



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF  
14 JULY 2023 (NO. 6 OF 2023) IN THE CASE 2023.V1 – HELGE**

As petitioned by:

the Minister of Infrastructure and Water Management  
in The Hague,

**petitioner,**

authorised representative: B.A.C. van Geest,  
senior inspector Human Environment and Transport Inspectorate  
(ILT)/Shipping in Zwijndrecht

versus

M.A.D. S.,

**the person concerned.**

**1. Course of the proceedings**

On 3 February 2023, the Disciplinary Court received a written request for disciplinary treatment from B.A.C van Geest named above (hereinafter: the Inspector), against the person concerned, as First officer of the Helge vessel, sailing under the Dutch flag. 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.

The Disciplinary Court received a statement of defence on 5 April 2023.



The presiding judge stipulated that the oral hearing of the case will be held at 09.45 hours on 16 June 2023 at the offices of the Disciplinary Court in Amsterdam.

The court hearing was held on Friday 16 June 2023. Appearing on behalf of the applicant: the Inspector.

The person concerned attended the hearing via a video link from the Philippines. He was heard with the assistance of an interpreter.

## **2. Grounds**

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

In the early morning of 9 September 2022, Mv Helge was en route from Antwerp to Heroya (Norway). The wind was East 7 bft, there was a rough sea and moderate swell, it was dark and raining, but visibility was good. The Helge heading was around 035 degrees, at a SOG of around 8 knots, and the vessel was sailing on the open sea, approximately 20 miles west of the Danish coastline. At 05.20 LT(=ST), the vessel was hit starboard aft by the overtaking vessel, Wild Cosmos, which had an SOG of around 17 knots. The ballast water tank 3 SB, ballast water tank 4 SB and the Helge's engine room suffered leaks and flooded. The Helge listed increasingly to starboard and trim by stern, suffered a black-out and was NUC. At 06.00 hours, the crew abandoned the Helge and boarded a life raft. After 30 minutes, a rescue helicopter arrived, hoisted the crew from the life raft and took them to Esbjerg. The Helge did not sink. The vessel was towed to Esbjerg where it arrived on 10 September 2022.

The Helge (IMO number 9677404) is a Dutch multi-purpose dry cargo vessel, sailing for the MF Shipping company. Built in the year 2013, the vessel has a length of 89 metres, a breadth of 13.35 metres and a cargo capacity of 2911



gross tonnes. At the time of the accident, the crew consisted of 7 people in total. This includes the person concerned, in the position of First officer.

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

According to the Inspector, the person concerned acted as First officer contrary to the duty of care that he, as a good seaman, should observe with regard to the persons on board, the vessel, the cargo, the environment and shipping traffic (Section 55a of the Seafarers Act). The objection comprises a number of elements, which will be judged below in the findings under point 5.

The Inspector cites as the specific regulations not complied with:

#### **COLREG- rule 5**

Every vessel shall at all times maintain a proper lookout by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.

#### **COLREG- rule 7**

- (a) Every vessel shall use all available means appropriate to the prevailing circumstances and conditions to determine if risk of collision exists. If there is any doubt such risk shall be deemed to exist.
- (b) Proper use shall be made of radar equipment if fitted and operational, including long-range scanning to obtain early warning of risk of collision and radar plotting or equivalent systematic observation of detected objects.
- (c) Assumptions shall not be made on the basis of scanty information, especially scanty radar information.
- (d) In determining if risk of collision exists the following considerations shall be among those taken into account:



- (i) such risk shall be deemed to exist if the compass bearing of an approaching vessel does not appreciably change;
- (ii) such risk may sometimes exist even when an appreciable bearing change is evident, particularly when approaching a very large vessel or a tow or when approaching a vessel at close range.

#### **COLREG- rule 17**

- (a)
  - (i) Where one of two vessels is to keep out of the way the other shall keep her course and speed.
  - (ii) The latter vessel may however take action to avoid collision by her manoeuvre alone, as soon as it becomes apparent to her that the vessel required to keep out of the way is not taking appropriate action in compliance with these Rules.
- (b) When, from any cause, the vessel required to keep her course and speed finds herself so close that collision cannot be avoided by the action of the give-way vessel alone, she shall take such action as will best aid to avoid collision.
- (c) A power-driven vessel which takes action in a crossing situation in accordance with sub-paragraph (a)(ii) of this Rule to avoid collision with another power-driven vessel shall, if the circumstances of the case admit, not alter course to port for a vessel on her own port side.
- (d) This Rule does not relieve the give-way vessel of her obligation to keep out of the way.

#### **STCW code part A/part 4-1**

- 13** The officer in charge of the navigational watch is the master's representative and is primarily responsible at all times for the safe navigation of the ship and for complying with the International Regulations for Preventing Collisions at Sea, 1972, as amended.
  
- 43** The officer in charge of the navigational watch shall take frequent and accurate compass bearings of approaching ships as a means of early



detection of risk of collision and shall bear in mind that such risk may sometimes exist even when an appreciable bearing change is evident, particularly when approaching a very large ship or a tow or when approaching a ship at close range. The officer in charge of the navigational watch shall also take early and positive action in compliance with the applicable International Regulations for Preventing Collisions at Sea, 1972, as amended and subsequently check that such action is having the desired effect.

The relevant procedures from Chapter 5 of the Quality System of **Marin Ship Management (MF Shipping Group)** were not followed or not followed in full.

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

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

The person concerned acknowledges (the elements of) the Inspector's objection, but considers the original demand formulated in the petition, to be overly strict and excessive because:

- he had only fulfilled the position of first officer for two months;
- he was working on the required paperwork at the time of the accident;
- he had always had a good track record, with reasonably good appraisals;
- he was convinced that the Wild Cosmos would keep a wide berth when overtaking or would in any case at least keep a safe passing distance;
- the previous look out and the second officer had also failed by not giving warning of the overtaking Wild Cosmos;
- although it is true that he was unsuccessful in preventing the vessel from being hit from behind, this does not necessarily mean that he acted without due care;



- he had only had the watch for an hour, when the Wild Cosmos approached the vessel at an increasing speed and without prior warning;
- he feels regret at not having been able to prevent the collision, and being overly focused on the paperwork;
- he has learned a great deal from the incident;
- he was dismissed following the accident – at the hearing, the person concerned
  - actually answered the Inspector’s question, that he (as a result of the accident)
    - personally resigned from his position – and has now been unemployed for nearly 7 months
    - which is hard on his family;
- he did not have the intention to violate the standards and rules.

## **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 by the person concerned at the hearing, in which he acknowledges all the elements of the inspector’s objection.
- B. The statement the ordinary seaman on the Helge, regarding the accident as follows:
  - “04.30: (not sure exact time chief mate instructed me to go down and take rest because I’m not feeling well due to my mother condition).
  - 05.20: collision big bang then followed by general alarm & immediately proceed to the bridge with lifejacket & immersion suit.”
- C. The internal investigation report of the coalition, including the following conclusions drawn by the investigating team on page 14:
  - “On MV Helge several coinciding factors contributed to the bridge team not recognizing the risk of collision. Those factors are:



- Inadequate safe navigation was executed by the bridge team, which resulted in lack of situational awareness
- Bridge team was incomplete due to absence lookout [...]
- OOW observed MV Wild Cosmos on the ECDIS and assumed that the vessel would pass clear based on the CPA of the AIS
- No cross check was made of the target with all available means
- Radar was off-centre and therefore the target was not visible on the radar
- Only one radar was switched on
- On the radar [...] safe guard(s), auto plot functions were not used [and apparently also not the radar overlay function on the ECDIS, addition by TvdS]
- OOW executed other duties and was distracted from his navigational watch
- BNWAS was switched off, the OOW was not triggered [to] execute his watch”

### Findings

The person concerned has acknowledged the Inspector’s objection regarding his actions and negligence. When also considering the statement by the seaman and the conclusions of the internal investigation report, this means that (with sufficient degree of certainty), the following facts are ascertained in this case:

1. The person concerned sent the lookout to his cabin during the hours of darkness and did not replace him.
2. The person concerned neglected to at least keep a good lookout himself, in lieu of the dismissed lookout.
3. The person concerned wrongly assumed on the basis of AIS data from the Wild Cosmos on the ECDIS that there was no danger of collision.
4. The person concerned did not use the radar(s) to determine any danger of collision with the Wild Cosmos.



5. The person concerned did not take measures to avoid a collision when the Wild Cosmos was so close that a collision could not have been avoided by an action of the Wild Cosmos alone.
6. The person concerned had been distracted by "paperwork" just before the collision.

This negligence and behaviour, which form the elements of the Inspector's objection, contributed to the collision. The Inspector's objection is therefore well-founded.

It goes without saying that the Wild Cosmos (not sailing under the Dutch flag), the approaching ship, should have given a wide berth to the Helge. However, as the first officer on duty aboard the Helge, the person concerned also played a role in the collision occurring. He failed to comply with the COLREG regulations 5, 7 and 17; if he had indeed complied with the regulations and the other provisions named by the Inspector, he would have been able to prevent the collision.

The following information is also added. The Helge was en route from Antwerp to Heroya (Norway). This is a busy navigation area, in which slow vessels are overtaken by faster vessels, sailing the same course. The Helge was sailing relatively slowly: 8 knots. All the more reason therefore to be alert on board the Helge, to any activity behind the vessel. This did not take place adequately.

The person concerned did see the AIS signal of an overtaking vessel, the Wild Cosmos, on the ECDIS, which at that point was approximately 5 miles behind the Helge, with an (AIS) CPA of 0.5 – 1.0 mile. The person concerned assumed that the Wild Cosmos would give the Helge a wide berth. He did not contact the vessel to check this.

The radar was to be used for lookout purposes. Of the radars however, only the x-band radar stood by at a range of 12 miles, off centre (9 NM forward





and 3 NM reverse), true vector and relative trail. Setting the radar to 3 miles reverse (off centre) is not “long-range scanning”. It gives insufficient insight into what is happening behind the slow sailing vessel. This would explain why the person concerned did not see the Wild Cosmos on the radar. “Radar centre” should have been used instead of “radar off centre”, in order to maintain good visibility behind the vessel.

The person concerned was also responsible for effective lookout. Instead, he dismissed the lookout from the bridge during the hours of darkness, and did not replace him with another lookout, neither did he himself exercise sufficient lookout, but instead undertook paperwork.

In his defence, the person concerned refers to circumstances which in his opinion render the Inspector’s objection ‘overly strict and excessive’. Such circumstances do not deter from the well-founded nature of the objection.

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 Maritime Disciplinary Court judges that the person concerned seriously failed in his responsibilities as First officer. The collision and all its consequences was therefore not prevented. Luckily there were no serious personal injuries.

In view of the seriousness of the evident negligence, a suspension of the navigation licence for the duration proposed by the Inspector during the hearing, is appropriate.



That duration is shorter than originally demanded by the inspector. The reason for this reduction includes the circumstances (i) that the person concerned has been fully cooperative throughout the investigation and (ii) that he has proven to understand the error of his behaviour and negligence, and to have learned from the situation. The Disciplinary Court agrees that these are extenuating circumstances in this case and is therefore of the opinion that it is sufficient to impose a partially conditional suspension of the navigation licence for the duration given below.

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

As a result of this collision, the Disciplinary Court notes that special attention for shipping vessels approaching from behind is important when sailing at relatively low speed in a busy navigation area. It is thereby recommended that the radar be set to “radar centre” (and not to “radar off centre”), in order to maintain good visibility behind the vessel.

#### **7. The decision**

The Disciplinary Court,

- rules that the complaint against the person concerned is well-founded;
- suspends the navigation licence of the person concerned for a period of eight (8) weeks;
- stipulates that of this suspension, a period of four (4) 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, its 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 J.M. van der Klooster, LL.M., presiding judge, W.A. Barten and R.A. Oppelaar, members, in the presence of V. Bouchla, LL.M., secretary, and pronounced in the public hearing on 14 July 2023.

J.M. van der Klooster  
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.