



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF  
29 DECEMBER 2023 (NO. 14 OF 2023) IN THE CASE 2023. V12- 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

J. G.,  
**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 Mar. Off. of the Barney vessel sailing under the Dutch flag. Twenty-four appendices were attached to the petition.

The Disciplinary Court has notified the person concerned of the petition, enclosing a copy of the petition with appendices, and informed the person concerned of the right 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 person concerned, as Mar. Off. The captain was also on the 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 captain 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 Mar. Off. 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 make any note of the *airdraft* in the voyage plan.
2. 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.
3. The person concerned did not exercise own initiative to take action to prevent collision with the Schellingwouderbrug bridge.

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:

***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.***



#### 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, and that he only chose to pass 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:

"It is true that I drew up the voyage plan. I did so a few days beforehand. It is correct that I did not make any note of the *air draft* in the voyage plan. I knew it off by heart: 10.65, depending on the draft. The second objection, that I 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 is also correct.

What it is all about, is the route plotted in the ECDIS, which passed through the lift section. However, something went wrong. I was convinced, to start with, that we would sail through the lift section. It probably went wrong when the captain gave the order to: lower the mast and the antennae. That may have been the subconscious mistake of: so we do fit under the bridge. Indeed, I should possibly have questioned this, or should have checked it for myself, but I failed to do so.

A few days ago, we sat down – with G. of the shipowner company, who also drew up the shipowner report – and we all came to the conclusion that the route passed through the lift section. I believe that is also what we submitted. I do not know what happened to that.



An improvement has been made in the shipowner company voyage plan. They now have a separate heading referring to the *air draft* and also requiring a calculation of the *clearance*.

Lessons have been learned. Of course we need to calculate it for ourselves, but there are now also guides in place so that it cannot be overlooked.

I myself did not calculate the clearance height from the gauge. Indeed, just before we passed under the bridge, the captain did indeed come to the conclusion: we won't fit. At that same moment – the exhausts are pretty noisy on the Barney – the crew members were on deck, and shouted to alert us. We then made a crash-stop, but that was not my initiative.

I did not see it coming. There was of course a collision, but it was not visible from the bridge, from the navigation deck as it were. We do not have windows at the top, so we cannot look up.

There was no contact with the lift section bridge keeper to open it.

I am now crewing a vessel which no longer sails under bridges. But I have done so for a while, and this certainly immediately makes you more alert. You do indeed always try to make the necessary calculations and to check them. Which I always did, but I failed to do so on this occasion, and the consequences are clear. I'm relieved that there were no personal injuries, because things could have been very different. We are very aware of that. I did keep working on ships though. I think it's been around seven years now, always as a Mar. Off."

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 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. The "Master Statement" (enclosed as appendix 8 to the petition) insofar as it contains the following:



“As master of the Shoalbuster Barney, I would hereby like to inform you of an incident which occurred on 3 March 2023 at the location of the Schellingwouderbrug bridge.

Prior to undertaking the voyage, I mentally checked whether the vessel could pass under the Schellingwouderbrug Bridge, and was convinced that this would not be a problem for the vessel. I had checked the maximum clearance height of the main navigation opening of the Schellingwouderbrug bridge before commencing the voyage.

The Maritime Officer of the Barney, Mr. J. G., was the Officer of the watch and responsible for navigation. I was also on the ship’s bridge. On approaching the Schellingwouderbrug Bridge, I became aware that things were going badly wrong. This resulted in collision with this bridge at around 10.15 LT.

#### 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 3 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 captain, 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 4.4 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.

#### The disciplinary measure

The Disciplinary Court judges that the person concerned failed in his responsibilities as Mar. Off., 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.