass through, but not the narrow passage in question at Auken. The other 2 were wider. I repeat: I should have woken the Captain.



8. Why were the course and waypoints not mapped in the paper sea chart?

Because even the most detailed paper charts are less detailed than the ECS.

9. Why did you think it sufficient to only track the position in the sea chart once every hour?

I would normally not find that sufficient, but it is impossible to work in the chart and the same time keep a lookout around, because of the layout of the Noorderlicht.

[...]

17. Just before the grounding, you dispatched the lookout to the navigation room to check the chart, why was that?

That was to be able to change the scale of the ECS image when I requested.

18. Did you see the green and red light buoys north of Auken before running aground?

Those are light beacons, I did see them, but realised too late that they were much too far to port side.

19. What was your situational awareness prior to the grounding?

It was not 100%. When the lights, including the 2 from question 18, came into sight, it took an effort and time to recognise them.

20. Would you like to state anything else concerning this incident?

I was tired and cold. I am not suitable to be sailing in this manner (without an indoor bridge).'

E. The findings of the inspectors of the flag state who inspected the Noorderlicht on 26 March 2023, include:

- The voyage plan had not been completed and was not signed.
- There was insufficient communication regarding voyage preparation.
- No courses or waypoints had been plotted in the sea charts.
- An ECS was used as the primary navigation system.



- The voyage plan was insufficiently monitored. Positions were only tracked in the chart once every hour.
- Deviation of the (magnetic) compass and autopilot of approximately 20 degrees.

5.2 Considerations

Preamble

5.2. 1 The Noorderlicht is a seagoing vessel sailing under the Dutch flag, IMO number 8650813. According to the owner's declaration: a double-masted schooner, built in 1910 and converted in 1993, gross tonnage 140, length approximately 46 metres (the CvD certificate of soundness states: 30.58 metres, according to the definition of article 2 (1) 1 Annex 1 Netherlands Ships' Decree 1965), width approximately 6.5 metres, draft 3.2 metres and equipped with a 460 hp Caterpillar C12 diesel engine. The maximum permissible number of passengers is 20.

5.2.2 This vessel, described by the owner as a 'tall ship' and used for commercial seagoing voyages, is governed by the rules of the Dutch Seafarers Act (see Sections 1 and 2 of that act). Based on Section 55a paragraph 1 of the Seafarers Act, the captain and the ship's officers of the Noorderlicht are subject to disciplinary rules with regard to any act or omission contrary to the care expected of a good seaman in respect of the persons on board, the (Dutch nationality) vessel, the cargo, the environment and shipping traffic.

The Inspector's objection

5.2.3 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 first and second points of the objection – inadequate voyage preparation and insufficient communication

It has been established that the grounding of the Noorderlicht (to the north of the small island of Auken on 23 March 2023 at 02:40 hours LT) was the



direct consequence of a steering error by the first officer. In this case however, this steering error cannot be seen separately from the inadequate voyage preparation and lack of communication between the first officer and captain. These points also relate to the acts or omissions of the person concerned as master of the Noorderlicht.

Although this was not his responsibility, the person concerned did not ensure/supervise the effective and comprehensive voyage preparation for the Trondheim – Rørvik voyage. This is contrary to good seamanship. Good seamanship assumes a good preparation of the voyage to be undertaken. Voyage preparation concerns not only the charting/plotting of a route, but also a comprehensive risk analysis, whereby the best possible inventory is made of possible hazards and therefore also potentially tricky navigation sections. This must take into account the specific characteristics of the vessel and the expected weather conditions. The legislation cited by the inspector (see point 3.2 above) defines the obligation to work in this manner, though such obligation always exists even without legislation.

It must be determined that this obligation to undertake good voyage preparation by the person concerned (who plotted the courses in the digital ECS chart) and by the first officer (who drew up the voyage plan) was not met in the correct manner. The voyage plan was limited and was not mutually discussed. This (also) particularly applies to the narrow strait/passage at the small island of Auken, where the incident occurred. It was only with hindsight that both persons concluded that they should have conferred on the navigation at that point. Partly due to the layout of the ship – with the engine/rudder controls above deck and the navigation room below deck, resulting in the steering position needing to be abandoned to note and check the position and course of the vessel – it was contrary to good seamanship to sail through narrow straits between islands close to the coast of Norway during night hours, with only the first officer acting as officer of the watch. This should have been recognised during the voyage preparation, all the more with a view to the (forecast) weather conditions and the fact that this



was the first voyage on the Noorderlicht for the person concerned, and that the first officer was inexperienced in sailing under such circumstances and also unfamiliar with this route.

The person concerned, who should have monitored the voyage preparation, should have reached clear agreements with the first officer regarding the distribution of tasks. All the more because the person concerned was aware, or at least should have been aware at the beginning of the voyage and at the change of watch, that the vessel would need to navigate a narrow strait in the darkness of the night hours, with 17 children on board. The standard watch orders were inadequate under such circumstances. The person concerned should have explicitly agreed with the first officer that he wished to be present when navigating the narrow strait in question.

Incidentally, it should be noted on this point that following the grounding, it was agreed with the shipowner that sailing close to the Norwegian coast would only be allowed in daytime, supervised by two officers alternating between the steering position above deck and the navigation room below deck.

With regard to the opinion of the person concern that this was a well-lit fairway, in which a vessel such as the Noorderlicht could easily navigate by sight with only one officer of the watch, without the need for further, more accurate determination of the position, it should be noted that the first officer stated otherwise; he indicated that he had no land recognition points for a large stretch of the voyage and that he found it difficult and time-consuming to recognise the (position of the) beacons at the island of Auken when they came into sight.

The third point of the objection

Based on the current legislation (SOLAS Chapter V Regulations 19 under 2.1.4), all vessels, regardless of their size, must be equipped with seagoing charts and seagoing publications required to plan and display the route of the vessel's proposed voyage, and to plot and track positions during that



voyage. An Electronic Chart Display and Information System for sea charts (ECDIS) used for the same purpose is also acceptable. An ECS, as used on board of the Noorderlicht, is not a legally accepted alternative for the presence and use of the seagoing charts and publications.

In this case, the route had only been planned beforehand in the ECS. This track in the electronic chart, which was visible from the steering position, was used by the first officer en route to determine the vessel's position. The positions and times of course changes and when passing recognisable points were not accurately recorded on the paper sea chart, or at least no more than once per hour (and equally inadequately recorded in the ship's journal). In this case the ECS was the primary navigation tool for the first officer. He has indeed not denied that. Shortly before running aground, he dispatched the lookout down to the navigation room in order to be able to change the scale of the ECS image if necessary.

If the Noorderlicht is unsuitable for the installation of an ECDIS and/or the owner of the Noorderlicht objects to this for some other reason, this does not justify simply using an ECS system as the primary navigation tool. Some other form of accepted method of navigation must then be applied. Any passengers enjoying the travel programmes offered on board the Noorderlicht must be able to rest assured that navigation takes place in a safe and legal manner. Although in this sense the duty of care for the required equipment/crew of the vessel lies primarily with the owner, the person concerned has a responsibility in his position as captain.

For the record, it should be added that the use of the ECS was not the cause of the grounding. Although the inspector's objection to the use of the ECS is indeed justified in itself, it will not result in a more serious measure being imposed in this case, than if it were not involved.



5.3 The disciplinary measure

Following on from the above, the conclusion must be that the person concerned seriously failed in his responsibilities as captain/master of the Noorderlicht. The attributable failure of the person concerned to comply with the safety regulations and the associated supervision, 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 ship's officer, contrary to the duty of care expected of a good seaman in relation to the persons on board, the vessel, the cargo, the environment and shipping traffic.

As already mentioned, although the grounding is the direct consequence of a steering error by the first officer, this steering error cannot be seen separately from the inadequate voyage preparation/communication. The reprehensibility for this becomes even more serious because of 17 trainees/children being on board the vessel (for an educational programme). As captain, the person concerned had final responsibility for the safety of these passengers (too). The negligence shown in voyage preparation/communication is evidence of insufficient awareness of this. Suspension of the navigation licence is therefore appropriate.

As the Disciplinary Court is particularly concerned regarding the inadequate voyage preparation/communication, in combination with the intended final responsibility of the person concerned as captain, the disciplinary measure is more severe than proposed by the inspector. Also with a view to the mutual involvement in the voyage to be undertaken and the (inadequate) preparation/communication thereof, the disciplinary measure imposed on the person concerned will match that imposed on the first officer.

Given that the person concerned has learned from the incident and is willing to make every effort to prevent repetition, the Disciplinary Court (also) sees good cause to rule that the suspension of the navigation licence will be imposed partially conditionally.



6. The decision

The Disciplinary Court,

- rules that the objections against the person concerned are well-founded;
- suspends the navigation licence of the person concerned for a period of three weeks;
- stipulates that of this suspension, a period of two (2) weeks will not be imposed unless the Disciplinary Court stipulates otherwise in a subsequent ruling based on the fact that the person concerned has once again behaved contrary to his duty of care as a good seaman in respect of the persons on board, the vessel, the cargo, the environment or shipping traffic 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 J.M. van der Klooster, presiding judge, W.A. Barten and T.W. Kanders, members, in the presence of V. Bouchla, LL.M., as secretary and pronounced in public session on 29 December 2023.

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.