

**MARITIME DISCIPLINARY COURT
OF THE NETHERLANDS**

**ANNUAL
REPORT
2013**



**MARITIME
DISCIPLINARY
COURT OF THE
NETHERLANDS**



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MARITIME DISCIPLINARY COURT OF THE NETHERLANDS

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GENERAL

On 1 March 2013 the office of the Disciplinary Court was relocated from Oude Brugsteeg to the Damrak side of the Beurs van Berlage. The archive of the Dutch Maritime Court for the period 1940-2010 was also relocated, in anticipation of further cataloguing and transfer to the National Archive in The Hague, where the Court's archive for the period 1909-1940 is already kept. This transfer is expected to take place in 2014.

The first president of the Disciplinary Court, D. Roemers, was forced to step down prematurely owing to illness. We owe Mr Roemers a huge debt of thanks for getting the Disciplinary Court underway. He has been succeeded by the vice-president E.A. Bik, who was appointed president of the Disciplinary Court on 1 August 2013. J.M. van der Klooster was appointed to replace Mr Bik as the vice-president.

There were changes not only to the Disciplinary Court's 'presidium', but also among the members when the four-year term of appointment of the presidents, members and secretaries of the Disciplinary Court of the Netherlands and their respective deputies came to an end on 31 December 2013.

Various members were unable or no longer wished to be reappointed for a new term of office. There were various reasons for this (in random order age, sea-time requirement, unable to combine with current job). The people concerned are: J.F. de Boer, F.P.J. de Haan, F. Karmelk, J.F. Krijt, H.W.M. Linssen, J.C. Muller, J.G. van Oerle, M.J. van Overklift, G. Vooijs and P.F. Vos. Neither was it possible to reappoint Mr T.P. Tammes, deputy additional secretary, who was appointed at the beginning of 2010 in connection with the long-term sickness of the official secretary, Mr D.J. Pimentel. The Disciplinary Court owes a debt of thanks to them, too.

Advertisements have been placed in maritime journals to fill the vacancies for the new term of office (2014-2018) under the current legislation and for the vacancies that will be created when the amendment to the Dutch Maritime Crews Act/Seafarers Act passes into law in 2014. More than 70 applications have been received. A selection has been made and interviews conducted. This procedure has resulted in a proposal for appointments and reappointments being made to the Minister. The decision was published in the Government Gazette on 10 December 2013. The decision came into effect on 1 January 2014.

Further on in this annual report you will find (in alphabetical order per category) the composition of the Disciplinary Board as it was on 1 January 2013 and on 1 January 2014. This has to do with the changes to the members of the Disciplinary Court.

In 2010 the Minister submitted eight petitions to the Disciplinary Court. Only two petitions were submitted in 2011. The limited number of petitions submitted in that year can be attributed to the

lack of personnel capacity, which formed an obstacle to submission. The Disciplinary Board also received a complaint during that year.

In 2012 the Disciplinary Court received seven petitions from the Minister. No complaints were submitted. Ten petitions were received in 2013.

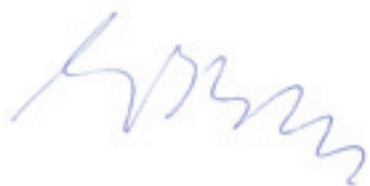
In 2013 the Maritime Disciplinary Court of the Netherlands published six rulings. One complaint was submitted about the conduct of a captain, there were four petitions concerning groundings and a petition relating to a ship that went adrift with a dragging anchor. The key points of the rulings are given further on in this report.

The rulings of the Disciplinary Court are published in anonymised form in Dutch and English on its website. The rulings under disciplinary law have been anonymised on the Disciplinary Court's website in conformity with the directives of the Dutch Data Protection Authority (DPA). The rulings of the Maritime Court of the Netherlands that were published on the website www.raadvoordescheepvaart.nl have been deleted. This is because those rulings did not meet the directives of the DPA.

As was the case in 2012 the Disciplinary Court's premises were also used for the Ministry of Infrastructure and the Environment. In 2013 four meetings were organised at the Disciplinary Court's rooms. The office location of the Disciplinary Court was also used by the Ministry of Infrastructure and the Environment to hold a meeting.

On the request of the Shipping and Transport College in Rotterdam the President of the Disciplinary Court, Mr Roemers, once again gave a talk on the Disciplinary Court's activities in 2013.

In 2013 interested parties again asked the secretariat of the Disciplinary Court for assistance with investigating the rulings of the Maritime Court of the Netherlands. Researchers, journalists and other interested parties made use of the archive of the Maritime Court of the Netherlands. More than 20 requests were received. As soon as the Court's archive has been relocated to the National Archive, interested parties will be referred to that institution. The Court's website will be taken down at that point.



E.A. Bik, president

NEW CASES

In 2013 ten new cases were filed in response to a petition of the Minister. No complaints were submitted.

Reference is made to the table below for a comparison of the 2010, 2011 and 2012 figures.

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
2013	10	0	2	1	6

* In 2011 one case was withdrawn by the Minister

The rulings of the Maritime Disciplinary Court are given on its website:
www.tuchtcollegevoordescheepvaart.nl.

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



PUBLISHED RULINGS OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS IN 2013

MERCHANT MARINE

TEMPEST

RULING 1 IN 2013, CASE NUMBER 2011.K1 OF 15 JANUARY 2013

Person concerned: the captain

In 2011 the complainant submitted a complaint concerning the conduct of the person concerned as captain of the tug Tempest when securing the rudderless and drifting ocean-going vessel Western on 12 November 2010 in the North Sea to the west of IJmuiden.

The president of the court rejected the complaint as being manifestly unfounded in 2012. The complainant lodged an objection to this president's decision within the prescribed term, as a result of which the president's decision was repealed and the case was heard again by the Disciplinary Court in 2012.

In concise terms the complainant alleges (amongst other things) that the person concerned was seasick upon leaving port, that he made a towage connection with the aid of a heaving line rather

than using a line casting device and for that purpose had to get very close to the Western and that according to the complainant the video recordings he had made showed that the crew members standing on the afterdeck of the Tempest were regularly submerged by the surging seas. The complainant also referred in his complaint to the fact that the crew members were not connected with safety lines to the afterdeck and to surviving suits and, finally, the complainant held the person concerned culpable for the fact that the chains used to secure the towing line broke during the towing operation and that the use of those chains was a highly irregular course of action. The complainant added to his complaint at a later stage the allegation that when leaving port the Tempest was not equipped with an emergency stop for the port main engine and that working in the immediate vicinity of the towing roller on the afterdeck with surging seas and a clear and present danger of collision is a perilous undertaking.

The Disciplinary Court issued its ruling in this case on 15 January 2013 and after hearing the person concerned and to sea salvage experts dismissed the complaints made against the person concerned. The complainant has lodged an appeal against this decision with the Dutch Administrative High Court for Trade and Industry.

ENNIO MARNIX

RULING 2 IN 2013, CASE NUMBER 2012.VIA OF 27 MARCH 2013

Person concerned: the captain

In the matter of a grounding the person concerned is accused of acting contrary to the following regulations and provisions: the Convention on International Provisions for the prevention of collisions at sea, 1972, Regulation 2 (Responsibility), the STWC, Section A-VIII/2, part 2, Voyage Planning, General requirements (3), part 3.1, Watchkeeping at Sea, Principles to be Observed in keeping a Navigational Watch, the Solas Chapter Regulation 34, Safe Navigation and Avoidance of Dangerous Situations and Section 4 (3) of the Dutch Maritime Crews Act.

Prior to the grounding and the voyage the captain had not sufficiently checked the voyage planning or arranged to have it checked, as a result of which the proposed course passed over a depth that was unsuitable for the vessel's draught. The person concerned is also accused of not posting a lookout during the hours of darkness whilst sailing in coastal waters with many navigational hazards.

The Maritime Disciplinary Court ruled that the person concerned had failed seriously in his responsibilities as captain, with the grounding of the vessel as a result. The Disciplinary Court regarded the decision of the person concerned not to post a lookout during the hours of darkness to be incorrect, but noted that the failure to post a lookout had not contributed to the grounding.

The navigation licence of the person concerned was suspended for a period of four weeks.

GEERVLIET

RULING 3 IN 2013, CASE NUMBER 2012.V4 OF 11 OCTOBER 2013

Person concerned: the captain

During the watch kept by the person concerned the Geervliet grounded at around 23:00 hours local time on 6 March 2012 on the Greek island of Nisos Polyaigos. The captain was keeping watch on the bridge at the time of the grounding. Prior to and during the grounding there was effectively no lookout on the bridge. The person concerned was accused of acting contrary to Regulation 2 (Responsibility) and Regulation 5 (Lookout) of the Convention on International Provisions for the prevention of collisions at sea, 1972:, to the provisions of STCW Section A-VIII/2, Part 3.1 Watchkeeping at Sea, Principles to be Observed in Keeping a Navigational Watch and to Section 4 of the Dutch Maritime Crews Act.

The Disciplinary Court ruled that the failure to keep an effective lookout for a long period of time in the vicinity of islands resulting in a grounding must be regarded as a serious violation of the principles of good seamanship. The person concerned did not act in a manner befitting a competent ship's captain, as a result of which the safety of the crew, the vessel and the environment were jeopardised. The navigation licence of the person concerned was suspended for a period of two months.

VRIESENDIEP

RULING 4 IN 2013, CASE NUMBER 2013.V1 OF 15 NOVEMBER 2013

Person concerned: the captain

At approximately 01:00 hours on 18 December 2012 the seagoing vessel Vriesendiep grounded in Finnish waters. At that time the person concerned was keeping watch on the bridge together with a pilot and was acting as the helmsman. The voyage preparation consisted mainly of a summary of waypoints, without taking account of the guidelines and recommendations laid down by the IMO. The person concerned is accused of thus acting contrary to the following regulations and provisions: the Convention on International Provisions for the prevention of collisions at sea, 1972, Regulation 2 (Responsibility), Section 4 (3) of the Dutch Maritime Crews Act, the Solas Chapter V, Safety of navigation, Regulation 34 Safe Navigation and Avoidance of Dangerous Situations and the STWC, Section A-VII/2, part 2 Voyage planning.

The Disciplinary Court concluded that the person concerned acted contrary to Regulation 2 (Responsibility) of the Convention on International Provisions for the prevention of collisions at sea, 1972 and with Section 4 (3) of the Dutch Maritime Crews Act. The Disciplinary Court is of the opinion that the person concerned failed seriously in his responsibilities as captain. The

connection between taking over the helm and the grounding has not been made sufficiently clear. The steering error jeopardised the safety of the ship and its cargo and the surrounding area. It became clear during the hearing of this case that the person concerned had been deeply affected by the grounding and that it had had a serious personal effect on the person concerned for a longer period of time. In view of the nature and seriousness of the proven behaviour and the personal circumstances referred to above, the Disciplinary Court found that there was good cause to refrain from imposing a disciplinary measure.

FLINTERBAY

RULING 5 IN 2013, CASE NUMBER 2013.V5 OF 15 NOVEMBER 2013

Person concerned: the maritime officer

On 17 June 2012 the seagoing vessel Flinterbay went adrift on a dragging anchor off the Dutch coast (Schouwenbank anchorage). The person concerned was the duty officer and was not present on the bridge at the time when the ship was adrift. The person concerned failed to hand over the bridge watch when he left the bridge. No watch alarm was activated and he had not posted a duty lookout. The person concerned is accused of thus acting contrary to the following regulations and provisions: the Convention on International Provisions for the prevention of collisions at sea, 1972, Regulation 2 (Responsibility) and Regulation 5 (Lookout), Section 4 (3) of the Dutch Maritime Crews Act and the STWC, Section A-VIII/2, part 3.1 Watchkeeping at Sea, Principles to be Observed in keeping a Navigational Watch.

The Disciplinary Court found that the person concerned, as the duty officer, should not have left the bridge. After his departure there was apparently nobody on the bridge for several hours. No lookout whatsoever was kept, the ship's positions were not monitored and nobody listened out on VHF, despite the fact that the ship was in a potentially dangerous situation in that it was adrift in darkness and during bad weather in or close to an anchorage and in the vicinity of at least one other ship and an electricity cable. Contrary to the standing orders, the person concerned did not immediately inform the captain that he had noticed that the ship was adrift.

The Disciplinary Court concluded that the person concerned had acted contrary to Regulations 5 (Lookout) and 2 (Responsibility) of the Convention on International Provisions for the prevention of collisions at sea, 1972, with Section 4 (3) of the Dutch Maritime Crews Act, and with the rules of the STWC, Section A-VIII/2, part 3.1 Watchkeeping at Sea, Principles to be Observed in keeping a Navigational Watch, with special reference to provisions 13, 17, 23 and 40.

Since the incident took place in the twelve-mile zone of the territorial sea, the Shipping Regulations Territorial Sea, Sections 4 and 5 of which contain provisions concerning precautionary measures which, in accordance with good seamanship, should be taken and listening out on VHF channel 64 of TC Steenbank as well as the general channel 16.

It was noted that the actions of the person concerned, which led to the inability to contact the ship, resulted in the lifeboat and its crew having to make the challenging trip to the ship in rough sea conditions.

The Disciplinary Court ruled that the person concerned had seriously failed in his responsibilities as a ship's officer. The person concerned did not act as befits a responsible officer of the watch, which meant the safety of the crew, the vessel, its cargo, and the environment were jeopardised. These actions could have had very serious consequences. The navigation licence of the person concerned was suspended for a period of four months. It was stipulated that of this suspension, a period of two months would not be imposed unless the Disciplinary Court stipulated 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 prior to the end of a probationary period, which the Disciplinary Court set at two years;

EEMS CARRIER

RULING 6 IN 2013, CASE NUMBER 2012.V6 OF 15 NOVEMBER 2013

Person concerned: the captain

On 15 September 2012, the seagoing vessel Eems Carrier grounded in the Viestroom (Wadden Sea). The person concerned was on the bridge at the time of the grounding. In essence, the accusation made against the person concerned is that - despite the presence of buoys - he exceeded the boundary of the shipping lane and ran aground and that the person concerned therefore cannot have kept a proper lookout. In concise terms, the person concerned is accused of acting contrary to the following regulations and provisions: the Convention on International Provisions for the prevention of collisions at sea, 1972, Regulation 2 (Responsibility) and Regulation 5 (Lookout), Section 4 (3) of the Dutch Maritime Crews Act and the STWC, Section A-VIII/2, part 3.1 Watchkeeping at Sea, Principles to be Observed in keeping a Navigational Watch.

In conducting his navigation the person concerned had not apparently given any consideration to the green buoys that (approximately) indicated the western side of the shipping lane. In the given circumstances of daylight and good visibility the person concerned - who was navigating mainly by sight - could and should have noticed in good time that he was crossing the green line of buoys and was therefore sailing out of the shipping lane on the western side.

The Disciplinary Court concluded that the person concerned was therefore insufficiently attentive in his navigation. The navigation error and the grounding that followed could have had serious consequences, which fortunately did not manifest themselves.

The person concerned failed to keep a proper lookout making use of all the available resources. The grounding could not be prevented as a result of this. The person concerned thus acted

contrary to Section 1.04 of the local Inland Waterways Police Regulations (all precautionary measures to be taken as required by the principles of good seamanship), the content of which is largely in keeping with Regulation 2 of the Convention on International Provisions for the prevention of collisions at sea, 1972. This also constitutes a violation of Section 4 (3) of the Dutch Maritime Crews Act. The person concerned also failed to act in conformity with the provisions of the STCW code, Section A-VIII/2, Part 3.1, Section 13 that makes it compulsory to keep a proper lookout in accordance with Regulation 5 of the convention referred to above.

The Disciplinary Court judged that the person concerned had failed in his responsibility as captain, resulting in the ship grounding and which placed the safety of the people on board, the ship and its cargo and the surrounding area under threat.

In view of the seriousness of the proven conduct, the Disciplinary Court ordered the suspension of the navigation licence of the person concerned. In view of the merits of the case, including the fact that no harmful effects resulted from the grounding, the Disciplinary Court decided to rule that the suspension of the navigation licence will be imposed for a period of one month on an entirely conditional basis.



COMPOSITION OF THE MARITIME COURT OF THE NETHERLANDS

ON 1 JANUARY 2013

PRESIDENT

D. Roemers
State Councillor with the Council of State

P.J. Lensen
Chief Engineer in the merchant navy

J.M. Bais
Skipper in marine fishing

DEPUTY CHAIRMEN

E.A. Bik
Lawyer practising in Rotterdam

J.C. Muller
Formerly skipper in marine fishing

H. Romkes
Skipper in marine fishing

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

G. Vooijs
Skipper in marine fishing

MEMBERS

R.J. Gutteling
Formerly captain in the merchant navy

E.R. IJssel de Schepper
Captain in the merchant navy

F. Karmelk
Formerly captain in the merchant navy

DEPUTY MEMBERS

J.F. Krijt
Formerly captain in the merchant navy

H. van der Laan
Captain in the merchant navy

H.W.M. Linsen
Formerly captain in the merchant navy

J.G. van Oerle
Marine Engineer in the merchant navy

J.F. de Boer
Skipper in marine fishing

A. Dekker
Skipper in marine fishing

P.L. van Slooten
Skipper in marine fishing

W. Toering
Skipper in marine fishing

M.J. van Overklift
Shipping company

C.J.M. Schot
Shipping company

E.C. Holman
Hydraulic engineer

P.F. Vos
Hydraulic engineer

T.S. de Groot
Registered pilot

R.J.N. de Haan
Registered pilot

F.P.J. de Haan
Hydrographer

N.P. Kortenoeven
Hydrographer

SECRETARY

E.H.G. Kleingeld

DEPUTY SECRETARIES

D.P.M. Bos

T.P. Tammes



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ON 1 JANUARY 2014

PRESIDENT

E.A. Bik
Lawyer practising in Rotterdam

A. Dekker
Skipper in marine fishing

H. Romkes
Skipper in marine fishing

DEPUTY CHAIRMEN

J.M. van der Klooster
Senior justice at the Court of Appeal in the
Hague

W. Toering
Skipper in marine fishing

A.N. van Zelm van Eldik
Former vice-president of the District Court in
Rotterdam

DEPUTY MEMBERS

J. Berghuis
Captain in the merchant navy

O.F.C. Magel
Captain in the merchant navy

MEMBERS

R.J. Gutteling
Formerly captain in the merchant navy

J. van Vuuren
Captain in the merchant navy

E.J. IJssel de Schepper
Captain in the merchant navy

D. Willet
Chief Engineer in the merchant navy

H. van der Laan
Captain in the merchant navy

I.G. Bakker
Skipper in marine fishing

P.J. Lensen
Chief Engineer in the merchant navy

S. Kramer
Skipper in marine fishing

J.M. Bais
Skipper in marine fishing

P.L. van Slooten
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J.W.T.C. de Vreugd
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A.J. de Heer
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Registered pilot

T.S. de Groot
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D.P.M. Bos



