

**MARITIME DISCIPLINARY COURT
OF THE NETHERLANDS**

**ANNUAL
REPORT
2012**



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DISCIPLINARY
COURT OF THE
NETHERLANDS**



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MARITIME DISCIPLINARY COURT OF THE NETHERLANDS

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GENERAL

It was pointed out in the 2011 annual report that the Disciplinary Court had come up against a number of points of improvement in the Dutch Maritime Crews Act whilst hearing cases. These points were reported to the Ministry of Infrastructure and the Environment for inclusion in legislative amendments.

The amendment to the appendix to the International Convention on the Standards of Training, Certification and Watchkeeping 1978 (Treaty Series 1981, 44), referred to below as the STCW Convention, and the accompanying Code (Treaty Series 1996, 249), referred to below as the STCW Code, as adopted under resolution 1 and resolution 2 respectively of a conference of parties to the convention held in Manila from 21 to 25 June 2010, referred to below as the Manila amendments (Treaty Series 2012, 43), should be enacted in Dutch legislation. This calls for an amendment to the current Maritime Crews Act. This opportunity was taken to include in the amendment the points of improvement identified by the Disciplinary Court. To this end the Disciplinary Court has held consultations with the Ministry of Infrastructure and the Environment and has assisted with the drafting of these proposed amendments.

It should be noted in this regard that as a result of the implementation of another convention, the Maritime Labour Convention (Treaty Series 2007, 93, Bulletin of Acts, Orders and Decrees 394), the short title of the Maritime Crews Act is being changed to the Seafarers Act. This amendment is due to take effect on 1 July 2013.

In 2012 the Disciplinary Court's premises were also used for the Ministry of Infrastructure and the Environment. In 2012 thirteen meetings/conferences were held at the Disciplinary Court's rooms. The secretariat of the Disciplinary Court provided the assistance needed for this purpose. The use of the Disciplinary Court's rooms for international conferences was particularly appreciated. The concluding reception of the Maritime Affairs Directorate in 2012 was also held in the Disciplinary Court's rooms. In 2012 the Disciplinary Court also provided space as a teleworking station for an employee of the Ministry of Infrastructure and the Environment.

As foreshadowed in the 2011 annual report, the Disciplinary has not been able to avoid the need to relocate. The relocation will however take place within the current Beursgebouw and the current room will continue to be used for the hearings. Fortunately the new location has sufficient space to accommodate the archive of the former Maritime Court of the Netherlands. The relocation underlines the need to transfer the archive of the Maritime Court of the Netherlands to the National Archive. The intention is to have this done within two years. The digitisation of the rulings of the Maritime Court of the Netherlands was continued in 2012. Since the discontinuation of the Maritime Court in 2010, the work has now progressed back to 1977. Once the archive of the Maritime Court of the Netherlands has been transferred to the National Archive, interested parties will be able to obtain the rulings of the Maritime Court from the secretariat of the Disciplinary Court and download rulings in digital form from the website of the Maritime Court of the

Netherlands. The Disciplinary Court will continue to manage the website of the Maritime Court of the Netherlands.

In 2012 interested parties again asked the secretariat of the Disciplinary Court for assistance with investigating cases of the Maritime Court of the Netherlands. Most of those investigating the archive of the Maritime Court of the Netherlands are journalists, authors, historians and people with a personal interest in a case. In 2012 fourteen requests for information were submitted and handled (see appendix).

In 2012 the Maritime Disciplinary Court of the Netherlands published 6 rulings and a president's decision. An objection was made against the president's decision, which resulted in the decision being set aside. A further hearing on this case was held in 2012 and the ruling is due to follow in 2013.

Although in view of the number of cases a cautious approach should be taken to drawing conclusions, there are a number of aspects that stand out.

As in 2011, it was notable that foreign subjects generally left the Dutch merchant navy following the incident in which they were involved and could not be reached again or placed themselves out of reach. As mentioned in the 2011 annual report, the measures taken are limited to the Netherlands.

The Disciplinary Court remains of the opinion that it is unacceptable for a person whose navigation licence has been suspended in the Netherlands for a longer period of time because he has acted contrary to the principles of good seamanship to be able to continue his career elsewhere, especially in other countries of the European Union, without any consequences. This is not only dangerous in the case of doctors but also in the case of people in possession of a navigation licence.

The Disciplinary Court once again calls for a study into an international regulation. It was highly notable that 4 of the 6 cases investigated in court and published involved a grounding. Three of the cases also involved the watchkeeping officer falling asleep. Although it cannot be ruled out that this has to do with an excessively demanding watch schedule, this has not been established in any of these cases. In one of the cases it was even possible to establish that this was not the case. Alcohol consumption was at issue in two of the four cases.

During the year under review courses were followed by the secretariat of the Maritime Disciplinary Court. The secretary took a maritime investigator's course at Lloyds Maritime Academy, which will be completed in 2013.

The management assistant successfully completed 2 courses at the Haaglanden educational institute: the typing and RSI resistance course and the minute-taking course. Suitable training courses will again be taken in 2013.

In reporting year 2012 consultations were held with the North Sea Public Prosecutor and the Shipping Inspector on safety in the North Sea and the role that the Disciplinary Court can play here. This consultation will be continued periodically.

On 1 May 2012, J. van de Berg was given an honourable discharge as a member of the Disciplinary Court on reaching the age of seventy.

On 1 October 2012 J.L.A. van Aalst and J.F. Jongbloed were given an honourable discharge on reaching the age of seventy. These former members were given an appropriate farewell at the Disciplinary Court's courtroom. J. van de Berg has been a member of the Disciplinary Court since its inception. A.J. Both served as a member of the Maritime Court of the Netherlands and the Disciplinary Court of the Netherlands for many years.

H. Romkes, H. van der Laan and N.P. Kortenoeven were appointed as successors by ministerial decree dated 27 November 2012.

During the year under review a lecture on the work of the Disciplinary Court was given on the request of the Shipping and Transport College in Rotterdam. There are plans to hold this lecture again in 2013. The Disciplinary Court is of course willing to provide information at other maritime educational institutes.

The Disciplinary Court will continue its activities in 2013. An evaluation will be carried out during the relocation to establish which part of the library and equipment can be divested.



D. Roemers, president
Amsterdam, February 2012

NEW CASES

In 2012 seven new cases were filed in response to a request of the Minister. No complaints were filed.

A comparison of the 2010 figures with those of 2011 is given in the table below.

Year	Petition of the Minister	Complaints	Preliminary investigations	Number of cases settled by president's decision	Number of cases investigated at a hearing and published
2010	8	0	4	0	0
2011	2	1	1	1	5*
2012	7	0	2	1	6

* In 2011 one case was withdrawn by the Minister

The rulings of the Maritime Disciplinary Court have been available since 2011 at: www.tuchtrecht.nl.

and on the website of the Maritime Disciplinary Court of the Netherlands: www.tuchtcollegevoordescheepvaart.nl.

The rulings translated into English are given on the English site of the Disciplinary Court: www.themaritimedisiplinarycourtofthenetherlands.com.

PUBLISHED RULINGS OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS IN 2012

MERCHANT SHIPPING 2012

IJSSELDELTA

RULING 1 IN 2012, CASE NUMBER 2010.V4 OF 4 JANUARY 2012

Person concerned: the captain

The person concerned was accused, as the captain of the dredger IJsseldelta, of overloading the vessel on five trips on 23 June 2010.

The evidence of overloading consisted only of printouts from the MARS computer. These printouts may only serve as evidence provided that they are sufficiently reliable. This was not demonstrated in this case. The mere fact that the MARS computer has a prescribed accuracy margin of 0.5% does not mean that the system actually features such a level of accuracy. Based on the findings of Bureau Veritas of 24 June 2010 the MARS computer showed an accuracy of about 4.6% for the draught fore and about 3.3% aft, which is considerably at odds with the prescribed accuracy margin of 0.5%.



The Disciplinary Court concluded that overloading during trips 1088 to 1092 could not be declared proven.

The Minister's petition was dismissed.

DONGEBORG

RULING 3 IN 2012, CASE NUMBER 2011.V1 OF 20 APRIL 2012

Person concerned: the captain

The person concerned was accused of navigating without due care, without an activated watch alarm and without placing a lookout during the hours of darkness, as a result of which the ship ran aground in Danish waters on 3 January 2011. The person concerned was not present on the bridge as the watchkeeping captain at the time of the grounding.

The Disciplinary Court judged that from the time at which the watch was taken over no proper lookout was kept. This applies especially to the period in which the person concerned had left the bridge. During that period no further navigation was conducted on the bridge while the ship was sailing in waters marked with buoys. A change of course should have been made before he left the bridge, which was not noticed by the watchkeeping captain. No lookout had been posted and the watch alarm was switched off. The fact that the person concerned left the bridge to provide medical assistance for the chief engineer was not taken into account when the disciplinary measure was imposed. The person concerned should have taken measures to avoid sailing without a watchkeeping officer.

The captain's navigation licence was suspended for a period of six months.

ENNIO MARNIX

RULING 4 IN 2012, CASE NUMBER 2011.V1 OF 2 NOVEMBER 2012

Person concerned: the maritime officer.

The person concerned was accused of being responsible for the ship grounding, which caused damage to the ship's bottom and propeller, during her watch on 4 September 2011. The person concerned had not kept a proper lookout prior to the grounding, as a result of which she failed to notice a buoy close to the shallows.

The person concerned was also accused of failing to properly check the voyage preparation prior to the grounding and the voyage, as a result of which the proposed course passed over a depth that was unsuitable for the vessel. The person concerned was also accused of having left the

bridge as duty officer at some point prior to the grounding. Neither had the person concerned posted a lookout whilst sailing in coastal waters.

The Disciplinary Court concluded that it had not been proven that the person concerned was culpable regarding the voyage preparation, especially concerning the route to waypoint 61, where the grounding took place.

In view of the (re)location of waypoint 61, it must be assumed that, in keeping with the statement of the person concerned, this waypoint was moved, as a result of which the route - other than in the original situation - passed over the shallows.

Making proper use of the navigation equipment would have resulted in the fact that the ship would pass over shallows following the course change at waypoint 60 being noticed. In that case the grounding would have been avoided. It must be concluded that the person concerned did not keep a proper lookout using all of the available resources, as a result of which the grounding was not avoided.

Being able to operate the navigation equipment is among the basic skills of an independent watchkeeping officer, even a young and inexperienced one. A marine officer can be expected to possess the necessary knowledge and skills. A claim invoking inexperience, a lack of knowledge regarding the navigation equipment and poor supervision is not convincing and does not absolve the person concerned of her own responsibility.

The navigation licence of the marine officer was suspended for 4 weeks, 2 weeks conditionally with an operational period of two years.

EEMS TRANSPORTER

RULING 5 IN 2012, CASE NUMBER 2012.V2 OF 30 NOVEMBER 2012

Person concerned: the captain

The person concerned was accused as falling asleep whilst on watch as the watchkeeping captain. Neither had the person concerned posted a lookout during the hours of darkness at 04.50 hours ship's time (GMT +2) or activated the watch alarm. This resulted in the Eems Transporter grounding on 3 April 2011 in Greek waters.

The Disciplinary Court judges that it has been proven that the person concerned, as watchkeeping captain, was asleep when the grounding took place, had failed to activate the watch alarm and had not posted a lookout at the time of the grounding, which took place during the hours of darkness. The cause of the grounding was that the person concerned failed to make a necessary course change after a Waypoint.

Sleeping at a time when keeping a lookout is required and missing a necessary course change can be described as being extremely reckless. Added to this is the fact that the person concerned ruled

out any possibility of correction.

The navigation licence of the person concerned was suspended for a period of two months.

FLINTERSPIRIT

RULING 6 IN 2012, CASE NUMBER 2011.V3 OF 30 NOVEMBER 2012

Person concerned: the captain

During the watch of the person concerned the *Flinterspirit* grounded at approximately 23.43 hours (ship's time) on 19 March 2012 on the island of Flodday Mor (North Uist). The person concerned was accused of failing to change course in accordance with the voyage plan prior to the grounding, that he left the bridge and was in his cabin at the time of the grounding.

The person concerned was also accused of having failed to post a lookout during the hours of darkness during the evening in question and that he had failed to activate the watch alarm. The person concerned was also accused of having failed to adequately take charge of the situation after the grounding: he first attempted to refloat the vessel without first charting the situation, he instructed the second mate to inform the authorities that the situation was under control, he was tired and he was taking medicines. Finally, the accusation is made against the captain that on the morning after the grounding he independently kept watch on the bridge whilst under the influence of alcohol.

The Disciplinary Court considers it to be proven that the *Flinterspirit* grounded on the island of Flodday Mor, North Uist, at approximately 23.43 hours on 19 March 2012.

The grounding was caused by the fact that the person concerned left the bridge, went to his cabin and fell asleep, as a result of which he failed to make the scheduled change of course at around 22.00 hours. The person concerned had not posted a lookout. The person concerned attempted to refloat the vessel without first informing himself of the situation before taking action. The person concerned instructed the second mate to mislead the authorities. The person concerned was tired and had overindulged in medicines, including tranquilisers. According to the summary of break hours, the person concerned could have had sufficient rest on 19 March 2012 and the preceding days. According to this summary the person concerned had two navigating officers available who could have had sufficient rest from 5 March 2012 onwards.

The Disciplinary Court does not consider it proven that the person concerned was under the influence of alcohol on the morning after the grounding. The witness statements on this subject were not sufficient to draw the conclusion of actual drunkenness.

It is virtually impossible to imagine more reckless navigation than that of the person concerned, and added to this is the fact that the person concerned ruled out possibilities for correction. The person also failed to carry out his duty as captain following the grounding.

The navigation licence of the person concerned was suspended for a period of six months.

TEMPEST

DECISION OF THE PRESIDENT OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS, CASE NUMBER 2011.K1 OF 11 MAY 2012.

Person concerned: the captain.

The complainant has submitted a complaint concerning the actions of the person concerned as captain of the tug Tempest when securing the rudderless ship Western on 12 November 2010 in the North Sea.

The complainant accuses the person concerned of having tied up with a heaving line that was cast manually. Opting for a heaving line made it necessary to closely approach the Western.

The complainant also claims that the crew members were not secured with a lifeline.

The complainant also holds the person concerned accountable for the breaking of the chains that were used to secure the towing wire. According to the complainant the dangerous situation is shown in the video recordings. The complainant accuses the person concerned of placing the lives of the people on board his own ship, the Tempest, and the ship being salvaged, the Western, in serious danger.

The complainant made a further addition to his complaint.

He accuses the person concerned of leaving port on 12 November 2010 without the Tempest having an emergency stop for the port main engine. He also accuses the person concerned of having the crew members work in the vicinity of the towing winch on the afterdeck on 12 November 2010, which according to the complainant is extremely dangerous when seas are surging over the deck.

The president of the court rejected the complaint as being manifestly unfounded.

He declared the addition to the complaint inadmissible since it did not affect the essence of the accusation in the complaint.

The president was unsure what the complainant was accusing the person concerned of with regard to the lifelines, and therefore did not consider these subjects to be part of the complaint.

In keeping with the judgement of the consulted expert, the president considered that it was appropriate for the Western to approach the stricken vessel on the windward side. The person concerned approached the Western from the windward side because the Tempest has an open stern, over which more water will surge if approaching from the leeward side than from the windward side.

The president shared the view of the expert that the use of a heaving line was not contrary to the principles of good seamanship.

According to the president, the mere fact that the towing chains broke is not sufficient to conclude that the person concerned acted contrary to the principles of good seamanship.

The complaint lodged an objection to the president's decision within the set time period.

The decision of the president was set aside as a result of the objection.

A further hearing on this case has since been held in 2012.

The ruling will be pronounced in 2013.

SEA FISHING 2012

CORNELIS JOHANNES VD77

RULING 2 IN 2012, CASE NUMBER 2011.V2 OF 08 JUNE 2012

Person concerned: the captain

The person concerned is accused as captain of undertaking a voyage without ensuring that the vessel was properly manned with personnel appropriate to the task at hand. On Wednesday 9 February 2011 there was a collision in the North Sea between the VD 77 and the container ship MSC Ali. Prior to and during the collision the bridge watch on the VD77 was kept by an unqualified crew member.

The crew list and the statement of the person concerned and a witness shows that G. was signed on as a mate and was acting in that capacity on 9 February 2011. G. did not have a Dutch navigation licence. The Transport, Public Works and Water Management Inspectorate had refused to convert the Polish papers into a Dutch navigation certificate on two occasions. It is up to the captain himself to verify that a crew member who is signed on and acts as a mate has the necessary navigation licence. He cannot rely on the notification of the shipping company that this is the case.

The person concerned was given a conditional fine of 500 euros. The operational period was set at 2 years. This fine was conditionally imposed in connection with the fact that the person concerned has yet to face prosecution by the Public Prosecution Service for the offence.

COMPOSITION OF THE MARITIME COURT OF THE NETHERLANDS IN 2012

PRESIDENT

D. Roemers
State Councillor with the Council of State

E.R. IJssel de Schepper
*Dual Master / Integrated Captain at Maersk
Shipmanagement
Marine engineer / Captain in the merchant navy
(large ships)*

DEPUTY PRESIDENT

E.A. Bik
Lawyer practising in Rotterdam

P.J. Lensen
*Chief marine engineer at Wagenborg
Marine engineer*

A.N. van Zelm van Eldik
Vice president at the District Court in Rotterdam

J.M. Bais
Skipper in marine fishing

MEMBERS

R.J. Gutteling
*Head of the Port Coordination Centre, deputy
Harbourmaster
Formerly Captain in the merchant navy (large
ships)*

J. van de Berg
Formerly skipper in marine fishing

J.C. Muller
Formerly skipper in marine fishing

G. Vooijs
Skipper in marine fishing

F. Karmelk
Formerly captain at VOPAK Chemical Tankers

DEPUTY MEMBERS

B.V. in Dordrecht
*Formerly captain in the merchant navy (small
ships)*

H.W.M. Linssen
*Managing Director, Keppel Verolme
Formerly marine engineer*

J.G. van Oerle
Superintendent at Maritime Performance in Barendrecht
Marine engineer

J.F. Jongbloed
Formerly captain at Jo Tankers B.V. in Spijkenisse
Formerly Captain in the merchant navy (large ships)

J.F. Krijt
Formerly commander at P&O Nedlloyd BV
Formerly captain in the merchant navy

P.L. van Slooten
Skipper in marine fishing

W. Toering
Skipper in marine fishing

J.F. de Boer
Skipper in marine fishing

A. Dekker
Skipper in marine fishing

M.J. van Overklift
Ship owner in the merchant navy (large ships)

C.J.M. Schot
General director at Scheepvaartbedrijf Schot
Ship owner in the merchant navy (large ships)

E.C. Holman
Director of Technische Dienst Boskalis B.V.
Hydraulic engineer

P.F. Vos
Formerly Fleet Manager van Oord Dredging and Marine Contractors
Hydraulic engineer

T.S. de Groot
Pilot

R.J.N. de Haan
Pilot

F.P.J. de Haan
Head of Hydrography, Hydrography Division of the Royal Navy
Hydrographer
Vice-Admiral (retd.)

J.L.A. van Aalst
Formerly Inspector-General for the Army
Hydrographer

SECRETARY

E.H.G. Kleingeld

DEPUTY SECRETARY

D.P.M. Bos
Legal counsel at Koninklijke Ahold N.V.

T. Tammes
Lawyer at the Royal Association of Dutch Ship Owners

APPENDIX

FILE VIEWED BY APPLICANT AT OFFICES

date	application by	ship's name	accident	result
2 January 2012	family	Frisia HA 38	2010	referred to the Dutch Safety Board (Ovv)
5 January 2012	interested party	Annie IJM 14	1955	ruling sent
19 January 2012	seafarer	Anna Jenny, 1995	1995	ruling sent
19 January 2012	interested party	Vikingbank, 1967	1967	ruling sent
19 February 2012	family	Pollux IJM 339	1922	ruling sent
27 June 2012	journalist	Meerkerk, 1946	1946	conducted own study of the archive
4 July 2012	interested party	Sirra, 1917	1917	ruling sent
10 August 2012	interested party			general question about the digital archive
13 August 2012	interested party	Algarve, 1948	1948	ruling sent
20 September 2012	interested party	Maassluis 1989	1989	ruling sent
12 November 2012	interested party	Julia IJM 63	1918	ruling sent
20 November 2012	interested party	Ariana, 1952	1952	ruling sent
28 November 2012	interested party	ss Hilversum	1917	ruling sent



