



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF  
19 APRIL 2024 (NO. 6 OF 2024) IN THE CASE 2023.V13– DOUWE–S**

As petitioned by:

the Minister of Infrastructure and Water Management  
in The Hague,

**petitioner,**

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

versus

C.G.J. M.,  
**the person concerned.**

**1. The course of the proceedings**

On 28 August 2023, the Disciplinary Court received a written request (with annexes) for disciplinary treatment from (ir) B.A.C. van Geest, aforementioned (hereinafter the inspector) against the person concerned as second officer of the Douwe–S vessel sailing under the Dutch flag.

The Disciplinary Court has notified the person concerned of the petition, enclosing a copy of the petition with 39 annexes and two videos, 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 hearing of the case will be held at 10:30 hours on 01 March 2024 at the courtroom of the Disciplinary Court in Amsterdam.



The court hearing was held on 01 March 2024. Inspector (ir) B.A.C. van Geest, appeared at the hearing on behalf of the petitioner.

The person concerned attended the hearing via an online video link from the Philippines.

## **2. Grounds**

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

On 31 July 2022 at 01:30 hours, the north-going motor vessel Douwe-S came into contact with the portside boom of the English fishing vessel PZ115 Steph of Ladram. In the contact, the Douwe-S sustained minor damage to the starboard side of the forecastle. The Steph of Ladram sustained damage to the boom. One day later on 1 August 2022, the Douwe-S was visited by the Maritime & Coastguard Agency in Sharpness, and detained on the basis of several ISM-related deficiencies. On 5 August 2022, the detention was lifted.

The Douwe-S (IMO number 9467225) is a Dutch cargo vessel sailing for Steenstra Shipping in Genemuiden. The vessel was built in 2011, is 95 metres long and 14 metres wide. At the time of the accident, the crew consisted of seven people in total.

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

3.1 According to the Inspector, the person concerned acted or failed to act as second 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 objection, amended at the hearing, is that the person concerned collided with the portside boom of the fishing vessel PZ 115 Steph of Ladram as OOW



of the Douwe-S, as he did not apply the COLREGS correctly by not moving out far enough and by moving out too late.

3.2 The Inspector cites as regulations that have not been complied with:

**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.

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 and subsequently check that such action is having the desired effect.

**COLREG - rule 7 - Risk of collision**

- (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 8 – Action to avoid collision**

(a) Any action to avoid collision shall be taken in accordance with the Rules of this Part and shall, if the circumstances of the case admit, be positive, made in ample time and with due regard to the observance of good seamanship.

(b) Any alteration of course and/or speed to avoid collision, shall, if the circumstances of the case admit, be large enough to be readily apparent to another vessel observing visually or by radar; a succession of small alterations of course and/or speed should be avoided.

(c) If there is sufficient sea room, alteration of course alone may be the most effective action to avoid a close-quarters situation provided that it is made in good time, is substantial and does not result in another close-quarters situation.

(d) Action taken to avoid collision with another vessel shall be such as to result in passing at a safe distance. The effectiveness of the action shall be carefully checked until the other vessel is finally past and clear.

(e) If necessary to avoid collision or allow more to assess the situation, a vessel shall slacken her speed or take all way off by stopping or reversing her means of propulsion.



- (f) (i) A vessel which, by any of these Rules, is required not to impede the passage or safe passage of another vessel shall, when required by the circumstances of the case, take early action to allow sufficient sea room for the safe passage of the other vessel.
- (ii) A vessel required not to impede the passage or safe passage of another vessel is not relieved of this obligation if approaching the other vessel so as to involve risk of collision and shall, when taking action, have full regard to the action which may be required by the Rules of this part.
- (iii) A vessel the passage of which is not to be impeded remains fully obliged to comply with the rules of this part when the two vessels are approaching one another so as to involve risk of collision.

**COLREG rule 15 – Crossing situation**

When two power-driven vessels are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way and shall, if the circumstances of the case admit, avoid crossing ahead of the other vessel.

**COLREG rule 16 – Action by give-way vessel**

Every vessel which is directed to keep out of the way of another vessel shall, so far as possible, take early and substantial action to keep well clear.

**COLREG rule 18 – Responsibilities between vessels**

Except where Rules 9, 10 and 13 otherwise require:

- (a) A power-driven vessel underway shall keep out of the way of:
- (i) a vessel not under command;
  - (ii) a vessel restricted in her ability to manoeuvre;
  - (iii) a vessel engaged in fishing;
  - (iv) a sailing vessel.



## ISM – part A – Chapter 6 – RESOURCES AND PERSONNEL

6.3 The Company should establish procedures to ensure that new personnel and personnel transferred to new assignments related to safety and protection of the environment are given proper familiarization with their duties. Instructions which are essential to be provided prior to sailing should be identified, documented and given.

6.4 The Company should ensure that all personnel involved in the Company's SMS have an adequate understanding of relevant rules, regulations, codes and guidelines.

3.3 The Inspector's demand (amended at the hearing) is to suspend the navigation licence for four weeks, two of which conditionally.

### 4. The position of the person concerned

The person concerned acknowledges that he did not apply the COLREGS correctly. He apologises to everyone.

### 5. The ruling of the Disciplinary Court

#### 5.1 The means of evidence

The Disciplinary Court bases its assessment of the inspector's objections regarding the acts or omissions of the person concerned on the following means of evidence:

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

*"I agree with the facts in the petition under the heading "brief description of the accident".*

*Around midnight I took over the watch from the Captain. He gave me the usual instructions on course and speed and keeping watch properly. He did not say anything about the distance I should maintain in respect of other vessels.*



*When I checked the radar and had a visual sighting, I saw red and green lights at 10 miles and I thought it concerned fishing vessels. I had to go to the toilet but did not go, because I could see on the radar that the distance to the fishing vessels was becoming smaller. First it became 8 miles, then 6 miles and then 4 miles. Then I thought this could go wrong. I called the first vessel to say I wanted to pass their bow ("So I told him I want go on his bow, I want to pass his bow") and they said okay. That was also the case for the second vessel, the Steph of Ladram ("I informed him that I want to pass his bow"). I thought it was going to be okay but that was stupid of me. My lookout warned me that it was not okay. He could see on the radar that the CPA was reducing. I saw that on the radar too. Therefore, I called the Steph of Ladram again and said I wanted to pass their bow, they said okay, no problem. They said they were all clear. I interpreted that as it was going to be okay. I was clear for them. I thought they were making way. That's why I maintained portside course and moved a little more to portside. ("So ultimately, I'm keeping my route, I'm keeping my course, and I'm keeping a little bit portside because I'm already porting. So I was keeping my course, I'm just keeping it straight. I mean, they may course it, I'm getting a little... I alter a little bit... I'm (...) my portside just to make clear and add more CPA. But yeah, I thought we were already clear, just keep going, I thought he's going to make way also. So yeah, I didn't expect this."). I don't know if they made way ("I don't... I don't know he's giving more way, because, I don't know if he's giving way, because as long as I am porting I thought we are already clear. So I just keep my course after I altered it port, just to make clear okay. But if we are... Based on the COLREG I have to go starboard. I know it, so I admit also it was my fault because I didn't apply this regulation. But if we will apply this, I know it would be okay, maybe..").*

*It was my fault that I did not comply with the COLREGS. I should have moved to starboard. It was my responsibility that I moved portside.*



*You say that moving portside would have been okay too, provided it was far enough. I had given 15 degrees more portside.*

*I did not try to call the captain just before the collision, because I knew I could manoeuvre the vessel. Later the Steph of Ladram was too close already. You read the statement of the AB: When fishing vessel already closed in one mile, I said to the OOW: "If you are not sure how to pass, or not sure what action to do, better call Captain." The OOW did not reply. Little later, I said again the same thing, then the OOW tried to call Captain but did wrong number and did not know how to raise alarm". What he stated, is not correct. He said shall I call the captain, but that was not necessary because I could handle it myself. When the distance became less than 1 mile I told him to call the captain, but then he called the wrong number. I was unable to push the alarm button, because it was dark and I was nervous, but also because the familiarisation had not gone well.*

*I only used the AIS, but to be accurate I should also have plotted and used the radar. I read the AIS details of both fishing vessels from the radar. I think that the AIS details also gave the bow crossing range. The bow crossing range was positive to 4 miles, therefore I maintained the course. But it became less when the distance became less than 4 miles. Therefore I called the Steph of Ladram twice and the second time the answer was "okay, no problem". In answer to your question what it means to have a positive bow crossing range, I say that you can still pass. I agree with your analysis that my assessment that I would pass the bow of the Steph of Ladram was wrong, when in reality I would have passed aft if I had not moved further to portside.*

*I came on board of the Douwe-S on 4 June 2022. It was my second voyage as second officer. They gave me the Dutch certificate of the watch.*

*When I was just on board, the familiarisation form was signed but I was still new at that time. They gave me some instruction, but that was only paperwork. Perhaps they expected too much from me. It was my first time. I was new and needed to learn more. I pushed myself to*





*learn. I was on board for one week when I acted independently as officer of the watch. I was guided by the first officer. My knowledge of the COLREGS was not good yet and therefore they gave me some books. I read them whilst I was on watch when everything was done, and also after work. At the time of the accident I had been on board for seven weeks. I don't think that I was 100% familiarised at that point. I did not know everything about the vessel yet. I had only learned the special equipment that was required for navigation, but not all. In all honesty I did not learn about the other equipment myself by reading the manuals. I only focused on the COLREGS.*

*On 8 August 2022, I signed off at my own request. I did not feel good after what had happened. I asked the captain if I could be allowed to go home, as I could not continue like this.*

*I had to start all over again and since the accident I have not sailed as an officer. I was allowed to sail with Marlow, first as OS and now I have been promoted to AB. My income is less than before. Perhaps I can work as an officer again at some point. I need to study more.*

”

- B. The answers of the captain to the written questions of the Inspector (annex 13 to the petition), insofar as it contains the following:  
*“Cause of collision: As captain, I can say that the OOW did not comply with the COLREGs. Due to his decision to move to port and by assuming that the fisherman would keep a little to starboard, it is clear to me that he did not act in line with the COLREGs. In addition, the OOW did not act in accordance with the applicable standing watch orders and the procedure bridge operations from our ISM. The captain was not called on time when it looked like it might go wrong, even though this was said several times, and it is included in the standing watch orders.*
- C. The answer of the lookout in response to the Inspector's question as to whether he had discussed how they would pass the fishing vessels (annex 21 to the petition) with the person concerned:



*“No, the OOW make decision himself to pass their bow.  
Maybe 5 minutes before I suggested to go hard to starboard to pass  
astern of fishing vessel. This was when already passed first fishing  
vessel.”*

## 5.2 Considerations

The Disciplinary Court permits the amendment to the Inspector's objections at the hearing, as this objection was described previously in the petition (page 9 under the heading: “Principal cause of the collision”) in comparable wording and the person concerned was not prejudiced in his defence.

The Disciplinary Court deems the objection of the Inspector well-founded. The person concerned did not apply (rules 8 and 18) of the COLREGS correctly, which led to the collision of the Douwe-S with the portside boom of the Steph of Ladram.

The person concerned should have made better use of the radar and should have plotted the Steph of Ladram. Also, as the OOW of the power-driven vessel Douwe-S, the person concerned should have moved out adequately and on time for the Steph of Ladram, which was fishing according to the person concerned himself and displayed fishing lights, but the person concerned failed to do so. As demonstrated by the screenshot of the ECDIS (annex 16), the person concerned still had enough room if he would have maintained his course, but he made a minor adjustment to his course to portside. The person concerned assessed incorrectly that he would cross the bow of the Steph of Ladram. In reality he would have passed aft.

The fact that the Steph of Ladram came from starboard, as described in this petition, is not relevant in this matter, as acknowledged by the Inspector at the hearing. COLREG rule 15, which provides for the situation *when two power-driven vessels are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way and shall, if the circumstances of the case admit, avoid crossing ahead of the other vessel*, does not apply here. This does not concern two power-driven



vessels, as the Steph of Ladram was fishing and the vessel is not considered to be a power-driven vessel at that point due to its limited manoeuvrability. Insofar as the person concerned (in his statement at the hearing) wished to argue that the disciplinary measure should be less severe, because he was not yet sufficiently familiarised, and consequently unable to activate the alarm, the Disciplinary Court holds that this was also the responsibility of the person concerned. The ship management and the shipping company do have a role to play here, but the person concerned should have taken action himself to be sufficiently familiarised when he was on watch.

### 5.3 The disciplinary measure

The Disciplinary Court judges that the person concerned failed in his responsibilities as Second Officer, which resulted in the collision.

As it has become apparent that there is little chance of the person concerned being allowed to sail again as officer in the short term, the measure of the suspension of his navigation licence will not affect him. Therefore, a fine is appropriate.

In a situation where the person concerned has been punished already because he has been reduced in rank (not officially) and receives lower wages, the Disciplinary Court sees cause to provide that the fine is imposed conditionally in full.

## 6. **Focal points for professional practice**

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

In the OOW's assessment as to whether two vessels safely pass each other, the CPA should be considered as a numerical value, whilst the position of the



vessels in relation to each other before, during and after reaching this point should also be taken into consideration.

The ship management, the shipping company, and the officer in question should be aware that novice officers of the watch still require good guidance and instruction due to a lack of experience, even if they have completed the familiarisation “successfully”.

## **7. The decision**

The Disciplinary Court,

- rules that the complaint against the person concerned is well-founded;
- orders the person concerned to pay a fine of € 500.00;
- stipulates that this fine 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 ship, 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, D. Roest and R.E. Roozendaal, members, in the presence of V. Bouchla, LL.M., as secretary and pronounced in public session on 19 April 2024.

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.