

**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF  
23 JUNE 2023 (NO. 4 OF 2023) IN THE CASE 2022.V8–NIEUW AMSTERDAM**

As petitioned by:

the Minister of Infrastructure and Water Management  
in The Hague,

**petitioner,**

authorised representative: K. van der Wall,  
senior inspector Human Environment and Transport Inspectorate  
(ILT)/Shipping in Zwijndrecht

versus

W.E.R. H.,

**the person concerned,**

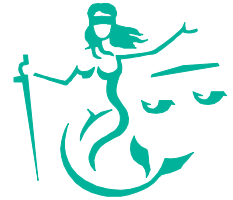
Counsel: J.L.M. Limpens, LL.M.

**1. Course of the proceedings**

On 5 July 2022, the Disciplinary Court received a written request for disciplinary treatment from K. van der Wall, aforementioned, against the person concerned as third officer of the Dutch vessel Nieuw Amsterdam. Thirty-seven 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 of appeal.

On 7 October 2022, a statement of defence was received from the person concerned. The inspector responded to the defence on 20 October 2022. The person concerned filed a rejoinder to the reply on 17 November 2022.



The presiding judge stipulated that the oral hearing of the case will be held at 10:30 hours on 12 May 2023 at the offices of the Disciplinary Court in Amsterdam.

The court hearing was held on 12 May 2023. The aforementioned Inspector, K. van der Wall, appeared for the petitioner, accompanied by her colleague, B.A.C. van Geest.

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 8 March 2021, an industrial accident occurred on board the Nieuw Amsterdam. A sailor's fingers were trapped while he was transporting a steel wire. Part of his middle finger was amputated in the process.

The Nieuw Amsterdam (IMO number 9378450) is a Dutch cruise ship, sailing for the Holland America Line shipping company (hereinafter: the shipping company). Built in the year 2010, the vessel has a length of 285 metres, a breadth of 32 metres and a cargo capacity of 86273 gross tonnes.

## **3. The inspector's objections**

According to the Inspector, the person concerned, as third officer, acted 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. There are no consequences attached to the crane used being partly defective.



- a. This meant that a very heavy load (180 kg) had to be lifted manually over a coaming.
  - b. Partly because of this, a wheel of the trolley ended up in the gap at the hatch's hinge.
2. A home-made wooden trolley was used for horizontal transport, instead of proper work equipment.
3. The person concerned accepted the order to carry out this work without sufficiently assessing the risks.
4. During the operations under the responsibility of the person concerned, a seaman's hand became trapped, causing part of his middle finger to be amputated.

The Inspector cites as the regulations not complied with:

#### **Working Conditions Decree**

##### *Article 3.17. Preventing hazards from objects, products, liquids or gases*

The danger of being hit or injured by objects, products or parts thereof or liquids or gases, or the danger of being trapped by objects, products or parts thereof shall be prevented and if this is not possible, the risk shall be limited wherever possible. Measures aimed at collective protection take precedence over measures aimed at individual protection.

##### *Article 7.3. Suitability of work equipment*

2. In order to ensure that the use of work equipment does not endanger the safety and health of workers, work equipment made available to workers at the workplace shall be used only for the purpose, in the manner and at the location for which it was designed and intended.

##### *Article 7.4. Soundness of work equipment and accidental events*

1. Work equipment consists of sound material.
2. A piece of work equipment is of sound construction.
3. A piece of work equipment is positioned, attached or designed in such a manner, and applied in such a manner, that this minimises the risk of



undesirable events such as shifting, falling, tilting of the work equipment, or being struck by the work equipment or parts thereof, as well as overheating, fire, explosion, lightning strike and direct or indirect contact with electricity.

*Article 7.5. Assembly, dismantling, maintenance, repair and cleaning of work equipment*

1. Maintenance, repair and cleaning work on work equipment shall be carried out only if the work equipment has been switched off and depressurised or powered down. [...]

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

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

To summarise, the person concerned claims to have acted in accordance with the tasks and responsibilities delegated to him, according to the applicable protocols and the due care which might be expected from a good seaman.

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

There is no evidence that the person concerned acted contrary to the duty of care that he, as a good seaman, should observe.

The steel wire of a lifeboat needed to be replaced. The new steel wire was hoisted on deck from the boatswain's workshop by means of a crane, after which it was transported horizontally using a trolley. Due to a defect, the crane could only lift and lower the load, and could not move crossways; the trolley was positioned in such a manner that the load could land on the trolley upon pulling the cable sideways. In order to continue on its path, the trolley needed to be lifted over a coaming. The trolley tilted in doing so. The



seaman may have attempted to stop the movement of the steel wire, at which point his finger became trapped.

A hazard identification & risk assessment form had been drawn up for the replacement of the steel wires of lifeboats on board the Nieuw Amsterdam in August 2019 (appendix 10 of the petition). This form was drawn up by the staff captain and the safety officer. It paid attention, among other things, to the correct lifting methods and the risk of hand injury, and the severity of the possible consequences of the identified risks was estimated with due attention for the prescribed working method. On the day of the accident, a *Permit to Work* was issued for the replacement of the steel wire (appendix 9 of the petition). The *responsible officer/ supervisor* (third officer M) signed the Permit to Work to state that he "reviewed this permit with the workers(...) and briefed them on work activity and safety precautions" and that he "personally inspected the work site and adjacent spaces and verified the information as per this permit and that safety procedures and equipment are in place". The *authorising officer* (the safety officer) signed the Permit to Work to state that he was convinced "that all the necessary precautions have been taken and that the Responsible Officer/Supervisor is competent to carry out the work" and gave his approval to start the work activities. The Permit to Work was also signed in the space reserved for "Captain's or Staff Captain's approval Signature".

From the above, it can be concluded that the consequences of the crane being partly defective and the identification of risks of the work activities, were not the task and responsibility of the person concerned, but rather of the staff captain and/or the safety officer and the responsible officer. The person concerned therefore cannot be accused of not having attached consequences to the crane being partly defective. For the same reason, the person concerned cannot be accused of accepting the order to carry out this work without sufficiently assessing the risks.

The person concerned was also not present at the safety meeting held in the morning prior to the accident. During that meeting, the safety officer had discussed the work activities with the responsible officer (third officer M) and



the crew involved. The safety officer discussed the work activities at a later moment with the person concerned, who had been made responsible for the transport of the steel wire, and indicated that he should contact the electricians regarding the status of the crane, and that a safe distance should be kept from the steel wire. They did not discuss the transport of the steel wire using the trolley at that point, but rather only the lifting process using the crane.

With regard to the trolley, it is commonly used on board to transport heavy loads. The trolley had previously been used for transport of steel wire. The person concerned was not present at that time. He had only been on board for three days, and was therefore still establishing his routine. He arrived at the work location slightly later. The seamen had at that point already received instructions to start preparing transport of the steel wire. With this in mind, it is not contrary to the duty of a good seaman that the person concerned did not indicate that the steel wire must be transported in another manner rather than using the trolley.

However, the steel wire needed to be lifted over a coaming. That is when the accident occurred.

Once the wire was positioned on the trolley, the person concerned left the working location momentarily to switch off the crane. At that point, the person concerned did not instruct the seamen to halt further work until he returned. However, the Disciplinary Court does not attach any consequences to this for the person concerned, because the working method was a result of the decision to have the work conducted using a partially defective crane, and the responsibility for this decision did not lie with the person concerned.

With a view to the above, the Disciplinary Court dismisses the charges against the person concerned.



## **6. Practical areas of attention**

Following on from this, but also separately from the decision in this case, the Disciplinary Court draws attention to the fact that the responsible officers/supervisors who will be involved in the actual implementation of work, must be present during the discussion of risks and mitigating measures in the safety meeting.

## **7. The decision**

The Disciplinary Court dismisses the charges against the person concerned.

Duly delivered by W. van der Velde, LL.M., presiding judge, W. A. Barten, T.W. Kanders, S.W. Postma and R.E. Roozendaal, members, in the presence of V. Bouchla, LL.M., as secretary, and pronounced by W. van der Velde in public session on 23 June 2023.

W. van der Velde  
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.