



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF
9 AUGUST 2024 (NO. 9 OF 2024) IN THE CASE 2023.V14-MUNTGRACHT**

As petitioned by:

the Minister of Infrastructure and Water Management
in The Hague,

petitioner,

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

versus

B. V.,

the person concerned.

1. The course of the proceedings

On 1 September 2023, the Disciplinary Court received a petition (with annexes) for disciplinary treatment of an objection referred to in that petition, from (ir) K. van der Wall, aforementioned (hereinafter the inspector) against the person concerned as first officer of the Muntgracht vessel sailing under the Dutch flag.

The Disciplinary Court has notified the person concerned of the petition, enclosing a copy of the petition with annexes, 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 of the Disciplinary Court stipulated that the hearing of the case will be held at 11:00 hours on 14 June 2024 at the courtroom of the Disciplinary Court in Amsterdam.

Appearing on behalf of the applicant: the Inspector.

The person concerned attended the hearing via an online video link from Russia. He was heard with the assistance of a Russian-Dutch interpreter present in the courtroom.

2. Grounds

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

On 10 October 2022, the Dutch cargo vessel, the Muntgracht, hit a buoy on entering the port of Darwin, Australia. The buoy became stuck between the vessel's hull and the rudder. The vessel dragged the buoy, including the chain and the concrete block, to its mooring location in the port. The period between the collision and mooring amounted to more than two hours. During this period, the captain only noticed that the vessel sailed 1 to 1.5 knots slower than usual. The crew only detected the buoy when they used the monkey ladder to inspect the outside of the stern.

The Muntgracht (IMO number 9571545) is owned by the Muntgracht shipping company and sails on behalf of the Spliethoff shipping company. The vessel was built in 2012, is 142.10 metres long and 18.90 metres wide. At the time of the accident, the crew consisted of 15 people in total. The person concerned was the officer of the watch at that time.



3. The Inspector's objection

3.1 According to the Inspector, the person concerned acted or failed to act as first officer/officer of the watch 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. The voyage plan refers to a strong current. The person concerned took insufficient account of the actual current.
2. The person concerned did not notice on time that there was a considerable discrepancy between the course over the ground and the compass course (*heading*) of the vessel.
3. There was no lookout on the bridge, despite the fact that it was dark.
4. After the collision, the person concerned did not notice that the red buoy had 'disappeared'.

3.2 The collision itself is not named as an element of the objection, as the Inspector believes the errors which resulted in the collision to be more important.

3.3 The Inspector cites as regulations that have not been complied with, alongside art. 55a of the Dutch Seafarer's Act:

STCW Part A, Chapter VIII, Part 4-1 – Principles to be observed in keeping a navigational watch

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.

14 A proper lookout shall be maintained at all times in compliance with rule 5 of the International Regulations for Preventing Collisions at Sea, 1972 and shall serve the purpose of:



- .1 maintaining a continuous state of vigilance by sight and hearing, as well as by all other available means, with regard to any significant change in the operating environment;
- .2 fully appraising the situation and the risk of collision, stranding and other dangers to navigation; and
- .3 detecting ships or aircraft in distress, shipwrecked persons, wrecks, debris and other hazards to safe navigation.

15 The lookout must be able to give full attention to the keeping of a proper lookout and no other duties shall be undertaken or assigned which could interfere with that task.

16 The duties of the lookout and helmsperson are separate and the helmsperson shall not be considered to be the lookout while steering, except in small ships where an unobstructed all-round view is provided at the steering position and there is no impairment of night vision or other impediment to the keeping of a proper lookout. The officer in charge of the navigational watch may be the sole lookout in daylight provided that, on each such occasion:

[...]

25 During the watch, the course steered, position and speed shall be checked at sufficiently frequent intervals, using any available navigational aids necessary, to ensure that the ship follows the planned course.

36 Officers of the navigational watch shall be thoroughly familiar with the use of all electronic navigational aids carried, including their capabilities and limitations, and shall use each of these aids when appropriate and shall bear in mind that the echo-sounder is a valuable navigational aid.

3.4 The inspector's demand is: to suspend the navigation licence for a period of six weeks, two of which conditionally.



4. The position of the person concerned

The person concerned admits having made a navigation error, resulting in collision with the buoy. He also admits to all other elements of the objection given above.

5. The ruling of the Disciplinary Court

5.1 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 made by the person concerned at the hearing. The person concerned agreed with the correctness of the accusation against him. Furthermore he answered the questions, in concise form:

Following a voyage from South Korea to Australia, the Muntgracht arrived in Darwin on 09 October 2022. The vessel anchored there just outside Darwin anchorage. It was agreed that, as officer of the watch, I would heave up anchor the following day at 04.00 hours and would sail to the *inner pilot boarding position* where the pilot would come on board. The anchor position was slightly east of the planned route. My intention was to return to the route as quickly as possible, but I altered course slightly due to another incoming vessel (the Far Senator). Something went wrong at that point, because the port side of the Muntgracht made contact with a red buoy in the fairway at 04.37. Shortly before that, I had noticed that the vessel began to diverge to port side. I immediately informed the captain of the collision and he concluded that I had been unaware of the discrepancy between the course over the ground, i.e. the actual course, versus the plotted course and compass course (heading) of the vessel. I assume that I did not take sufficient account of the strong current at that time. This was purely my navigation error. With hindsight, we became aware that the buoy with which we collided, with chain and concrete block, had been dragged by the Muntgracht for around two hours.



It was dark at the time of the collision. I did not observe any irregularities, besides there no longer being red light from the buoy following the collision. I did hear the collision and it was clear that it was the buoy, but at that moment you hope that the damage will be limited. I did not use the parallel index line when entering the fairway. I trusted my intuition and observations, and believe that all would be well.

You ask whether it is correct that the voyage plan showed the buoys to lie within the corridor (*XTE/x-track - error*), and that if the buoys had been located outside that (*XTE*) zone and the *safety frame* around the vessel had been used, that I would have been warned by the ECDIS alarms.

I did not disable any alarms. Everything was functioning normally. I simply did not pay sufficient attention to the ECDIS and the data which it could have provided. I concentrated on the visual signals which I could see and the observations gained via the radar.

You ask whether a voyage plan was made from the anchoring position just outside the anchorage, to the pilot station. I believe a plan was indeed made by the second officer. However, the incident occurred due to the current and because of my decision to alter course as a result of the incoming vessel.

You ask whether it is standard practice to not have a lookout in position when entering a port or approaching a fairway with buoys. I am familiar with the rules. It is not standard practice; it was my choice to proceed in that manner at that time. I did not request extra assistance on the bridge.

You ask whether I was aware of the safe water entrance to the fairway and whether the *safety contour* on the ECDIS was set to the current situation. I can no longer remember precisely what data had been input. You ask whether it was clear to me that I might have kept the buoy to starboard while maintaining sufficient water under the keel. From the point of entering the fairway, the distance was equal on both sides, visually, which is why I followed the intended track.



It subsequently became clear to me that the vessel had diverged off-track under the influence of the current.

That was the reason why I could not clearly see the option of keeping the red buoy to starboard.

This was my first visit to Darwin port. That was part of the reason for not taking sufficient account of the unexpectedly strong current.

In October 2022, I had been first officer for Spliethoff for three years, and I am still employed by them. This was my first voyage on the Muntgracht. Only the helmsman and myself were present on the bridge. This is the first time that I have been involved in a steering/navigation error.

I understand the Inspector's demand. I am fully aware that I made a navigation error. We have thoroughly analysed the situation and have drawn conclusions for the future.

B. An email message received by ILT from the AMSA (Australian Maritime safety Authority) on 11 October 2022 regarding the boarding of the Muntgracht and a form from the AMSA, titled: Incident Report, completed by the captain of the Muntgracht on 11 October 2022, in so far as it contains, under the heading "Part C: What Happened? Describe Who, What, When, Where, How the incident occurred.":

"Vessel was at Anchor north of reporting point Alfa on the roads of Darwin since 09 Oct 2022 09:45.

10 Oct 2022

04:00 Commence heaving up the anchor. Chief Officer on duty.

04:10 VESSEL PICK UP THE ANCHOR AND PROCEED TO PBG

04:37 VESSEL HIT THE FAIRWAY BUOY #2 WHEN ENTERING DARWIN FAIRWAY TO PICK UP THE PILOT DUE TO THE DRIFT CAUSED BY THE CURRENT.

05:30 POB

06:45 Vessel along side at East Arm

10:00 Vessel crew discovered that the buoy got stuck under the ship hull.



17:53 – 18:43 Diving inspection of the area, no significant damage to the rudder, propeller discovered. The whole buoy with a chain and concrete block got caught by the vessel and brought to the port.

Decision was made to set the buoy free using a shore crane in the morning 11 Oct 2022.

11 Oct 2022

08:30 Ship crew noticed that the buoy is floating free behind the ship.

10:25 – 11:50 Inspection of the rudder and propeller by the divers.

12:45 – 14:10 Recovery of the buoy by shore crane

Please state why you think the incident happened? Due strong current and relatively slow vessel speed vessel had a lot of drift when entering the fairway.”

5.2 Considerations

The objection is well-founded. The person concerned also agrees that it should be concluded that he did not take sufficient account of the current at that time and did not notice on time that there was a considerable discrepancy between the course over the ground and the compass course (*heading*) of the vessel. He also failed to arrange for a lookout on the bridge, even though this was essential for the navigation situation. Finally, he did not ascertain the consequences of the collision, so that he did not notice that the red buoy had “disappeared” and had been dragged by the vessel along with its chain and concrete block. The person concerned acknowledges all these facts. His acts and omissions on the day in question were contrary to the regulations named by the Inspector.

The fact that another vessel (the Far Senator) was incoming cannot serve as an excuse. With a view to the mutual distance between the two vessels, there was no risk of a collision and the Muntgracht could have steered to starboard earlier in order to anticipate any discrepancy between the course over the ground and the compass course (*heading*). The person concerned only navigated on sight (and intuition). This was inadequate and resulted in a *lack of situational awareness*. With the adequate use of the available nautical instruments, there were sufficient opportunities – taking into account the



current at that time – to navigate the entrance to the port while avoiding the buoy, even in the presence of other incoming vessels.

The buoy could have been plotted, and furthermore the person concerned could have used the radar *overlay*, the *parallel index line* and the radar *ground-stabilized mode* (instead of *sea-stabilized mode*).

The person concerned made no use or inadequate use of the ECDIS.

The person concerned could have set a *safety frame* around the vessel, and could have ensured that the buoys were located outside the route corridor (*x track error*) – the green and red lines, so that he could have seen where and where not to navigate, whereby the ECDIS alarm would have sounded in case of a navigation error.

The effective use of nautical equipment is part of the basic skills expected of an officer. The route corridor of the Muntgracht was directly between buoy berths 1 and 2. In order to avoid a collision, the person concerned could have steered to the track given in the voyage plan well before the buoy berth, which would have given him better sight of the current pushing the vessel to port side.

Moreover, he did not arrange for a lookout on the bridge, even though entering a port is the perfect example of a potentially hazardous situation whereby the bridge must be adequately manned.

The vessel collided with the buoy as a result of the acts/omissions of the person concerned. The person concerned has stated that he could hear the collision occurring and that it was clear to him that this concerned the buoy. He should have ascertained the consequences of the collision, thereby checking whether the buoy was still in place. Instead, he hoped that nothing serious had occurred and continue to sail for two hours with the buoy between the vessel's hull and the rudder. Failing to stop after a collision is not only reprehensible but also a criminal offence.

5.3 Disciplinary measure

The Disciplinary Court judges that the person concerned seriously failed in his responsibilities as first officer, which resulted in the collision with and subsequent dragging of the buoy.



In view of the seriousness of the evident behaviours, a suspension of the navigation licence for the duration mentioned below is appropriate.

Given that the person concerned had relatively little experience and has shown himself to have learned a lesson from the incident, the Disciplinary Court sees good cause to order a partial conditional suspension of the navigation licence as given below. The sanction is thereby in accordance with the Inspector's demand.

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 fact that a comprehensive voyage plan is of eminent importance at all times, therefore also when deviating from a preplanned route, such as the return from an actual anchorage to that route, in this case. In this sense, compare this to the use of a voyage plan for movements within a port (from port basin to port basin). The ECDIS is ideal for this purpose, as it can automatically carry out a route check, allowing for anticipation when off-track.

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 six weeks;
- stipulates that of this suspension, a period of two 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, 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 J.M. van der Klooster, LL.M., presiding judge, V.C. Engel and H.H. Pannekoek, members, in the presence of V. Bouchla, LL.M., secretary, and pronounced in the public hearing on 09 August 2024.

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.