



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF
19 JULY 2024 (NO. 7 OF 2024) IN THE CASE 2024.V2-EEMS CARRIER**

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

D.G. M.,

the person concerned.

1. The course of the proceedings

On 04 April 2024, 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 third officer of the Eems Carrier vessel sailing under the Dutch flag.

The Disciplinary Court has notified the person concerned of the petition (enclosing a copy of the petition with 41 annexes, including an audio and video file), and informed the person concerned of the right to submit a statement of defence.

A statement of defence was received from the person concerned on 16 April 2024.



The presiding judge stipulated that the hearing of the case will be held at 10:30 hours on 24 May 2024 at the courtroom of the Disciplinary Court in Amsterdam.

The court hearing was held on 24 May 2024. Inspector (ir) B.A.C. Van Geest appeared at the hearing for the petitioner, accompanied by his colleague (ir) K. van der Wall.

The person concerned attended the hearing via an online video link from the Philippines. He was assisted by a Tagalog-Dutch interpreter.

2. Grounds

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

On 20 September 2023, ms Eems Carrier was en route, in ballast, from Lysekil in Sweden to Faxe Ladeplads in Denmark. As the Eems Carrier was heading south to the north of the small island of Ven, she suddenly failed to answer the wheel. She veered to port, on which side she was at that time being overtaken by another vessel, the Rix Explorer, a few points abaft the beam. The distance between the two vessels was approximately 0.2 NM at that time and the Rix Explorer was travelling more than 1 knot faster. Approximately three minutes after failing to answer the wheel, the port bow of the Eems Carrier collided with the starboard quarter of the Rix Explorer. The person concerned was the *officer of the watch* (OWW) prior to and during the collision.

The Eems Carrier (IMO number 9148142) is a Dutch cargo vessel sailing for EemsWerken B.V. of Werkendam. The vessel was built in 1996, is 85.70 metres long and 10.70 metres wide. Gross tonnage 1,546. At the time of the accident, the crew consisted of 6 people in total.



3. The Inspector's objections

3.1 According to the Inspector, the person concerned acted or failed to act as third 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 consists of the following elements:

1. When the Eems Carrier failed to answer the wheel, the person concerned did not attempt to avoid a collision by steering manually.
2. When the Eems Carrier failed to answer the wheel, the person concerned did not attempt to avoid a collision by reducing speed.
3. The collision between the Eems Carrier and the Rix Explorer occurred partly because of the above.

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

STCW code Part A/ part 4-1

Principles to be observed in keeping a navigational watch

10 The master of every ship is bound to ensure that watchkeeping arrangements are adequate for maintaining a safe navigational or cargo watch. Under the master's general direction, the officers of the navigational watch are responsible for navigating the ship safely during their periods of duty, when they will be particularly concerned with avoiding collision and stranding

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.

29 In cases of need, the officer in charge of the navigational watch shall not hesitate to use the helm, engines and sound signalling apparatus. However,



timely notice of intended variations of engine speed shall be given where possible or effective use shall be made of UMS engine controls provided on the bridge in accordance with the applicable procedures.

ISM code

Eemswerken BV – Manual – SMS – Part 3 – Bridge Checklist 01 – familiarization with bridge equipment – Propulsion and Steering

Among other things:

- Location and operation of engine telegraph
- Operation of steering gear, including manual, autopilot and emergency steering changeover and testing arrangements and emergency steering systems.

3.3 The inspector's amended demand during the hearing was: a fine, possibly (partially) conditional.

4. The position of the person concerned

To summarise, the person concerned argued that he had attempted to avoid a collision by steering manually, but that this was ineffective because he had not learned how to do so on board. The familiarization had only lasted 30 minutes. He had no other choice than to sign for it, because he was new to the shipping world.

Furthermore, the person concerned stated that the captain had forbidden him to reduce speed, and that he had therefore attempted to call the captain. However, the captain did not reply to his call.

Finally, the person concerned argued that he had communicated via the VTS that the vessel could not change course, because the steering did not react. The person concerned believed that the Rex Explorer would overtake the Eems Carrier and would avoid it because of the VTS message.



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:

The facts referred to in the brief description of the accident on page four of the petition are correct.

I attempted to navigate using the manual steering system, but the captain had not shown me how to do so and had forbidden me to reduce speed. I had only been taught to navigate using the automatic pilot. I was forced to sign the document which stated that I was capable of manual steering. Nobody showed me or taught me this during the familiarization procedure. They only taught me after the incident.

The alarm was no longer working and I then called the captain to request that he join me on the bridge. You say that the captain has stated that he did not hear anything, that he only came to the bridge after the collision and that he then noticed that the manual controls were activated. That is a problem, I cannot defend myself. If I had known how to navigate manually, I would have had sufficient time to avoid a collision. In the four weeks I spent on board, I had never myself tried to switch from autopilot to manual steering. The captain had forbidden that. He would have been angry.

There was contact with the other vessel, the Rix Explorer. They telephoned me. I explained that I had a problem with the steering. The autopilot did not work and I therefore panicked. The vessel was moving in the direction of the Rix Explorer.

I did not try to reduce speed, even though that is given in the *standing watch orders*. The captain had forbidden that. I knew that if I were to reduce speed, he would be angry with me. That is the reason why I called him. You ask whether the captain was not angry because of the collision. Yes, he was



extremely angry. You ask whether I understand that I may reduce speed in an emergency situation. Yes, but the captain had still forbidden that.

I have sailed these waters five times. In all cases, the captain was present on the bridge, but not during this voyage.

I have a *chief mate licence* and I should know how to operate all the equipment on the bridge.

I went home on 30 October 2023, and resumed sailing on 12 March 2024.

My Dutch navigation licence and medical certificate were taken from me and are still being held at the office. They have no longer allowed me on board.

My contract was still ongoing. I am now sailing for the Avior Agency, under the Mauritian flag. The agency I worked for on the Eems Carrier was

Quncrew. I have problems applying for jobs.

You say that the inspector now believes a fine to be a more appropriate measure, because my navigation licence is still at the office. I do not have any money. I now earn one thousand dollars per month as a third officer.

I am very sorry about what happened.

B. The Master's statement dated 20 September 2023, in so far as it states:

"During collision my OOW was on the duty and according to his report that our autopilot suddenly stopped working making the vessel heavy turn to port and touch overtaking vessel Rix Explorer.

When the Master came to the bridge all steering, main and emergency was tested and found all in good order."

C. The captain's answers to questions from the Inspector on 27 December 2023, in so far as they contain:

"As per explanation of OOW he was shocked to avoid collision but only to alter course to starboard. When I arrived on the bridge I noticed that hand steering was engaged so OOW was trying to do something."



5.2. The audio file

The audio file pertains to “communication between persons who were involved in the functioning of a means of transport, recorded using a technical aid”, according to article 69b of the Dutch Safety Board, and according to this article (heading) may not be used as evidence in a disciplinary procedure, unless for exculpatory purposes.

5.3 Considerations

All objections are well-founded. The person concerned could have avoided a collision if he had steered manually and reduced speed, which he failed to do.

When the Eems Carrier failed to answer the wheel, the person concerned may have attempted to avoid a collision by steering manually, but this attempt failed because the person concerned did not undertake the attempt properly. The person concerned, a third officer whose (full) *chief mate licence* makes him the replacement for the captain, should have known how to manually steer the vessel, and must not be allowed to hide behind the captain or other officers. If he was unaware of how to steer manually, he should himself have taken action to learn such a skill. An officer must be capable of steering a vessel, and should even be able to warn the captain if the latter should make a mistake.

When the Eems Carrier failed to answer the wheel, the person concerned also did not attempt to avoid a collision by reducing speed. With a view to his rank, the person concerned should have done so. Even if the captain had indeed forbidden this, the person concerned should not interpret such an order as stopping him from reducing speed in an emergency situation.

5.4 The disciplinary measure

The Disciplinary Court judges that the person concerned seriously failed in his responsibilities as third officer, which resulted in the collision.



As the person concerned no longer has his Dutch navigation licence and now sails under a different flag, the Disciplinary Court believes a fine to be an appropriate measure. In view of the seriousness of the evident behaviours, a fine of the amount mentioned below is appropriate.

In the circumstances that the person concerned has already suffered the consequences of his failure, in the sense that he has spent a number of months unemployed at home, he now has a lower salary and has expressed regret for the incident, the Disciplinary Court sees cause to impose a partially conditional fine.

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 point:

Regardless of whether this played a role in this case, there must be a procedure/the work on board must be arranged in such a manner by the captain that differences in rank cannot result in officers on board not daring to take action in emergency situations due to fear of their superiors.

7. The decision

The Disciplinary Court,

- rules that the objections against the person concerned are well-founded;
- orders the person concerned to pay a fine of € 1,500.00, of which € 750.00 conditionally;
- stipulates that the unconditional part of the fine (€ 750.00) must be paid within three months of today;
- stipulates that the conditional part of the fine (€ 750.00) 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 people 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 conditional part of the fine shall commence on the date six weeks following the date of this ruling being forwarded.

Duly delivered by P.C. Santema, LL.M., presiding judge, O.F.C. Magel and C.R. Tromp, members, in the presence of V. Bouchla, LL.M., secretary, and pronounced in the public hearing on 19 July 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.