



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF
23 JUNE 2023 (NO. 5 OF 2023) IN THE CASE 2022.V9–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

A.J. K.,

the person concerned,

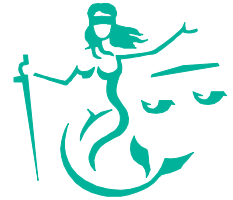
Counsel: W.E. Boonk, LL.M.

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 safety officer of the Dutch vessel Nieuw Amsterdam. Thirty-three 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 6 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 18 November 2022.



The presiding judge stipulated that the oral hearing of the case will be held at 14.00 hours on 12 May 2023 at the offices of the Disciplinary Court in Amsterdam.

The court hearing was held on 12 May 2023. Inspector K. van der Wall appeared for the petitioner.

The person concerned appeared at the hearing, represented by his lawyer.

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 acted as safety officer 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. Despite being a safety officer, the person concerned instructed the third officer to carry out this work without sufficiently assessing the risks.
4. During the operation, a seaman's hand was trapped, which resulted in the amputation of part of his middle finger.

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".

A safety meeting was held prior to the work activities on 8 March 2021, in which the person concerned discussed the work with the responsible officer (third officer M) and the crew involved. The other officer who was to be present at the work activities (third officer W) was not present at the safety meeting. The person concerned discussed the work activities with him at a later moment, 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.

It was not until the hearing that it became clear that the person concerned had informed the staff captain of his doubts prior to the incident, regarding the work to be carried out using a crane which was partially defective and with a fewer number of people than under normal circumstances. It also became clear that the person concerned had advised the staff captain that it



was sensible to postpone the work activities until a special team or extra seamen were on board to conduct the work. The Disciplinary Court appreciates this. It became the task and responsibility of the staff captain to consider the risks of conducting work activities using a crane which was partly defective and with a fewer number of people than under normal circumstances, contrary to the advice of the person concerned. However, the staff captain overruled the doubts and advice of the person concerned to postpone the work. No cruises were being offered due to COVID-19, and a limited number of crew members were therefore on board. According to company protocol and international guidelines, it was however essential that maintenance work be conducted on the lifeboats. The staff captain therefore believed that the work could not be postponed. The work needed to be done using the crane which was not able to transport the steel wire crossways. With a view to the instructions given by the person concerned to the crew members involved, during and after the safety meeting, as well as the doubts which he had expressed to the staff captain, and in the light of the hierarchic structure on board, the person concerned cannot be accused of not attaching consequences to the crane being partially defective, nor can he be accused of delegating the task of conducting the work to the third officer without fully identifying the risks.

At the hearing, it became clear that, prior to the work being conducted, the person concerned had instructed that the steel wire should be pulled crossways using two safety lines, but that this working method was not followed. On actually conducting the work, the trolley was positioned behind a coaming, over which the trolley containing the steel wire, needed to be lifted. That is when the accident occurred. The person concerned was not present during this actual work. The person concerned therefore cannot be reproached with regard to the use of the trolley.

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.