RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF 27 JANUARY 2023 (NO. 1 OF 2023) IN THE CASE 2022.V6- EN AVANT

As petitioned by:

the Minister of Infrastructure and Water Management
in The Hague,
petitioner,
authorised representative: B.A.C. van Geest and K. van der Wall,
senior inspector ILT/Accident investigation shipping and administrative inspections, Zwijndrecht,

versus

C.M.V. S.,
the person concerned,
counsel: K. Boele, LL.M.

1. The course of the proceedings

On 29 June 2022, the Disciplinary Court received a written petition for disciplinary proceedings from aforementioned B.A.C. van Geest and K. van der Wall against the person concerned as captain of the vessel EN AVANT 7 (referred to below as EA7), sailing under the Dutch flag. Attached to the petition were 40 annexes and 9 video clips.

On 30 August 2022, a statement of defence was received from the person concerned. On 26 September 2022, the inspector replied to this with two annexes, after which a rejoinder with two annexes was received from the person concerned on 13 October 2022.

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The presiding judge stipulated that the oral hearing of the case will be held at 10.30 hours on 9 December 2022 at the offices of the Disciplinary Court in Amsterdam.

The court hearing was held on Friday 9 December 2022. The aforementioned inspectors B.A.C. van Geest and K. van der Wall appeared at the hearing. 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 25 August 2021, at around 11.09pm LT, a very serious accident occurred on board the tug EA7. The accident led to the death of a seaman, and a trainee was injured. The accident took place in Centrale Insteekhaven at Moerdijk. The EA7 was performing port assistance, as a stern tug. The ocean-going vessel being assisted was the Tia Marta. The En Avant 4 was involved as a bow tug. The Tia Marta was towed astern out of the Oostelijke Insteekhaven before being turned into the swinging circle of the Centrale Insteekhaven before turning ahead towards Zuid-Hollands Diep. During this manoeuvre, the seaman and the trainee became trapped between the towline and the accommodation. The seaman died of his injuries almost immediately. The trainee suffered two broken ribs.

The EA7 (IMO number 7625483) is a traditional Dutch tug (with 2 fixed propellers), owned by shipping company Muller, Dordrecht, the Netherlands (the shipping company).
Built in the year 1981, the vessel is 22.5 metres long and 6.8 metres wide, has a gross tonnage of 108 T and a power capacity of 1176 KW. At the time of the accident, the crew consisted of four people in total.

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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 inspector's objection against the person concerned consists of the following elements:

1. The person concerned, when manoeuvring to come forward with the head, allowed the vessel to swing too far.
2. The person concerned was not sufficiently aware how the EA7 was situated in relation to the Tia Marta, the position of the towline and the position of the deck crew.
3. The person concerned did not adequately convey with Mr J. B. (referred to below as the captain of EA30) on who would pay attention to what and how they would communicate.
4. The above objections contributed to this accident and partly as a result, 1 crew member died and 1 crew member was injured.
5. The person concerned sailed out with the vessel without complying with all the crew requirements imposed by the applicable inland navigation legislation.
6. The person concerned sailed out with the vessel without drawing up the crew list.

The Inspector cites as the regulations not complied with:

- Commercial Code, second book, third title
  - Article 342
  - Article 343 (1)
- Seafarers' Decree
  - Article 94 (2)
- Seafarers Act
  - Article 3 (2)
  - Article 33 (2)

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    - Article 59
- STCW Code Part A / Section A-II/2
    - table A-II/2
- Inland navigation regulation
    - Article 2.9 (2)
    - Article 5.6(5), Annex 5.7[1]
    - Article 5.10
- RSP (Regulations on navigational personnel on the Rhine)
    - Article 3.19(1)
    - Article 3.20(1) and (2)

The demand is to impose a suspension of the navigation licence six months, three months of which conditionally.
At the hearing, inspector Van der Wall argued that it might be more appropriate to impose a fine, since the person concerned is not currently sailing and indicated that he was not going back to sea for the time being. The inspector leaves that decision to the disciplinary court.
The inspectors have not included in the level of their demand the failure to draw up a crew list and have a crew member on board with a valid inland navigation licence, as these facts did not contribute to the accident.

4. The position of the person concerned

in respect of the first objection in combination with the fourth objection
The person concerned does not recall having turned (too) far, but the electronic chart data and film footage show that the turn continued further than he remembers. Also, according to the police who studied the electronic chart data, the ship continued to slowly turn further, but “in the dynamics of sailing, this is not unusual and possibly to be expected”.
According to the person concerned, the hawser could not become taut because of the EA7's turn, as the EA7's speed was too low for that. It has not

[1] *As will be shown below, these articles are incorrectly cited.*

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been sufficiently substantiated that the accident occurred partly because the EA7 overshot the turn.

with regard to the second objection in combination with the fourth objection
The person concerned made clear arrangements to ensure that the entire situation was overseen. Standing from the helm position, visibility was limited. For that reason, the person concerned asked the shipping company for an experienced officer to take the lookout position on the bridge wing on the port side. That lookout position was filled by the captain of EA30. The person concerned and the captain of EA30 were in constant contact through the open door of the wheelhouse. Together, they had a good overview of the situation. Given the EA7's turn, the manoeuvre and the information he had received from the captain of EA30, the person concerned acted correctly in indicating to the pilot that it was agreed to turn slowly forward.

with regard to the third objection in combination with the fourth objection
According to the statements of the person concerned and the captain of EA30, there were clear agreements and a clear division of tasks. Moreover, the same manoeuvre had also been performed earlier that day, and the person concerned held a toolbox meeting for both times the manoeuvres were performed.

with regard to the fifth objection
According to the person concerned, the requirements applicable under inland navigation legislation are not prescribed and in the area the ship was in when the accident took place (the Moerdijk seaport), only seafarer's papers were used in accordance with the Minimum Safe Manning Document. The person concerned further takes the view that it was primarily the responsibility of the shipping company to man the ship correctly. On the question of whether or not one crew member should have a certificate of competence for inland navigation, the person concerned defers to the Disciplinary Court’s opinion.
with regard to the sixth objection

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The person concerned acknowledges that he did not prepare a crew list when he came on board. He had intended to do so later, which was possible according to the other captains and the shipping company, but he now realises that he should have done so immediately when signing on.

5. The ruling of the Disciplinary Court

The evidence

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

At the start of the assistance task, the EA7 was stern-to-stern with the Tia Marta. Once the Tia Marta had turned in the Centrale Insteekhaven, the EA7 would come head-to-stern, with the towline running over the head bollard. The EA7 would thus sail along behind the Tia Marta, heading forward. It is not in my recollection that I let the ship swing too far to come around headfirst. I understood from the trainee's explanation that the towline had ended up under a tyre. I only read that in the file. Perhaps my view of the hawser was from a different angle. The hawser apparently broke free from under the tyre and whipped out. If you turn too far, the hawser can move more towards the ship's accommodation. It is true that I saw afterwards from the Tresco footage that I had gone further than what I had remembered. To what extent that contributed to the accident is still unclear. You point to the inspector's analysis of CCTV footage. I have watched that several times. I do not see the towline in the images, but I do see the direction of the ship. The idea is that the hawser will be picked up by the tug to be placed over the head bollard. I cannot tell if this is how the stern of the bulk carrier is and if I am in the middle of the hawser or on the outside on the way there. I find that difficult to gather from the images. The intention of this manoeuvre was for me to steer behind the bulk carrier, lifting the hawser, at such a distance from the bulk carrier that the hawser is loose. If the signal had been given that he was well behind the middle bollard, it would have told me that the crew was guiding the hawser to the bow. My intention was to stay on this

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side of the hawser with sufficient slack. You can't cross the hawser. The middle ground is in between, so that the hawser is slack in the water with enough slack for people to work with, and that the EA7 is lightly overtaking the bulk carrier or remains the same, but preferably lightly overtaking, as the hawser will then remain slack. I also moved slowly and for the rest it is about dynamic steering. I stand by my earlier statement (page 108) in which I say: *"(...) I still believe it was possible that the tug still continued to turn to port. That is not how I experienced it. Or perhaps I started turning to starboard too late and that I didn't start the pursuit fast enough."* This is what might have happened. You have to catch up with the seagoing ship or keep following its speed. That is why I relied on the signs given by the captain of EA30, who I had positioned on the bridge wing to keep an eye on the seamen, the deck work and the hawser. I acted based on his indications and his information. I made my decision to steer the ship on that basis. If I steer sitting down - the windows are relatively small - I can see the bulk carrier, the lights, the direction of the hawser and whether it is loose. If I stand up I can see the crew when they come forward with the hawser past the first few bollards, but I don't do that very often because then I have to look there and steer there. I can always see the head bollard. I could see the Tia Marta and the towline in my memory. I followed them as best I could. I steered towards the Tia Marta, which is in the same field of vision. If I turned too far to port, I could have seen it from the position relative to the Tia Marta, but I don't see that in my mind's eye. I have difficulty with that. In my mind, it was OK, but something still happened that altered that. I think it is relevant that the hawser was behind that tyre, so I saw the wrong angle of the hawser. It could be concluded that I briefly did not see the ship and the hawser. I remember turning ahead with both engines.
It is correct when you say that I could not see everything from my position and that was the reason for asking for an experienced officer, but that I could see the ship and the hawser.
I feel that, remembering the position of the hawser and knowing the situation with the crew on deck, I gave my approval to the pilot to turn ahead at the right time. I was already sailing ahead myself. I knew the hawser was not yet

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over the head bollard at the time I gave approval. You can wait for that, but it is more likely that we did not. In my case, I think it would have been better, but we also didn't want the Tia Marta manoeuvre to take longer. Things become dangerous as soon as the Tia Marta stays still and I start catching up because then the hawser starts hanging in the water too much. Looking back there is all sorts of information, but sometimes putting the hawser on the head bollard cannot wait. I also like to use the engines sometimes, because then I also have rudder pressure. That does away with the turning from that boat.
The first moment I realised things were not going well was when I heard a noise. It was clear to me that something was wrong. It was a kind of singing bang.
The moment to approve turning ahead was my own assessment. I wanted to use my engines to take my own course. I also wanted to move ahead. At the time we moved ahead, the EA7 was not in the area where the propeller water was bubbling, as shown by the red arrow on screenshot 29 of the film footage (page 140). You say there is a delay. Generally, this is true.
We had a brief toolbox beforehand, before tying up, and discussed how the manoeuvre was going to go and what the intention was. During this toolbox we also discussed things like the middle bollard. In Dordrecht, we had done the same manoeuvre on the same day with the same crew composition and we also held a toolbox for it. To my knowledge, it was just clear who was expected to do what. Also, I did this manoeuvre at the beginning of my training programme with the captain of EA30. At that time the captain of EA30 took the helm and I watched and we talked about the relevant matters at that time too. I don't think I agreed in detail what was to be watched. The captain of EA30 would monitor what I could not see and that included the tyres. He would be my eyes and ears outside. What his eyes and ears were supposed to see was not explicitly agreed upon. I would navigate and manoeuvre the ship. So my ears would be mainly for outward communication to the captain of EA30 and for the VHF radio and for the rest just the wheelhouse, ship controls and navigation. Keeping an eye on the position in relation to the Tia Marta and the towline is a helmsman's job, so therefore

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mine, but that coincides with what you can see outside. So that has to be done by two people, each from his own point of view. The propellers were not discussed. This aspect is so dynamic that you cannot determine in advance how it will turn out. On communication, what information one would pass on to the other, we mainly talked about the middle bollard and the position on deck. That is what I cannot see and that is what the person is there for. It is also known what I cannot see. Communication between the captain of EA30 and me took place through the doorway. We do not both operate the VHF radio. That makes it easier to communicate with me and for the people on deck it is also easier when there is direct communication from above. The captain of EA30 would watch the gangway, the two crew members and middle bollard. He said “it’s OK”. I interpreted that to mean that the manoeuvre was well underway and that the crew was working on the hawser and the whole operation was going in the right direction. It is not clearly agreed what “it’s OK” would mean.

I find it a tricky question whether I contributed to what happened that way. Unfortunately, I cannot turn back time. I discussed safety on board relatively often and also discussed the car tyre part several times with the seaman. Also the bollards - that if the hawser gets stuck we have to fix it up in the wheelhouse in whatever way we can. First make sure it is safe, always communicate upwards and only then take action. The fact that it didn’t work out, I just don’t know. I also had the trainee walk behind the seaman for a reason. I had a proper conversation with the seaman: “You watch his safety, he walks after you, you have the lead on deck”. I also did the extra toolbox, so well, did I actively contribute to what happened? I also communicated with the office HR that I did not actually want a trainee on board, because I was still in a training programme myself and it would take too much of my energy and because I do not think the EA7 is a suitable trainee ship for the mate/engineer small ships course, and also I feel the supervision is lacking, as we do not have a full-time engineer on board to pick up the technical aspects or a mate to take up the nautical things. My response was that shipping company Muller is an approved apprenticeship company. By then, it

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was a fait accompli. Perhaps I should have acted more firmly on that. Did I contribute to it? I perhaps shouldn't have accepted it that the trainee had come on board, but that's with hindsight. Would things have turned out differently then? I have no idea.
I do blame myself for something, but I don't want to explain that further.

In terms of my progress with my training process, it was true at the time that I had done this manoeuvre dozens of times, both in Moerdijk and Dordrecht several times. There is nothing in writing, but I received oral feedback from the mentor. I felt confident to perform the manoeuvre. I did ask the captain of EA30 to be there, because I think the ship should be manned with at least three crew members. That second or third person must be competent for that job, including for experienced captains. I consider myself competent to perform the manoeuvre, otherwise I would not have started it. I was in the final stage of my training programme as a captain.
You say the Tia Marta was eight-tenths of a knot ahead, before I initiated the manoeuvre to go around to port. You ask me if I was aware that sailing backwards it would impede my manoeuvre in conjunction with the Tia Marta's propeller water. I turned forward myself. I was attached to the hawser and checked that I had enough space around me. That will affect the manoeuvre. You say that the maritime police footage shows that just before the accident, I come to be transverse to the Tia Marta's course and at that point I have some difficulty in coming around further over port and I am already considerably to the starboard side of the Tia Marta. You ask if I have considered putting an engine in reverse to reduce the turning radius. I have no memory of that.
You say that from the footage you notice that, when I was almost round, I propped up my rudder and was almost on an equivalent course with the Tia Marta, that I persevered in this for a while, then the EA7 moved on to port at once and I ended up almost 90 degrees transverse to the Tia Marta. I reply that it was not my intention to come 90 degrees transverse behind the Tia Marta. I have no memory of that.

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You say I have stated that I rotated around my own axis with a slacking hawser while going around. I reply that it is correct that the footage shows that the hawser was taut throughout the manoeuvre.
You ask whether I realised that when you say I overshot to port, the speed would become significantly lower than that of the Tia Marta, the distance would increase faster and I would be in difficulty with the length of the towline. In my memory, I did not experience it that way. If it was as you say, I would have intervened. I did see the stern of the Tia Marta while manoeuvring. You may be right that I did not realise this.
You point to section 4.0 on Safe Speed of the Muller manual (page 76). I am familiar with the Muller manual, which is present on every ship, but it was not used in training.
You point to the screenshots from page 139 of the petition. You say that on screenshot 28, I am sailing towards the Tia Marta, that I have to pick up the hawser and therefore turn the bow, the head bollard, towards the towline. You say that if I do that, I have to enter the propeller water. You say that screenshot 30 shows that I am sailing at an angle and from screenshot 31 the angle gets even bigger and I end up at an angle in the propeller water. You say that at some point, the propeller water then hits the starboard bow and causes a reaction to the ship by pushing the head further away to port. You ask why I did not react as I always do, that when a tug comes in the propeller water behind it, I react in the same way as when the Tia Marta comes in the propeller water. You ask why the angle is so big and that that must have been a deliberate action of mine. I reply that I must then speculate. Getting straight to the back of the propeller water is also my preference. It could have been disorientation on my part. I would not have done this on purpose. It could be what you say that because I was disoriented, I came at an angle in the propeller water and that is why the ship turned away and the hawser tautened and then hit the accommodation.

I said that I consider myself competent to perform the manoeuvre. In retrospect, with the information available today, I doubt I was sufficiently competent. Given the possible conclusion that I was disoriented, I have to

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conclude that this should not have happened and that has to do with competence. I live with a huge burden and I would like to know what happened.

I leave the response to the fifth objection to my counsel.
I familiarised the seaman with the engine room, because you know when you are sailing in pairs and if one of them breaks his leg, the seaman does have to go and do certain things. I doubt whether he then knows exactly what everything does in the engine room. I did explain the basic points, but I don't think much is being done with this guideline. I have insisted to the shipping company that there should just be a MAROF on board the EA7, so that there is time to cover that in the introduction. With those changing crew compositions, you don't get to familiarise yourself with changing crew all the time at short notice, which is what they want and keep doing. That happened to me as well because I was always stepping in to help on other ships when needed. I asked for the MAROF several times but nothing happened. If I break my leg, someone has to be around to replace me.
It is true that I sailed out without making up the crew list. I realise I should have done that right away and the objection is correct.
At the moment, things are going up and down with me. It is good that this hearing is taking place now. I have worked towards this. Mentally, I am not what I was. When I was a temporary ships officer, I came home with stress. It doesn't feel right in any way to do anything in a vessel. I don't know if that will change. I always enjoyed doing it though and loved being on the water.

B. The questioning of the captain of EA30 by C.A.H.M. Beltz, labour inspector of the Inspectorate SZW and aforementioned senior inspector Van der Wall, on 3 September 2021 (Annex 27 to the petition), in so far as it contains: *"The shipping company Muller asked me if I was in a position to sail with the captain. C. S. is the captain of the En Avant 7. I agreed to that. I first asked the shipping company how far the captain was with his sailing.*
(...)

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I knew the captain was in some kind of training programme. (…)
to the question *"What happened on Wednesday 25 August 2021?"*
Answer of the suspect: They walked along with the hawser, which suddenly tautened. They were both lifted up and pressed against the accommodation. The seaman was closest to the bow. The trainee stood next to the seaman but slightly more astern."
To the question: "What was the division of roles? "Answer of the suspect: "The captain had the helm. I was outside next to the bridge looking at the line and the two people on deck were working on the line. (..)
When I saw it was not going well, (I) shouted to the captain that it was not going well,

C. The questioning of the captain of EA30 as defendant by F.P.C. van der Ham, labour inspector of the Inspectorate SZW and aforementioned inspectors Van der Wall and Van Geest on 21 December 2021 (Annex 34 to the petition), in so far as it contains: Question: What did you discuss with the captain about what you would do?
Answer of the suspect: Nothing in particular.
Question: When were you standing where, and what were you paying attention to at the time?
Answer of the suspect: I was outside, port side on the bridge wing. I first checked that the hawser was well behind the port middle bollard. I looked from top to bottom. I did this for the captain. Otherwise, he had to get out from behind the controls.(...)
(Further to your previous statement:) We show you some images (pictures of the Tresco): to the question *"What can you tell us about why this line suddenly tightened?"*
Answer of the suspect: *"That seems obvious to me if you look at the images. He went too far off the stern of the Tia Marta and then drifted to starboard. I do not know what caused this. I could not see that this was happening, I was on the port side watching the deck crew. "To the question "In your earlier statement, you said that if things don't go*

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well, the towline could end up in the water and it would have to be picked up by hand and put on the tyres. But that was not been the case here. However, the trainee stated that he and the seaman lifted the hawser out of the water and put it around the middle bollard. He also pulled away the towline from behind a car tyre because it had ended up behind it.
What is your reaction to that?"
"The men walked along with it. In my opinion, the hawser did not get caught. It was in the water at the front, that is normal. The hawser should also be slack. It has to be that way, otherwise your people can't walk there either. It is normal for it to also be partly in the water. If there is too much tension on it, you won't be able to handle it either. I did not see anything abnormal in it. I do not remember the hawser getting stuck under anything. The hawser has to hang limply, which is why the men walk along with it."
To the question "What can you retell us about being pulled along 'at the head'? Is towing along "at the head" a common action?)"
"It is common on vessels like the EA7 that this takes place. These are the conventional vessels, either single-screw or twin-screw. This is safer. This has to do with when you get into propeller water, for example, where the vessel is turned. When you are fastened at the head, your vessel follows the ship ahead."
When asked "So you also watch the hawser going to the TIA Marta too?"
"I looked down at the middle bollard. I was watching the people. The captain could then watch the hawser at/on the Tia Marta.
His position was not ideal either."

D. The questioning of the trainee by T. van der Wal and A. Siegersma, labour inspectors of the Inspectorate SZW, on 1 September 2021 (annex 25 to the petition), in so far as it includes answers to

the question "What can you tell us about the accident? "While towing,

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the seaman and I had been standing on the foredeck. When we were given permission to bring the towline to the bow, the seaman and I walked along the starboard side to the aft deck. Meanwhile, the captain had turned our ship, causing the towline to slacken and lie in the water. The seaman and I lifted the port side line out of the water and put it around the bollard located at the level of the aft side of the superstructure. I then walked further forward, pulling the towline away from the outside of our ship behind a rubber car tyre, which is what it had got caught behind. While I was doing that, the seaman walked behind me towards the foredeck. About that time things went wrong, the towline suddenly tightened, causing the seaman and I to be pressed against the ship's superstructure by the towline."

E. The questioning of the trainee as a witness by F.P.C. van der Ham, Labour Inspector of the Inspectorate SZW and aforementioned inspectors Van der Wall and Van Geest on 22 November 2021 (annex 31 to the petition), in so far as it includes: to the question "Did you see the stern of the Tia Marta? "Answer of the witness: "No... I thought again about what went wrong. Our ship has turned too far, this is not right. Consequently, there is too little slack in the hawser. "To the question "At one point, the towline you were guiding suddenly became tight? What can you tell us about the reason this line suddenly became tight? What happened?
Answer of the witness: "The ship had turned a little too far and without enough slack in the hawser. That is my conclusion in any case."

F. The "Report of Findings" of aforementioned Inspector Van der Wall, drawn up and signed on 20 September 2021, in so far as it contains: "In this official report, the camera images taken with the cameras present at the Moerdijk Port Authority with the numbers C33, 4213, 4211, 4201, 3206 and 4217 were analysed. The available images from 25-08-2021, 22:29:58 hours to 26-08-2021, 00:00:44 hours, were obtained under Section 19 WED, under a warrant. The information and

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documents obtained are named in the Official Warrant Report 19 WED with reference AMB-002-01 and included in the investigation file.

From the CCTV footage:

I made some screenshots. The relevant screenshots have been incorporated in photo attachment (DOC-016) and placed in the case file. I will describe what I saw for each film below.(...)4211 Wuppermann-2021-08-25 22.52-23.20, accident 23.12 4

I saw that:(...)The distance between the EA7 and Tia Marta widens. I know in my official capacity that the towline had been used to place figure eights on the bitt in order to obtain a shorter towing connection when leaving Oostelijke Insteekhaven. Now these figures of eight are removed from the bitt, so that the full length of the towline can be used for the remainder of the voyage;

- The EA7 then turns with her bow towards the stern of the Tia Marta, with the towline running on the port side of the EA7);
- The towline is tight, at least from 15 minutes and 35 seconds to 16 minutes and 49 seconds. During this period, the EA7 turns by the head to the stern of the Tia Marta (see screenshot 19 to 29 of photo sheet DOC-016);
- After 16 minutes and 49 seconds on the EA7, a person appears at the port side middle bollard. From the images, it is not possible to tell exactly who this person is and what he is doing. It is plausible, given the statements of the crew members, that this person is doing something with the towline (see screenshot 30 of photo sheet DOC-016);
- After 16 minutes and 55 seconds, this person disappears from view again as he walks towards the bow;
- After about 16 minutes and 55 seconds, the EA7 has turned too far (see screenshots 31 and 32 of photo sheet DOC-016);
- After 17 minutes and 10 seconds, the towline tightens and the bow of the EA7 abruptly pulls towards the Tia Marta (see screenshot 32 of photo sheet DOC-016);

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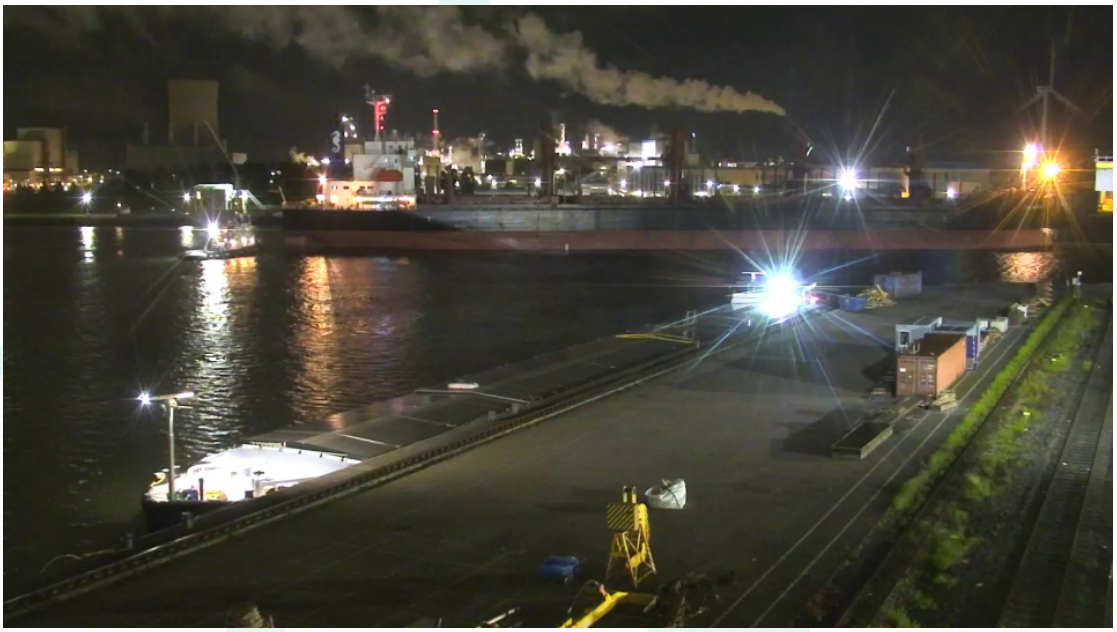
– Explanation: The reasonable presumption is that the accident happened between 16:55 and 17:10 (duration of the film. The actual time when the accident happened is in that case between 23:08:54 and 23:09:09;



Screenshot 31 - CAM 4211, after 16:56 film
The EA7 turned too far to port, causing the towline to conflict with the accommodation/superstructure of the EA7. The towline is not under tension here.

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Screenshot 32 - CAM 4211, after 17:10 film
The EA7 turned even further to port. This is the moment when the towline becomes tight/under tension. This is also when the accident happens/just happened. That is at 23:09:09 (hour:min:sec), or just a few seconds before.

G. The Minimum Safe Manning Document issued on 27 November 2017 for the EA7 (Annex 3 to the petition), in so far as it contains: *"Table III*

Grade/capacity	*Certificate (STCW reg.)*	*Number*	*Particulars*
Master	*II/3*	*1*	
Chief mate	*II/3*	*1*	
Officer in charge of an engineering watch	*III/1*	*1*	
Rating deck	*II/4*	*1*	

(...)
TABLE III:
For trading area 3 (see Annex I for description)

When sailing in non-continuous trade the Chief Mate is not required.

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non continuous sailing: a single voyage of maximum 14 hours based upon a minimum of 10 hours of rest in any 24-hour period.(…)

When sailing in within port limits/inland waters, the "Officer in charge of an engineering watch" is not required. When the "Officer in charge of an engineering watch" is not required: One of the ship's crew, not the master, shall be able to carry out regular engine room duties and be able to operate essential equipment or a crewmember, not the master, is in possession of a minimum endorsement as engineer (STCW-III/1).
(…)
TRADING AREAS

Code	*Description*
3	*(30) Coastal waters whereby the offshore distance does not exceed 30 nautical miles and the sailingtime from safe harbour or anchorage shall be within 6 hours."*

H. The "Safety manual Muller Dordrecht - Harbour towage" (Annex 16 to the petition), in so far as it contains: *"If the crew are required to attend the towing gear during a towing operation, the length of time exposed shall be kept to a minimum.*

During towage operations the towing gear equipment and personnel shall be continuously monitored. Any change in circumstances shall be immediately reported to the Tugmaster. This is particularly important on tugs where the Tugmaster has a restricted view of the towing area / personnel. Crew shall be aware that the tow may have to be released in an emergency situation, and that this may occur without warning. Having verified the towline is fastened to the tug, then this must be confirmed with the vessel's bridge/Pilot. The Pilots shall than confirm "all fast" to the tug, thus completing the loop. Sometimes it is not possible for the Tugmaster to see the crew on deck due to structural design or at night when they may be obscured by deck lighting on the

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ship.(…)

4.9.1 Speed changes
Most ship towage manoeuvres shall be carried out with the minimum of way on the ship. This is especially true when swinging, and no way shall be on the ship when working a conventional tug stern to stern. Caution shall be exercised when using the engines while the tugs are working. The after tug will be affected by the wash and every tug will be affected by the change of speed either up or down, and a rapid change in speed is all the worse. If the situation dictates the use of engines, the minimum that the situation allows shall be used and the tugs shall be informed of what the ship is about to do as it will affect their own actions."

Findings
with regard to the sixth objection
The sixth objection is unfounded. The person concerned acknowledges that, pursuant to section 94 paragraph 2 of the Seafarers Decree (and sections 33 paragraph 2 and 59 of the Seafarers Act), he is required to draw up a crew list whenever there is a change in the composition of the crew and that he failed to do so. However, the Disciplinary Court must decide whether this violation of the law constitutes a breach of the standard of good seamanship. The inspectors have made no such claim, nor is it a violation of good seamanship, as the violation of the law in this case did not endanger those on board, the ship, the cargo, the environment or shipping traffic.

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. At the start of the assistance task, the EA7 was stern-to-stern with the Tia Marta. Once the Tia Marta had turned in the Centrale Insteekhaven, the EA7 would come head-to-stern, with the towline running over the head bollard. The EA7 would thus sail along behind the Tia Marta, heading forward. During the manoeuvre to bring the ship's head forward and put the towline over the

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head bollard, the EA7 swung through too far to port and at the same time the towline became taut. The towline ran from the bitt to the middle bollard (more or less level with the bitt, but on the port side of the ship). From the port side middle bollard, the port side towline collided with the front of the accommodation. The seaman and trainee were on the port side in the gangway between the accommodation and the bulwark. They were trapped between the towline and the accommodation. The seaman was at the forefront and died almost immediately from his injuries. The trainee was slightly further back and broke two ribs.

with regard to the first objection
The first objection is well-founded. It transpired that the person concerned approached the stern of the Tia Marta too closely with the EA7 and most probably ran into the Tia Marta's propeller water, as a result of which the person concerned lost control and allowed the tug to swing too far. The wind (according to the pilot, NW - 4 Bft) also contributed to this. As shown in screenshot 32, the EA7 was incorrectly positioned and could not rectify the situation. The film shows the shock and the abrupt movement the EA7 made. The Tia Marta hardly moved at all, but the EA7 did. The person concerned himself also left open the possibility that he allowed the tug to swing too far. The Disciplinary Court does not share the police's view that swinging the tug too far (at an angle of almost 90 degrees!) in the dynamics of sailing is not unusual and possibly to be expected.

with regard to the second objection
The second objection is well-founded. It has been demonstrated that the person concerned was not sufficiently aware how the EA7 was situated in relation to the Tia Marta, the position of the towline and the position of the deck crew. This is clear from the following.
According to the shipping company's own rules (section 4.9.1 on Safe Speed of the Muller manual), with turning, the ship's speed should be as low as possible. It is normally appropriate and safest to wait to turn until the line is over the head bollard. Therefore, the Tia Marta should not have picked up

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any speed. Nevertheless, the person concerned agreed with the pilot to turn ahead with the Tia Marta while the line was not yet over the head bollard and he could not see the position of the deck crew. The person concerned has indicated that he can manoeuvre better when sailing forward and building up some speed, as this allows him to use the propellers for steering. However, this is an additional risk where alertness is called for. However, the person concerned was not aware of this. He had not learned this from his mentor. The position of the towline was a responsibility shared between the person concerned and the captain of EA30. An experienced captain has to constantly focus on the hawser to see whether or not it is getting tight. The person concerned could have seen from his position that the hawser was rising and could then have seen that there was tension. The person concerned stated that he was sailing towards the Tia Marta and he was looking in that direction and that the distance to the Tia Marta determines whether the hawser will be tight. However, he was not certain in his statement that he constantly followed the towline. The person concerned was therefore insufficiently aware of the position of the towline.
The same applies to the position of the deck crew, as the captain of EA30 had not informed him about it.

The third objection is well-founded. The fact that two toolbox meetings were held that day and the same manoeuvre was carried out earlier that day do not show that the person concerned coordinated with the captain of EA30 with sufficient precision as to who would pay attention to what and how they would communicate about it. In particular, there was a lack of proper agreements on communication. The captain of EA30 had a lookout function and could therefore be expected to keep the person concerned constantly informed about how the manoeuvre was going and to give the person concerned instructions, such as saying “don't steer further to port” or “don't turn too fast”. Instead, the person concerned and the captain of EA30 barely communicated with each other during the manoeuvre. The captain of EA30only told the person concerned “it's OK” and “there's a problem”.

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with regard to the fourth objection
The fourth objection is well-founded. As shown by the considerations regarding the first to third objections, the accident was contributed to by the fact that the person concerned allowed the EA7 to swing too far during the manoeuvre to come head-on, that the party concerned was insufficiently aware of how the EA7 was situated in relation to the Tia Marta, the position of the towline and the position of the deck crew, and that the person concerned did not sufficiently coordinate with the captain of EA30 on who would pay attention to what and how they would communicate about it.
The manoeuvre in question is not easy to perform properly with a conventional tug with no bow thruster and a low draft, especially in the dark and windy conditions. It is sufficiently plausible that the captain's lack of experience played a role. In new tugs, an accident like this is virtually impossible, as the tow rope runs through an eye on the bow to the winch/bitt on the bow and it can be shortened and operated from the wheelhouse.

with regard to the fifth objection
On behalf of the person concerned, counsel argued that the En Avant 7 was double-certified: the vessel could sail on both "maritime" and "inland navigation" papers. At the time of the accident, seafarers were sailing with maritime papers in accordance with the Minimum Safe Manning Document (MSMD). The person concerned takes the view that it was primarily the responsibility of the shipping company to man the ship correctly. However, he disagrees with the shipping company that port towage manoeuvres could be carried out by a captain and only a seaman because the requirement in the MSMD that a crewmember, other than the captain, "*shall be able to carry out regular engine room duties and be able to operate essential equipment" and that "a crewmember, not the captain, is in possession of a minimum endorsement as engineer"*was not met. At the request of the person concerned, the captain of EA30 was on board on the day of the accident as part of the crew, so in his opinion the MSMD was still complied with.
In the opinion of the Maritime Disciplinary Court, the person concerned - following the shipping company - wrongly assumes that if a vessel sails in

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Dutch inland waters on maritime documents (MSMD), in terms of crew requirements, it does not have to comply with Dutch inland navigation legislation. However, Article 5.10 of the Inland Navigation Regulations explicitly refers to "*seagoing vessels* complying with the provisions of Resolution A 890 (21) of the International Maritime Organisation". This resolution refers to the *Principles of Safe Manning*. Thus, for those seagoing vessels too, the said article of the Inland Navigation Regulation provides that Article 3.20 of the RSP applies mutatis mutandis (on the understanding that a person holding the Rhine Boatmaster's Certificate means a person holding a document as referred to in Article 2.9, second paragraph). Article3.20 of the RSP (Rhine Vessel Personnel Regulation) is headed *Minimum crew for sea-going vessels and reads as follows:*
1. Part II of these Regulations is applicable to determining the minimum crew of seagoing vessels.

2. Notwithstanding paragraph 1, seagoing vessels may continue to operate under the manning regime provided for in the provisions of IMO Resolution A. 481 (XII) and of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, provided that the number of crew members corresponds at least to the minimum crew as prescribed in Part II for operating mode B, taking into account, in particular, Articles 3.14 and 3.18 of these Regulations. In this case, the corresponding documents certifying the competence of the crew members and their numbers must be on board. There must also be a person on board who holds the full boatmaster's certificate in accordance with these regulations, valid for the section of river to be navigated. After a sailing time not exceeding 14 hours per 24-hour period, this boating certificate holder must be replaced by another boating certificate holder.

Here too, the IMO resolution refers to the *Principles of Safe Manning* but sets 3 additional conditions:

1. the number of crew members must at least correspond to the minimum crew prescribed in Part II for operating mode B;

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2. the corresponding documents certifying the competence of the crew members and their number should be on board;

3. there must be a person on board who holds the full boatmaster's certificate in accordance with these regulations, valid for the section of river to be navigated.

Re 1: Articles 3.14 and 3.18 of the RSP specify the equipment standards to be met and the additional crew requirements. Looking at Part II (Articles 2.01 to 5.11) of the Rsp, Article 3.19(1) is applicable here, as it reads:
The Committee of Experts shall determine, for the vessels to which the articles 3.15 to 3.17 do not apply (such as *tugs*, towing vessels and floating equipment) according to their dimensions, construction, equipment and utilisation, which crew must be on board during navigation.
In this case, however, it was not clear what the Expert Committee determined for the En Avant 7.
Re 2: Nor was there any evidence that the corresponding documents were present on board.
In the official report of findings submitted (Annex 33 to the petition), the Inspector cited Article 5.6(5) of the Inland Navigation Regulation and its Annex 5.7. However, the Disciplinary Court fails to see why this article and that annex are applicable to seagoing vessels when sailing in Dutch inland waters. Indeed, Article 5.10 refers only to Article 3.20 of the RSP and not (also) to Article 5.6 of the Inland Navigation Regulation. Another indication for this reading was mentioned by the captain of EA30's counsel and taken up by the party's counsel by rejoinder. Article 2 of the now defunct “Notice on minimum manning of tugs and harbour tugs on inland waterways” of 7 August 2003 explicitly stated that this notice on minimum manning – which has since been reproduced in Annex 5.7 of the Inland Navigation Regulation – does not apply to tugs and harbour tugs that have valid certificates for sea or coastal navigation.
Re 3: Although it has not become clear to the Disciplinary Court what the Committee of Experts determined for the En Avant 7, it can nevertheless be concluded that all crew requirements, set from the applicable inland

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navigation regulations, were not met her. Indeed, the third requirement mentioned above was not met. Furthermore, the person concerned stated that neither he nor any of the other crew members had a document as referred to in article 2.9(2) Rsp.
In isolation, the person concerned rightly argues that it was primarily the responsibility of the shipowner to properly man the vessel. However, this does not alter the fact that a captain is also deemed to act contrary to the principles of good seamanship if provisions intended to observe the safety of those on board, the ship, the cargo, the environment and shipping traffic are ignored. The fifth objection is well-founded.

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/ship's officer 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 Maritime Disciplinary Court judges that the person concerned seriously failed in his responsibilities/duties as captain, which resulted in the accident.

Given the seriousness of the conduct established, and the consequent partly led to the death of the seaman and injury to the trainee, a suspension of the navigation licence for the duration mentioned below is appropriate.

In view of the following circumstances the Disciplinary Court sees good cause to stipulate that the suspension of the navigation licence will be partially conditional:

- the person concerned was a relatively inexperienced captain, who was at the end of his training programme;
- the person concerned was not properly coached by the shipping company (he had apparently not learned from his mentor that when turning, the speed of the ship should be zero);

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- the person concerned showed that apart from that fateful day, he took safety on the water very seriously. He sent signals to the shipping company, which signals were ignored by the shipping company until the accident (that he did not think it was a good idea for the EA7 to continue without marine officers, he asked the shipping company if it was possible to install cameras so that there would be a view of the deck and deck work from the wheelhouse; and that he did not think it was a good idea to have a trainee on board, because the EA7 would not be a good learning place and because he himself thought this would be an additional burden);
- the shipping company sent an inadequately instructed person (the captain of EA30) to the EA7.

6. Practical recommendations

For practical recommendations, the Disciplinary Court refers to the November 2022 report of the Dutch Safety Board ("Crushing by towing wire with a fatal outcome – lessons from the accident aboard the tug En Avant 7").

7. The decision

The Disciplinary Court,

- declares the objections raised against the person concerned well-founded except for the sixth objection;
- suspends the navigation licence of the person concerned for a period of six months;
- stipulates that of this suspension, a period of four months 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

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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, LL.M., presiding judge, C.R. Tromp, R.E. Roozendaal, J. Berghuis and R.J.N. de Haan, members, in the presence of V. Bouchla, LL.M., as secretary, and pronounced by P.C. Santema, LL.M., in public session of 27 January 2023 at 10am.

P.C. Santema	V. Bouchla
presiding judge	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.

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