



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF
18 JUNE 2025 (NO. 2 OF 2025) IN THE CASE 2025.V1 –EEMS WARRIOR**

As petitioned by:

the Minister of Infrastructure and Water Management
in The Hague,

petitioner,

authorised representative: senior inspector Human Environment and
Transport Inspectorate (ILT)/Shipping in Zwijndrecht

versus

G. K.,

the person concerned.

1. The course of the proceedings

On 17 March 2025, the Disciplinary Court received a written request (with annexes) for disciplinary treatment from a senior inspector from (ILT)/Shipping, aforementioned (hereinafter the inspector) petitioning for a disciplinary hearing of an objection against the person concerned as captain of the Eems Warrior vessel sailing under the Dutch flag.

The Disciplinary Court has notified the person concerned of the petition (enclosing a copy of the petition with 59 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 stipulated that the hearing of the case will be held at 10:30 hours on 07 May 2025 at the courtroom of the Disciplinary Court in Amsterdam.



The court hearing was held on 07 May 2025. The inspector attended the hearing accompanied by a colleague.

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

2. Grounds

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

On 18–12–2024, the Eems Warrior tug was en route from Eemshaven to ‘s-Gravendeel as an individual vessel. It was to collect a barge there. The person concerned entered the wheelhouse before passing the piers at Hook of Holland and took over the watch from the chief officer, who remained in the wheelhouse. The speed was 9 knots. There was no pilot on board, as it was an individual vessel without any obligation to have a pilot on board because of the length of the Eems Warrior. Before the Eems Warrior exited the VTS sector of Maassluis, between Maassluis and the Botlek, the person concerned left the wheelhouse to go to the toilet. The chief officer now had the watch, and turned from the Scheur river onto the Oude Maas a few minutes later. He then quickly passed the closed Botlekbrug bridge whereby the mast of the Eems Warrior collided with the underside of the bridge. A comparable incident occurred a few minutes later, this time at the closed Spijkenisserbrug bridge, while the person concerned had returned to the wheelhouse in the meantime.

The Eems Warrior (IMO number 9213674) is a Dutch tug. The vessel is part of the fleet of Amasus Shipping B.V. in Delfzijl and is owned by Warrior B.V. in Farmsum. The vessel was built in 2004, is 35.3 metres long and 8.8 metres wide. The vessel has a gross tonnage of 322. There were 7 crew members on board at the time of the incident.



3. The Inspector's objections

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

1. The person concerned was unaware of the air draft of the Eems Warrior.
2. The person concerned was unaware of the clearance heights of the closed Botlekbrug and Spijkenisserbrug.
3. Passing the Botlekbrug and Spijkenisserbrug in closed or open state was not discussed with the chief officer, who took over the watch shortly before passing the first of the two bridges, due to the person concerned going to the toilet.
4. The person concerned approved the voyage plan, which gave no description of the passage under the Botlekbrug and Spijkenisserbrug in closed or open state.
5. There were no prescribed Nautical Pilots for the voyage on board.
6. The Eems Warrior's navigation mast collided with both bridges partly because of the objections 1 through 4.

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

Dutch Ships Decree 2004

Section 61.1 – The captain of any ship with which a voyage is made shall ensure that prior to the voyage and during the voyage the regulations and requirements of chapter V of the SOLAS Regulation are observed.

SOLAS V Regulation 34 – Safe navigation and avoidance of dangerous situations

1 Prior to proceeding to sea, the master shall ensure that the intended voyage has been planned using the appropriate nautical charts and nautical



publications for the area concerned, taking into account the guidelines and recommendations developed by the Organization*.

Refer to the Guidelines for Voyage Planning, adopted by the Organization by resolution **A.893(21).*

SOLAS Resolution A.893(21) Guidelines for voyage planning

3 Planning

- 3.1 On the basis of the fullest possible appraisal, a detailed voyage or passage plan should be prepared which should cover the entire voyage or passage from berth to berth [...]

STCW Code Part A, Chapter VIII, Section A-VIII/2, Part 2: Voyage planning

- 3 The intended voyage shall be planned in advance, taking into consideration all pertinent information, and any course laid down shall be checked before the voyage commences.
- 5 Prior to each voyage, the master of every ship shall ensure that the intended route from the port of departure to the first port of call is planned using adequate and appropriate charts and other nautical publications necessary for the intended voyage, containing accurate, complete and up-to-date information regarding those navigational limitations and hazards which are of a permanent or predictable nature and which are relevant to the safe navigation of the ship.

Resolution A.601 (15) PROVISIONS AND DISPLAY OF MANOEUVRING INFORMATION ON BOARD SHIPS

3 MANOEUVRING INFORMATION

3.1 Pilot card (appendix 1)

The pilot card, to be filled in by the master, is intended to provide information to the pilot on boarding the ship. This information should describe the current condition of the ship, with regard to its loading, propulsion and manoeuvring equipment, and other relevant equipment. The contents of the pilot card are available for use without the necessity of conducting special manoeuvring trials.



3.2 Wheelhouse poster (annex 2) (*note by inspector: not compulsory for the Eems Warrior, due to the nature and dimensions of the vessel*)

The wheelhouse poster should be permanently displayed in the wheelhouse. It should contain general particulars and detailed information describing the manoeuvring characteristics of the ship, and be of such a size to ensure ease of use. The manoeuvring performance of the ship may differ from that shown on the poster due to environmental, hull and loading conditions.

Inland shipping police regulations article 1.04 precautionary measures

Even when these regulations do not include specific directions, the captain must take all precautionary measures necessary according to good seamanship or with regard for the circumstances applicable to the vessel or combination, to avoid:

- a. endangering the life of any person;
- b. causing damage to other vessels or to floating objects, or to embankments, structures and facilities of any nature, found in the fairway or along the embankments;
- c. endangering the safety or normal progress of shipping.

3.3 The inspector has requested that the Maritime disciplinary court make a ruling for the benefit of the professional group. Due to the reason given below, he has not demanded measures to be taken against the person concerned:

1. The Public Prosecutor's Office considers the person concerned to have committed a criminal offence on 18 December 2024, namely violation of article 1.04, part b of the Inland shipping police regulations. According to the Public Prosecutor, there was legal and convincing evidence that the suspect (the person concerned) committed the criminal offence. The person concerned received a transaction proposal from the Public Prosecutor, amounting to € 609 -. He made payment personally, and will not be reimbursed by the shipowner .



2. Ne-bis-in-idem, double prosecution based on the same factual circumstances is not allowed.

3.4 At the hearing, the inspector enquired of the Disciplinary Court whether he had acted correctly by not demanding any measures, due to the person concerned already having paid a transaction for the same complex of facts.

3.5 The Disciplinary Court will explain the matter in this ruling, under 5. The ruling of the Disciplinary Court and the subheading: the disciplinary measure.

4. The position of the person concerned

In summary, the person concerned acknowledged the inspector's objections. Due to the poor weather conditions and the urgency with which the pontoon needed to be collected, the person concerned had opted to accelerate the passage under the bridges. As he himself had navigated this route along the Oude Maas on numerous occasions, he relied on his experience. Before leaving the wheelhouse to go to the toilet, he did not discuss the necessity of opening the bridges with the first officer. He is willing to accept full responsibility.

5. The ruling of the Disciplinary Court

The 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, in so far as relevant, in concise form summarised:



“On 18 December 2024, the Eems Warrior was en route from Eemshaven to ‘s-Gravendeel. I had indicated that I should be called before we entered the channel. As already explained by the *second officer*, we wished to speed up and find shelter from the storm, because of the approaching weather conditions. Those were the instructions I left behind for the *first officer*. I approved the *voyage plan* beforehand and I feel completely responsible for that. You may well state that I paid it insufficient attention. I was relying overly on my know-how and previous experience, because we had navigated this area before. And we were in a hurry. We were also somewhat pushed by the customer, who was very keen for us to collect the pontoon as quickly as possible. Moreover, I had extracted information from the *ECDIS*, and according to the *ECDIS*, the bridges were open, if I have understood it correctly.

I was aware that we would need to pass bridges. I was also aware that the bridges could be opened. I was aware that the *request*, i.e. a request to open the bridge, needed to be made in good time. And I was aware that there was also information available about the tidal movements.

I was aware that the *request* could be submitted via VHF and that the bridges would open.

I was missing official information about the *air draft*. I asked the second officer to make the calculations with plenty of leeway. That was the source of the 25 metre figure given in the *voyage plan*. The only other option would have been for me to measure it using a ruler. I did not request official data from the shipowner. This had been discussed informally with the superintendent in this matter. I knew that this vessel had recently been purchased by the shipowner and that these documents were lacking on board. The only sources where I could find information were the Internet or the drawings on board. However, there were no documents on board showing such information.

I received no warning that *nautical pilots* were missing. I should have checked up on that.

As we had navigated there on a previous occasion and because one of the bridges was fourteen metres and the other bridge thirteen metres, I assumed



that the bridge operators would ask whether the bridges should be opened. That is generally how it works. We could also request that the bridges were opened, but generally speaking the bridge operators see us approaching and ask for our *air draft* via VHF.

There was a further shortcoming on my part. Due to the haste and the bad weather, I did not discuss all this with the *first officer*, which was my fault. As I stated, I was below deck at the time of the collision. I was not in the wheelhouse, though I certainly heard the collision. I made every possible effort to proceed to the wheelhouse as quickly as possible. On my arrival there, we were travelling quite fast and with the current. My first action was to try to reduce speed as quickly as possible. I successfully reduced it to three knots. In the end, we were not able to avoid also colliding with the second bridge. The collision with the second bridge was much lighter, only a scratch. There was more damage to our navigation mast than to the bridge. We then checked the consequences of the collision, and whether there were any casualties.”

B. An Event Report by Amasus, enclosed as annex 26, states the following on pages 83 and 84:

“Root cause analysis:

Based on the (separate) Statements of the Master and Chief Officer and questioning from the QHSE Manager, the reason why the mast touched the two bridges can be defined out of two important facts;

1. The height of the bridges was unknown by the Master, Chief Officer and Second Officer (hereafter called Crew).
2. The air draught of the tug was unknown by Crew.

First point:

The Crew has mentioned during the interview towards the QHSE Manager, there was no information available regarding the heights of the bridges, located on the “Oude Maas”.

However, the information regarding bridge heights can be found:



- in the Nautical Pilot of the designated area.
- in the ECDIS.
- can be requested via VHF or telephone communication to the designated bridge or local VTS.
- can even be found on internet.

But not any action was taken to gather this information prior departure from previous port, or during the passage inbound as the Crew assumed that the height should be fine as they had passed the Oude Maas several times before without issues. Therefore, the speed was kept on 9 knots as it was assumed as safe speed due to no expected limitations.

During inspection (the next day) by QHSE Manager it was noticed that not any Nautical Pilots were onboard, as none of the Crewmembers could explain the location of the booklets and/or why they were absent.

For the good sake order; Nautical Pilots should be onboard of each vessel. They are digital supplied from the Office.

On the ECDIS, by means of the information tool, the vertical clearance was stated in bridge open and close condition (both bridges were able to open upon request). Heights are depending on water level (tidal level).

By means of VHF communication the VTS has asked the tug if a bridge opening was required, but has been rejected by the Chief Officer as he stated that there was clearance enough to pass safely.

On the question from the QHSE Manager “why no Nautical Pilots were available and why they were absent”, no answer could be given.

Second point:

The Crew has mentioned that they was not sure about the air draught of the tug as it was not written anywhere onboard.

The air draught, or better said the dimensions of the vessel could be measured by the ships drawing (e.g. General Arrangement Plan) which is



available onboard. Also those dimensions could be measured by the Crew them self by means of measuring tape (the practical way) to get at least a close indication of the height.

If the total height of the tug is known (top of mast to keel), and deduct the draft of the vessel, the air draught can be calculated as it also has to be mentioned on the voyage plan.

This is not been investigated by the Crew, nor any doubts were reported towards the Office.

Referring to the follow SMS procedures;

- SMS.P2.1070 – Charts and Nautical Publications.
- SMS.P2.1010 – Voyage Planning.
- SMS.P4.0110 – IMO resolution A.893(21)
- SMS.P2.1050 – Pre-departure and pre-arrival.
- SMS.P2.1060 – Pilotage.
- SMS.P3.0150 – Pre-arrival checklist – Bridge

Based on above mentioned, and all the available information onboard, the conclusion is that the Crew did not perform a proper Voyage Planning due to the fact that important factors were not known, while sufficient information was onboard available. Factors like reporting channels of bridges, height limits during the passage, sufficient tidal information, own air draught.

Also is has not been reported to the Office that Nautical Pilots were absent (which should be available all time) and height of the vessel was in doubt. Herefore it is concluded that the Crew did not followed the SMS procedures (referring to the above mentioned procedures) as it is been requested and required by the Company.”

The considerations

The content of the evidence referred to above has led to conclusions being drawn in this case (with an adequate measure of certainty) that all of the objections given by the Inspector are well-founded. The vessel, which had



too high an air draft, collided with the two bridges. The voyage plan was completed by the 2nd officer. The person concerned, who was captain of the Eems Warrior, had signed this voyage plan for approval without having checked it properly. He therefore did not notice that there was no mention of the Botlekbrug and Spijkenisserbrug needing to be opened. As the person concerned was unaware of the air draft of the Eems Warrior and all the clearance heights of the bridges, but instead depended on his earlier experience on that route, an unsafe situation arose when the person concerned left to go to the toilet without informing the chief officer about the need to open the bridges. The person concerned should have taken more action to halt the vessel immediately following the first collision, in order to have prevented the collision with the second bridge.

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 paragraph 4 of that Act: acting or failing to act on board as captain contrary to the duty of care expected of a good seaman in relation to the persons on board, the ship, 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 captain, which resulted in the collision with the bridges. Luckily it was limited to material damage without any personal injury occurring. The person concerned has already paid the transaction proposal of the Public prosecutor, amounting to 609 euros. The inspector is of the opinion that, based on the so-called "ne bis in idem" principle, there is no option to impose a further measure in this disciplinary procedure, as the criminal proceedings concerned the same complex of facts.

The Disciplinary Court agrees with the inspector that this disciplinary case refers to the same complex of facts, namely – in brief – acting in violation of the duty of care of a good seaman on 18 December 2024, resulting in



damage to the Botlekbrug and Spijkenisserbrug. Even the violation of the standard: article 1.04 sub b of the Inland shipping police regulations is comparable with the standard regarding good seamanship of Section 55a of the Dutch Seafarers Act in conjunction with Section 4 paragraph 4 of that act. However, the Disciplinary Court does not believe this to represent a violation of the "ne bis in idem" principle. This principle is described in article 68 of the Dutch Penal code. Criminal proceedings serve a different purpose to disciplinary proceedings. Criminal law has a punitive basis while the primary purpose of disciplinary law is to safeguard the quality of the professional group.¹ The inspector explicitly requested that the Maritime disciplinary court make a ruling for the benefit of the professional group.

With a view to the severity of the proven behaviours, it is the opinion of the Disciplinary Court that there is every reason in this specific case to bring the unacceptability of the behaviours to the attention of the professional group, and the Disciplinary Court noted that besides the transactions already paid, there should be consequences for the navigation licence (a (partially conditional) suspension). The Disciplinary Court chooses not to impose such a measure in this case, because the inspector did not demand such a measure in the petition, and there was no communication with the person concerned during the hearing that the Disciplinary Court was not itself bound to do so. After all, this has given the person concerned the impression that prosecution by the Disciplinary Court would not result in a measure being imposed.

Returning to the query by the inspector. Despite the fine already paid, the inspector could have demanded a measure for the same complex of facts within this disciplinary case, because a disciplinary case serves a different purpose to criminal proceedings. For that matter, should there indeed have been a violation of the "ne bis in idem" principal, the presiding judge of the Disciplinary Court would apparently be able to declare the inspector's

¹ M.F.J.N. van Osch, Disciplinary law guide, 2022, p.396–397



petition for disciplinary handling of the case inadmissible directly upon receipt of the petition (Section 55j of the Dutch Seafarers Act).

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:

1. It is recommended that shipowners include a separate box in their standard forms for the voyage plan, with questions regarding tidal heights, allowing for safe passage under bridges.
2. There should be clear instructions that each voyage plan must be signed by all officers of the watch, as proof that they are familiar with the plan.

7. The decision

The Disciplinary Court,

- rules that the objections against the person concerned are well-founded;
- does not impose a measure on the person concerned.

Duly delivered by P.C. Santema, LL.M., presiding judge, H.H. Pannekoek and P.H.G. Schonenberg, members, in the presence of F. Pietersma-Smit, LL.M. as secretary and pronounced in public session on 18 June 2025.

P.C Santema
presiding judge

F. Pietersma-Smit
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.