



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF  
29 DECEMBER 2023 (NO. 13 OF 2023) IN THE CASE 2023.V11 – BARNEY**

As petitioned by:

the Minister of Infrastructure and Water Management  
in The Hague,  
**petitioner,**  
authorised representative: ing. K. van der Wall,  
senior inspector Human Environment and Transport Inspectorate  
(ILT)/Shipping in Zwijndrecht

versus

C. d. B.,  
**the person concerned.**

**1. Course of the proceedings**

On 12 June 2023, the Disciplinary Court received a written request for disciplinary treatment from ing. K. van der Wall, aforementioned, against the person concerned as captain of Barney vessel sailing under the Dutch flag. Twenty-five appendices were attached to the petition.

The Disciplinary Court has notified the person concerned of the petition, enclosing a copy of the petition with appendices, and informed the person concerned of the right to submit a statement of defence.

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

The presiding judge stipulated that the oral hearing of the case would be held at 10.30 hours on 17 November 2023 at the offices of the Disciplinary Court in Amsterdam.



The court hearing was held on 17 November 2023. Inspector Ing. K. van der Wall appeared at the hearing for the petitioner accompanied by her colleague ing. B.A.C. van Geest.

The person concerned also appeared at the hearing.

## 2. Grounds

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

On Friday, 3 March 2023, at approximately 10.15 hours LT, the Shoalbuster Barney collided with the top of its wheelhouse against the underside of the Schellingwouderbrug bridge in Amsterdam. The navigation was in the hands of the Mar. Off. The person concerned, as captain, was also on the ship's bridge. There was no (effective) assessment of the *air draft*, in relation to the clearance height of the Schellingwouderbrug bridge. At the very last moment, the person concerned realised that the vessel could not fit under this bridge, but this occurred too late and resulted in the collision. There were no personal injuries. However, the satellite domes were damaged among other things, a life raft was activated and the *cradles* of the life rafts were damaged.

The Barney (IMO number 9740938) is a Dutch Shoalbuster, sailing for the Tug and workboat company Herman Sr. BV. in Barendrecht. The vessel was built in 2015, is 30.02 metres long and 13.46 metres wide. At the time of the accident, the crew consisted of 6 people in total.

## 3. The Inspector's objections

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

1. The person concerned did not check the voyage plan accurately enough.
2. The person concerned took account of an *air draft* of 2 metres less than it was in reality.
3. The person concerned therefore also did not recognise the consequences of the noted clearance height of the Schellingwouderbrug bridge in relation to the actual *air draft* of the Barney.
4. The person concerned sailed out with the vessel without complying with all the crew requirements imposed by the applicable inland navigation legislation.

The demand is to impose a suspension of the navigation licence for a period of 6 weeks, 2 weeks of which conditionally.

The Inspector cites as the regulations not complied with:

**Commercial Code, second book, third title**

Article 343(1): The captain is obliged to act strictly in conformity with the usual rules and the existing regulations to secure the seaworthiness and safety of the vessel, the safety of those on board and the goods on board.

**SOLAS Resolution A.893(21) Guidelines for voyage planning**

*3 Planning*

*3.1 On the basis of the fullest possible appraisal, a detailed voyage or passage plan should be prepared which should cover the entire voyage or passage from berth to berth [...]*

**STCW Code Part A, Chapter VIII, Section A-VII/2, Part 2: Voyage planning**

*3 The intended voyage shall be planned in advance, taking into consideration all pertinent information, and any course laid down shall be checked before the voyage commences.*



*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.*

### **Inland navigation regulation**

#### **Article 5.10**

With regard to seagoing vessels which comply with the conditions of Resolution A.890 (21) of the International Maritime Organisation of 25 November 1999 and the London Treaty of 7 July 1978 regarding the standards of seafarers in terms of training, diploma and watch duties, with appendix, (Trb. 1981, 144 and 1992, 109), article 19.07 of the RSP (Rhine Shipping Service act) 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.

#### **Documents referred to in article 2.9, second paragraph**

- a. a Rhine Boatmaster's Certificate referred to in article 11.01, first paragraph, of the RSP or a Rhine Boatmaster's patent according to article 20.03, first paragraph, of those regulations;
- b. a certificate of competence as referred to in article 25, first paragraph of the act;
- c. a document as referred to in article 25, third paragraph of the act; or
- d. an exception according to article 31 of the act, or exemption from the obligation to hold a master's certificate referred to in article 25, first paragraph, of the act, as long as there is compliance with the conditions or limitations of the exception or exemption.



#### 4. The position of the person concerned

In summary, the person concerned acknowledged the inspector's objections. Unlike earlier statements, the person concerned stated at the hearing that the intention was to sail through the lift section of the Schellingwouderbrug, passing under the bridge after leaving the locks.

#### 5. The ruling of the Disciplinary Court

##### The evidence

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

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

"When it comes to the *air draft*, I agree that I did not check the voyage plan accurately enough. I had checked it in advance but the voyage was repeatedly postponed. We only sign the voyage preparation when actually heading there. Our original *sail plan* did not pass under the bridge, but rather through the lift section. We deviated from that, on leaving the locks.

In the original *sail plan* from Velsen, drawn up until Urk, our voyage was: on leaving the Oranjesluizen locks – that would be the central lock – to head towards the lift section and sail that as if we were heading for the IJsselmeer lake. But that went a little wrong.

I have navigated under the Schellingwouderbrug in the past, and I therefore did not myself check the gauge. I forgot to do so. Normally when passing under a bridge, you check the calculation one more time. I failed to do so this time.

The *air draft* is normally 10.85, we were 20 centimetres deeper in the bows, so this came to 10.65. We generally read the draft marks on departure, in order to also know the height of the ship.

I can't get it out of my head: what can have happened, that it all went so wrong? I have undertaken this voyage many times before, and even recently.



I was talking to the clients, at that point... Well actually, for the complete voyage, because we were to immediately start work at the wind park. That had my attention. We then entered the locks and I gave the order to lower the mast and antennae. I saw 8.65 somewhere. Outside the Oranjesluizen locks, there are gauges for the bridge. I think I related them to something, and I assumed... I think that was my mistake, giving the idea of sailing under the bridge, while knowing that it would not fit, but I did give the order. That's where it was misleading.

Yes, it's clear that I did not recognise the consequences of the noted clearance height of the Schellingwouderbrug bridge, in relation to the actual *air draft* of the Barney.

You say that you did not read anything about this in earlier statements. We sent it to the office. I mean prints of the route which we had plotted in the ECDIS. I assumed that this had also all been sent.

We did indeed get together a few days ago and we discussed the events again.

I have always held my master's certificate, up to the age of sixty-five. We were never going to work inland again anyway. Then you really don't need it. Not realising that you can sail the Noordzeekanaal to the Oranjesluizen locks on your seagoing certificates. But after that, it's inland waters. That never occurred to me.

It is indeed true that nobody on board had a valid inland navigation certificate.

The incident still has an impact on me, seriously. Throughout my career, I have never ever been in such a situation. I've been sailing as a captain for around 35 years. And yet I can't really explain what happened. On the one hand, I'm relieved that the damage was so limited. That it was only the *domes* and the mess on board, and that sign here in the bridge. We could easily have... That's the worst I can imagine.

I've spoken to the shipowner, and have continued to sail, without any sanctions."



B. A form “*Voyage Planning*” (enclosed as appendix 12 to the petition). To summarise, this form concerns the voyage of the Barney from Velsen Noord to WP (Wind Park) blue, on 3 March 2023. Noted under the heading “Remarks” is: “*Vertical height Schellingwoudebrug 9.3 mtr*”. The form is dated 3 March 2023 and signed by the captain and the officer of the watch.

C. An email of 28 April 2023 (enclosed as appendix 22 to the petition) from “QHSE Herman Sr.” to ILT, insofar as it contains the following:  
“Please find below the answers given by the Maritime Officer to your questions:

Maritime Officer:

I drew up the voyage preparation, which was checked by the captain before starting the voyage. When planning the route, I noted the Schellingwouderbrug as an object to be passed, and for that reason I stated the characteristics of the bridge in the voyage preparation document. However, I did not include a calculation of the clearance height versus the air draft of the vessel, in the voyage preparation.

A number of metres before the bridge, the captain indicated there was insufficient height and requested I make a crash-stop. However, it was too late to stop because of the speed already gained by the ship. We came to a standstill just after passing the bridge and checked whether everyone was okay. We then retrieved the activated lifeboat and reported the incident. I was the Officer of the watch (OOW) and was navigating the ship. The captain was also on the bridge right from the departure from Velsen, but was mainly in conversation with the client who was on board.”

An email from the QHSE Manager of Holding Herman Sr. BV to ILT, dated 2 June 2023 (enclosed as appendix 23 to the petition), insofar as it contains the following:

“I would like to inform you that at the time of the incident, the crew comprised seafaring crew in accordance with Table III of the Minimum Safe Manning of the Barney. None of the officers had a valid master’s certificate.”



### Considerations

The content of the evidence referred to above has led to conclusions being drawn in this case (with an adequate measure of certainty) that all 4 of the objections given by the Inspector are well-founded. For unexplainable reasons, the vessel hit the bridge, despite the knowledge that the *air draft* was too high for the clearance opening. The Disciplinary Court considers it unlikely that the intention was to pass through the lift section of the Schellingwouderbrug bridge. This cannot be read either in the *statements* drawn up a day after the incident, or in the written replies from the person concerned and the Mar. Off., approximately one month later. The report of 23 August 2021 drawn up by the shipowner, also does not refer to the plan to sail through the lift section. It was the responsibility of the person concerned to produce any deviating *track record* of the ECDIS. It is generally recommended that ILT also go on board to undertake investigation and to safeguard authentic documents.

Even if sailing through the lift section was the original intention, this does not deter from the basis of the objections. The person concerned was in any case extremely inattentive.

The 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 paragraph 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 vessel, the cargo, the environment and shipping traffic.

### The disciplinary measure

The Disciplinary Court judges that the person concerned seriously failed in his responsibilities as captain, which resulted in material damage. Luckily there was no personal injury.

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





Given that the person concerned has learned a lesson from the incident, the Disciplinary Court sees good cause to order a partial conditional suspension of the navigation licence.

## 6. Professional development pointers

Following on from, but also separately from, the decision in this case, the Disciplinary Court sees cause to draw attention to the following points:

1. It is recommendable that the standard forms used by shipowners for voyage preparation include a separate box with questions regarding the minimum clearance height of bridges, etc., the actual *air draft* of the vessel and *clearance*, in order to be able to safely sail under such objects.
2. Effective *Bridge Resource Management* entails everyone sharing the same navigation information, thus making the intention clear to everyone involved. Furthermore, crew working on the bridge should not be distracted by visitors.

## 7. 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 FOUR weeks;
- stipulates that of this suspension, a period of TWO weeks will not be imposed unless the Disciplinary Court stipulates otherwise in a subsequent ruling based on the fact that the person concerned has once again behaved contrary to his duty of care as a good seaman in respect of the persons on board, the vessel, 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 P.C. Santema, presiding judge, J. Berghuis and T.W. Kanders, members, in the presence of V. Bouchla, LL.M., as secretary and pronounced in public session on 29 December 2023.

P.C. Santema  
presiding judge

V. Bouchla  
secretary

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