

**MARITIME DISCIPLINARY COURT
OF THE NETHERLANDS**

**ANNUAL
REPORT
2014**



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DISCIPLINARY
COURT OF THE
NETHERLANDS**



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MARITIME DISCIPLINARY COURT OF THE NETHERLANDS

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GENERAL

In 2014 the Maritime Disciplinary Court of the Netherlands published twelve rulings. The rulings concerned the following incidents: a collision with a platform, the loss of deck cargo resulting from a strong list that came about during a turn, a grounding, a collision between two merchant ships, a case of sailing under the influence of medicines or alcohol, a dangerous listing of the vessel caused by a liquefying cargo, an oil spill during bunkering, a failure to sail in accordance with the regulations for the shipping safety system, a case of sailing in the security zone of a wind farm and a fatal accident on board a self-propelled floating barge. The key points of the rulings are given further on in this report. See also the sections on “Merchant shipping” and “Fishery”.

The act amending the Seafarers Act passed into law in May 2014. In response to this amendment the number of “merchant shipping” members was increased by four members and four deputy members. The new members are the captains E.R. Ballieux, R.A. Oppelaar, R.E. Roozendaal and C.R. Tromp. The new deputy members are the ship’s officers S.M. den Heijer, T.W. Kanders, P.H.G. Schonenberg and Captain D. Roest. The appointments are effective from 1 May 2014 to 31 December 2017. The reason for the addition is that as a consequence of the statutory sailing time requirement most of the people appointed are serving captains and ship’s officers. The regular absence of members in connection with their duties sometimes makes it difficult for the Disciplinary Court to form a tribunal of five members.

The statutory power of the Disciplinary Court to institute cases of its own volition has been revoked. This is because that power is contrary to Section 6 of the European Convention for the Protection of Human Rights. This situation would impede the impartiality of the Disciplinary Court, which is why the Disciplinary Court has refrained from making use of this power in the past and has asked for it to be revoked.

The Seafarer’s Act has also been amended on the point regarding the powers of the preliminary investigator of the Disciplinary Court. Those powers have been extended. The term between the summons to a hearing and the hearing itself has been extended from at least two weeks to at least four weeks. This is because the two-week period has proved insufficient for captains and ship’s officers living abroad. It is also worth mentioning that the Seafarer’s Act now contains an explicit stipulation to the effect that cases can be heard in default of appearance. The Disciplinary Court derives its power in this regard from Section 55q, subsection one of the Maritime Crews Act, now the Seafarer’s Act.

The Shipping Inspector E.J. van Leeuwen left the Disciplinary Court in 2014. This took place on 16 May on conclusion of the hearings concerning the Lady Anneke and the Crown Mary. This was also his last working day at the Human Environment and transport Inspectorate (ILT) in Rotterdam. He held the position of Shipping Inspector with the Maritime Court of the Netherlands for nine years, followed by over four years at the Disciplinary Court from 2010.

The Act of 2014 amending the Maritime Crews Act in connection with the introduction of disciplinary law for seafarers describes the purpose of “maritime” disciplinary law as follows: “Statutory disciplinary law extends to guaranteeing good professional practice derived from the public interest.” During his years in office Mr Van Leeuwen has amply contributed to this purpose. The Disciplinary College wishes him every success in his new position as Shipping Manager at the Shipping and Transport College in Rotterdam. Mr Van Leeuwen is succeeded by Mr M. Schipper. Mr Schipper is employed by the Human Environment and Transport Inspectorate in Rotterdam, Shipping Analysis, Development and Accident Investigation department, in the position of senior Inspector/Accident Investigator.

Mr T. Hamburger, hydrographer and Mr J. Preesman, hydraulic engineer, were appointed as deputy members with effect from 1 January 2014. Mr I.G. Bakker, skipper in marine fishing and deputy member, was granted an honourable discharge on 24 September 2014 owing to personal circumstances. He was replaced as a deputy member on 24 September 2014 by Mr J.L. Schot, skipper in marine fishing.

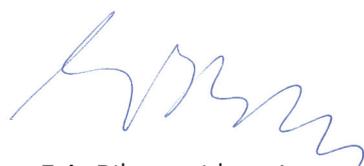
Ms R. Niamat, administrative assistant with the disciplinary court, reached the age of retirement in 2014. The Disciplinary Court would like to thank her for her contribution. She was succeeded by L. Batelaan. Ms Batelaan began in September and will be working at the secretariat two days a week.

On the request of the Netherlands Association of Merchant Shipping Captains (NVKK), on 8 October 2014 the undersigned gave a talk at the premises of the Koninklijk College Zeemanshoop in Amsterdam on the subject proposed by the captain’s association: “What happened to learning lessons at the boardroom table? Disciplinary law and accident investigation in 2014”. The conclusion was that the “consumers” of the rulings of the Disciplinary Court should learn their own lessons from the rulings. That implies that “learning at the boardroom table” is still with us. Contributions to this symposium organised by the captain’s association were also made by the General Committee for the Prevention of Industrial Accidents among Seafarers (ACVAZ), the Dutch Safety Board and by the former Shipping Inspector Mr Van Leeuwen.

At the beginning of October 2014 the archive of the Maritime Court of the Netherlands (period 1940-2010) was moved to the National Archive in The Hague. It will take some time to process the approximately 170 metres of archive files. It is possible that the archive for the period 1940-2010 will be open to interested parties again in 2016. The website of the Maritime Court of the Netherlands has now been taken down.

The Ministry of Infrastructure and the Environment continued to use the localities of the Disciplinary Court this year.

The annual report is concluded with the composition (in alphabetical order by category) on 1 January 2014 and on 1 January 2015. This has to do with the changes/additions to the Disciplinary Court during the course of 2014.



E.A. Bik, president, January 2015

NEW CASES

In 2014 five new cases were brought in. No complaints were submitted.

Reference is made to the table below for a comparison of the 2010, 2011, 2012 and 2013 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 * ¹	2	1	1	1	6
2012	7	0	2	1	6
2013	10	0	2	1	6
2014 * ²	5	0	0	0	12
Total	32	1	7	2	30

*¹ In 2011 one case was withdrawn by the Minister

*² In 2014 two cases were withdrawn by the Minister

The rulings of the Maritime Disciplinary Court are available on the Disciplinary Court's 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 2014

MERCHANT MARINE

FAST VICTOR

RULING 3 IN 2014
CASE NUMBER 2013.V8

Person concerned: the captain

In the early morning of 19 January 2013 the Fast Victor lost part of its deck cargo as a result of a listing heavily during a turn in the North Sea in the area of Maas Centre. The stability of the vessel was not sufficient prior to, and/or during and/or at the end of the voyage to meet the set requirements. In calculating the stability of the vessel, a correction for the free-flowing liquid surface was not taken sufficiently into account. Nor was the right correction for ice accretion applied as prescribed in the stability book. In situations in which the stability did meet the requirements this was no more than marginal and a minor change in the situation could lead to the stability no longer meeting the requirements.



The person concerned was charged by the Minister with acting in breach of the following regulations and provisions: Maritime Crews Act, section 4.3, Convention on International Provisions for the prevention of collisions at sea, 1972, regulation 2, Responsibility; Merchant Shipping Act, Section 4.1, preamble and subsection h; SOLAS, transport of cargo, chapter VI, part A, regulation 5; Commercial Code, Section 343 and IMO Res. A749, chapters 2, 3 and 5.

The disciplinary court judged that the person concerned seriously failed in the duty of care that should be observed by a competent seaman in relation to the people on board, the vessel, its cargo, the environment and shipping. He was accused of acting without due care regarding his responsibility for the ship's adequate stability. When executing the turning manoeuvre he failed to take sufficient account of the ship's stability situation at that time. In view of the seriousness of these failures – which constitute a violation of the aforementioned regulations and provisions – the Disciplinary Court considered it right and proper to impose a disciplinary measure in the form of a partly unconditional suspension of the navigation licence for six weeks, three weeks of which conditionally, with a probationary period of two years. The duration of the suspension took account of the fact to the detriment of the person concerned that this was a potentially very dangerous incident and, to the advantage of the person concerned, that there were no personal injuries and that the person concerned has been dismissed and has already been fined as a result of the incident. The fine was imposed for not promptly reporting the incident.

EMPIRE

RULING 4 IN 2014 CASE NUMBER 2013.V5

Person concerned: the second mate

In the early morning of 15 July 2013 the Empire ran aground off the island of Anholt (Denmark, Kattegat). The person concerned was the officer of the watch at that time. He had changed the vessel's course, as a result of which it entered shallows and grounded. In so doing according to the Minister he acted in violation of the following regulations and provisions: Convention on International Provisions for the prevention of collisions at sea, 1972, regulation 2, (Responsibility) and regulation 5 (keeping a lookout); Merchant Shipping Act, Section 4.3, STCW Section A-VIII/2, Part 3-1 (Watchkeeping at sea).

The disciplinary court judged that the person concerned had seriously failed in the duty of care that should be observed by a competent seaman in relation to the people on board, the vessel, its cargo, the environment and shipping. In view of the seriousness of this conduct – which resulted in a violation of the aforementioned regulations and provisions – the Disciplinary Court considered it right and proper to suspend the navigation licence for six weeks, three weeks of which conditionally, with a probationary period of two years.

STATENGRACHT

RULING 5 IN 2014 CASE NUMBER 2013.V4A

Person concerned: the captain

On 2 February 2013 the Dutch seagoing vessel Statengracht collided with the Maltese freighter Katre to the north of Rügen in the Baltic. At the time of the collision the person concerned was captain of the Statengracht. The person concerned was charged with acting in breach of the following regulations and provisions: Convention on International Provisions for the prevention of collisions at sea, 1972 (referred to below as: Colregs), regulation 2, Responsibility, regulation 8, Measures for the prevention of collisions, regulation 16, Measures to be taken by the ship giving way, Maritime Crews Act, Section 4.3, acting as a captain in a manner befitting a good seaman.

The Maritime Disciplinary Court judged that the person concerned failed seriously in his responsibilities as captain, which resulted in the vessel colliding with the Katre. The person concerned did not act as befits a responsible captain, as a result of which the safety of the people on board, the vessel, its cargo, and the environment were jeopardised. The serious collision resulted in both vessels sustaining considerable damage. The Statengracht sustained a large hole in its port side and could have sunk. Fortunately there were no personal injuries and no environmental pollution was caused.

In view of the seriousness of the conduct of the person concerned the Disciplinary Court considered it right and proper to suspend his navigation licence for two weeks. In view of the fact that the person concerned had built up a good work history as captain over many years and that he frankly admitted his shortcoming and has learned from the incident, the Disciplinary Court saw good cause to rule that his navigation licence will be suspended entirely conditionally.

STATENGRACHT

RULING 6 IN 2014 CASE NUMBER 2013.V4B

Person concerned: the second mate

On 2 February 2013 the Dutch seagoing vessel Statengracht collided with the Maltese freighter Katre to the north of Rügen in the Baltic. At the time of the collision the person concerned was second mate of the Statengracht. The person concerned was charged by the Minister with acting in breach of the following regulations and provisions: Convention on International Provisions for the prevention of collisions at sea, 1972, regulation 2, Responsibility, regulation 6, Safe navigation, regulation 8, Measures for the prevention of collisions, regulation 10, Traffic Separation Schemes,

regulation 16, Measures to be taken by the ship giving way, Maritime Crews Act, Section 4.3, acting as a ship's officer in a manner befitting a good seaman.

The Maritime Disciplinary Court judged that the person concerned failed seriously in his responsibilities as officer of the watch, which resulted in the vessel colliding with the *Katre*. The person concerned did not act as befits a responsible ship's officer, as a result of which the safety of the people on board, the vessel, its cargo, and the environment were jeopardised. The serious collision resulted in both vessels sustaining considerable damage. The *Statengracht* sustained a large hole in its port side and could have sunk. Fortunately there were no personal injuries and no environmental pollution was caused.

In view of the seriousness of the conduct of the person concerned the Disciplinary Court considered it right and proper to suspend his navigation licence unconditionally for a period of one year. The Disciplinary Court took account of the fact that the person concerned had failed entirely to respond to the notifications sent to him about these disciplinary proceedings.

CROWN MARY

RULING 7 IN 2014
CASE NUMBER 2013.V7

Person concerned: the captain

During the evening of 29 June 2013 and the early morning of 30 June 2013 the officer of the watch on board the *Crown Mary* failed to respond to various calls of the Finnish Coastguard. The course being followed by the ship at that time at and in a Traffic Separation Scheme (TSS) Off Halders was contrary to regulation 10 of the Provisions for the prevention of collisions at sea. The captain – the person concerned – was the officer of the watch. No lookout had been posted on the bridge. No adequate radio watch was being kept on the bridge and nobody was listening out on VHF channel 16. The bridge watch was being kept contrary to the regulations concerning the keeping of a proper lookout. No bridge watch alarm was being used. The watch was being kept under the influence of medicines or alcohol or a combination of the two.

The person concerned was charged by the Minister with thus acting in breach of the following regulations and provisions: Convention on International Provisions for the prevention of collisions at sea, 1972, regulation 2, Responsibility; regulation 5, Lookout and regulation 10, Traffic Separation Schemes; Maritime Crews Act, section 4.3, SOLAS Chapter V, regulation 19 and SOLAS Chapter IV regulation 12 and STCW, Section A VIII/2, part 3 Watchkeeping at Sea and part 3.1 Principles to be observed in keeping a navigational watch.

The Disciplinary Court judged that the person concerned had failed in his responsibility as captain and officer of the watch, which jeopardised the safety of the people on board, the ship and its

cargo and the surrounding area. In view of the seriousness of the conduct the Disciplinary Court considered it right and proper to suspend his navigation licence unconditionally for four months.

LADY ANNEKE

RULING 8 IN 2014
CASE NUMBER 2013.V9

Person concerned: the captain

Prior to departure on 22 June 2013, the person concerned was accused with loading a bulk cargo without first obtaining sufficient information about the cargo to be able to judge whether and how the cargo could be safely transported. The person concerned was also accused with failing to carry out a test on board to gain an impression of how the cargo could liquefy, even when he began to have doubts about the condition of the cargo. Furthermore, prior to and during the loading the person concerned failed to sufficiently assess the risks or obtain the correct – and compulsory – information about the cargo. Shortly after leaving Rotterdam on 22 June 2013 the person concerned experienced problems with the cargo, as a result of which the ship took on a list, and decided not to enter an emergency harbour but to continue the voyage to Germany. He corrected the list caused by the shifting cargo by taking in ballast on the other side. This led to the danger that if the cargo flowed back the ship would take on an even greater list to the other side as a result of the extra ballast. Finally, the person concerned was accused of taking in extra ballast during the voyage as a result of which the ship had less freeboard than permitted under the loadline certificate.

The person concerned was charged by the Minister with thus acting in breach of the following regulations and provisions: Convention on International Provisions for the prevention of collisions at sea, 1972, regulation 2, Maritime Crews Act, section 4.3, Merchant Shipping Act, Section 4 and Section 9 and Merchant Shipping Decree 2004, Sections 53, 56 and 60.

The Disciplinary Court judged that the person concerned had failed in his responsibility as captain on a number of points, which seriously jeopardised the safety of the people on board, the ship and its cargo and the surrounding area. In view of the seriousness of the conduct the Disciplinary Court considered it right and proper to suspend his navigation licence. However the Disciplinary Court saw good cause to stipulate that the suspension of the navigation licence would be partially suspended. The Disciplinary Court suspended the navigation licence of the person concerned for two months, one month conditionally, with a probationary period of two years.

HUMBERBORG

RULING 9 IN 2014
CASE NUMBER 2014.V3

Person concerned: the chief engineer

On 12 October 2013 the Humberborg was anchored close to Piraeus, Greece. On that day oil pollution was caused during bunkering on board the Humberborg when the Humberborg's fuel tank overflowed during the bunkering process. The chief engineer was responsible for bunkering. The Minister accused the person concerned of acting contrary to the provisions of Section 4.3 of the Maritime Crews Act; the captain and ship's officers shall act on board in a manner befitting a good seaman with respect to the people on board, the vessel, its cargo, the environment and shipping.

The Disciplinary Court concluded the person concerned had seriously failed in the performance of his duties and his responsibilities as chief engineer during the bunkering operation. This resulted in an oil spill and environmental harm. It was also assumed that the Humberborg and the bunker vessel were smeared with the overflowed HFO as well. This constituted a violation of Section 4.3 of the Maritime Crews Act, now entitled the Seafarers Act. The person concerned was not held accountable for the fact that the measures intended to mitigate the effects of the overflow on the deck of the Humberborg were not entirely successful. The oil spill in the sea was limited partly as a result of the fact that protecting booms had been placed in the water by the Humberborg and the bunkering vessel, apparently on the request of the person concerned.

It was partly for this reason that the Disciplinary Court saw good cause to stipulate that the navigation licence would be fully conditionally suspended for two months. Other considerations that played a role in this decision were the circumstances that this was apparently the first time that the person concerned had been involved in such an incident and that he has learned from this, as well as the fact that the person concerned has been subjected to a fine – albeit not charged to him, and the further consequences are unknown – and, finally, the fact that he appeared at the hearing.

BITLAND

RULING 10 IN 2014
CASE NUMBER 2014.V4

Person concerned: the captain

On 7 March 2014, between 11:00 and 12:00 hours BT, the Bitland sailed through the TSS South Hoburgsbank on route from Latvia to Nyborg in Denmark in a manner contrary to regulations.

The person concerned, the captain, was the officer of the watch at that time. The chart that he was using showed a planned course through the TSS that was contrary to the regulations.

The person concerned was accused by the Minister of acting contrary to (i) Regulations 2 and 10 of the Convention on International Provisions for the prevention of collisions at sea, 1972 and (ii) Section 4.3 of the Dutch Maritime Crews Act.

The Disciplinary Court ruled that failing to sail in accordance with the regulations governing the traffic separation scheme was a serious violation. The traffic separation scheme serves to protect the safety of shipping traffic. The prescribed manner of navigation should have been observed, even if this was not considered strictly necessary in the judgement of the individual officer of the watch from a safety viewpoint. Compliance with traffic regulations cannot be subordinated to the individual views of shipping lane users on the need to comply with them. The violation is not justified by the fact, as claimed by the person concerned, that the needless (diagonal) crossing of the navigation area of the TTS Hoburgsbank did not cause any danger in this case because there was no other shipping traffic in the (normally busy) area. This fact was however taken into account in the choice of the measure to be taken, which would have been more serious if an actual danger had been caused. The fact that the person concerned acknowledged that what he did was wrong and promised that there will be no future repetition was also taken into account in his favour in the choice of measure. The state of health of the person concerned was also taken into account. These circumstances do not however alter the fact that the violation is of such a serious nature that a mere reprimand, as proposed with the agreement of the person concerned, is not sufficient. Taking everything into account the Disciplinary Court found it appropriate to conditionally suspend the navigation licence for a period of two weeks.

CORMORANT

RULING 12 IN 2014
CASE NUMBER 2014.V1

Person concerned: the captain

Following the withdrawal of a number of points, the basis of the petition was formed by the following. On 1 August 2013 a crew member of the Cormorant, a self-propelling floating barge, was fatally injured by a fall from a height whilst working on board the vessel. The person concerned, as captain of the vessel, failed to report the accident to the Dutch authorities or the designated regulatory authority. Despite several requests to this effect, no documentation has been made available to the inspectorate showing that the captain conducted an investigation on board. The captain has not provided the ship's managing owner with an investigation report or investigation result. The managing owner stated that he did not have any information about the accident when the ILT asked for it several times in the period from 24 September to 30 September 2013, almost two months after the accident. The captain had not made a preliminary statement on the fatal accident that took place on board (within 48 hours) or a full statement (within eight



days). The captain has failed to draw up a proper specification of the property of the deceased crew member in the presence of two crew members. The ISM-procedure 40204 “Reporting of deficiencies, near misses and improvements” was not followed.

The person concerned is charged with acting in breach of the following regulations and provisions:

- Dutch Maritime Crews Act, Section 4.3 (behaving in a manner befitting a good seaman)
- Dutch Commercial Code, Section 346 (making an inventory)
- Dutch Commercial Code, Section 348 (keeping log books)
- Dutch Commercial Code, Section 353 (preliminary and full ship’s statement)
- Merchant Shipping Act, Section 9.2 (keeping log books, reporting accidents)
- Ships Decree 2004, Section 63 (conformity with ISM-Code)
- Ships Decree 2004, Section 64 (keeping log books).

The inspector stated at the hearing that the person involved had also acted contrary to the provisions of Section 9 of the Working Conditions Act (notification of accidents).

The petition was considered well-founded on a number of points. Regarding the completion of form 60126 in accordance with ISM procedure 40204, it has been established that this was not sent to the office or shown or given on board to Ms Pielaat. The prescribed form is important to following up an accident, so that lessons can be learned on this basis and from any investigation and recommendations and measures can be taken to prevent repetition. In this case Ms Pielaat, the SHE-Q manager of Multraship, who was responsible for following up the report of an accident, was already on board. She was immediately able to take possession of statements of facts from the person concerned and Mr De Witte and she was also informed verbally about the accident by crew members. In view of these circumstances the Disciplinary Court did not consider the omission of the person concerned to be sufficiently serious to warrant a disciplinary measure.

Regarding the failure to have a statement drawn up by a civil-law notary, which regulation is evidently intended to have what has happened laid down in writing shortly after the accident, the Disciplinary Court judged that in the circumstances outlined above this does not justify any disciplinary measure. Regarding the failure to draw up a description of the possessions of the deceased crew member the Disciplinary Court notes that it is certainly important to have such a description drawn up promptly and correctly, so that it is also clear to the surviving relatives which goods have to be handed over and losses are prevented. This was not altered by fact that the people on board responded emotionally to what had happened and that the two colleagues were repatriated shortly afterwards. However this non-conformity on the part of the person concerned – which has not apparently led to any problems – did not give the Disciplinary Court any cause to impose a disciplinary measure either.

FISHERY

MARIA GO 20

RULING 1 IN 2014
CASE NUMBER 2013.V2

Person concerned: the acting skipper

On 23 September 2012 at approximately 15.30 hours UTC the GO 20 collided with a platform in the North Sea, as a result of which the vessel sustained serious damage. The person concerned, who was the acting skipper, had handed over the watch to a seaman who was not qualified to act as officer of the watch and was so tired that he fell asleep on watch. Because the seaman who was acting as officer of the watch fell asleep the ship collided unnoticed against a platform. The person concerned handed over the watch with the instruction to 'follow the line' in the fishing plotter despite that course (the line) was being set over or very close to a platform. The preset course was set by a person other than the duty seaman. The ship was showing its fishing lighting whilst not fishing and was being propelled purely mechanically. It has been more frequently established that the ship was undermanned. The Dutch police had brought charges for this offence on three occasions: in 2003, 2007 and 2011. The person concerned had previously been convicted by the Maritime Court of the Netherlands in relation to a collision. The person concerned was not in possession of a valid navigation licence.

The person concerned was charged by the Minister on the basis of these facts and circumstances with acting in breach of the following regulations and provisions: Convention on International Provisions for the prevention of collisions at sea, 1972: Regulation 2 and Regulation 23 and the Maritime Crews Act, Section 4.3.

The Maritime Disciplinary Court was of the opinion that the person concerned had failed seriously in his responsibilities as acting skipper of the fishing vessel (and therefore as captain by virtue of Section 31 (3) of the Maritime Crews Act, or as a ship's officer). By acting as charged the person concerned placed, as well as the GO 20 and the property of third-parties, the safety of those on board and, more generally, the surrounding area, in danger.

In view of the seriousness of the violations an unconditional suspension of the navigation licence was right and proper. To the extent that an entirely conditional measure had been requested or recommended, the Disciplinary Court was unable to agree to this. The violations were too serious for this to be possible. The Disciplinary Court did however take the view that a conditional measure in addition to the unconditional measure was appropriate, partly in the form of a conditional fine. This will serve as a deterrent and an incentive to take compliance with the various regulations more seriously in future.



In determining the unconditional (one month) and the conditional (seven months) parts of the suspension the Disciplinary Court took account of the recommendation of the inspector and the fact that the person concerned has promised to better his ways and also that a lengthy unconditional suspension would be likely to destroy the company. On the other hand it was taken into consideration these are serious violations which, in view of the past violations involving the GO 20, cannot be viewed in isolation. The company's financial position was taken into account in determining the amount of the conditional fine of 2,500 euros.

MARIA GO 20

RULING 2 IN 2014 CASE NUMBER 2013.V3

Person concerned: the skipper

On 23 September 2012 at approximately 15.30 hours UTC the GO 20 collided with a platform in the North Sea, as a result of which the vessel sustained serious damage. At the time of the collision the duty seaman was also the officer of the watch. He was not in possession of the required navigation licence. The duty watchkeeper was not in possession of the minimum requirement of a 'restricted radio operator certificate'. The officer of the watch had the vessel follow a preset course that eventually turned out to be over the platform with which the vessel collided. The preset course was set by a person other than the officer of the watch at the time of the collision and the course resulted in the vessel colliding with the platform.

The ship was not manned with the minimum crew required for the navigation area 30 miles off the coast whilst part of the voyage took place outside 30 miles off the coast. Several crew members had expired navigation licences and were therefore unqualified to serve in the positions for which they were on board. The skipper set out to sea with a crew member who was not in possession of a valid medical certificate. The Polish crew member was unable to present a medical certificate during a visit following the collision, and neither was he in possession of a Dutch seaman's book. The skipper himself was not in possession of a valid navigation licence. The bridge alarm was not activated prior to the collision and the key used to deactivate it had not been removed, which made it possible for the officer of the watch to deactivate it on his own initiative. The vessel was sailing as a mechanically propelled vessel, without fishing, with the fishing lighting on. Furthermore, the skipper had put to sea when the vessel's certification had lapsed because the annual inspections had not been carried out within the set time frame. On the trip back following a busy week of fishing the officer of the watch was not sufficiently rested to independently take the bridge watch but was none the less detailed to keep the bridge watch, as a result of which he fell asleep, which resulted in the ship colliding with the platform unnoticed.

The Maritime Disciplinary Court has heard two past cases: rulings 17/1994 and 18/1994. These cases concerned a collision with a ship at anchor in which the same seaman was officer of the watch and had fallen asleep. The skipper at that time was now on board as the acting skipper. It

has been more frequently established by the Dutch police that the ship was undermanned. The Dutch police had brought charges for this offence on three occasions: in 2003, 2007 and 2011.

The person concerned was charged by the Minister on the basis of these facts and circumstances with acting in breach of the following regulations and provisions: Convention on International Provisions for the prevention of collisions at sea, 1972, regulation 2 and regulation 23; Maritime Crews Act, Section 4.3, and Section 4; 27.2; 35 and 40; Merchant Shipping Act, Section 343; Ship's Act, Sections 3 and 4, and Dutch Sea-Going Fishing Vessels (Manning) Decree, Section 77.

The Disciplinary Court took the view that the person concerned had failed seriously in his responsibilities as skipper of the fishing vessel. By acting as charged the person concerned placed, as well as the GO 20 and the property of third-parties, the safety of those on board and, more generally, the surrounding area, in serious danger.

In view of the seriousness of the violations the Disciplinary Court considered an unconditional suspension of the navigation licence to be appropriate. To the extent that an entirely conditional measure had been requested or recommended, the Disciplinary Court was unable to agree to this. The violations were too serious for this to be possible. The Disciplinary Court did however take the view that a conditional measure in addition to the unconditional measure was appropriate, partly in the form of a conditional fine. This will serve as a deterrent and an incentive to take compliance with the various regulations more seriously in future.

In determining the unconditional (one month) and the conditional (seven months) parts of the suspension the Disciplinary Court took account of the recommendation of the inspector and the fact that the person concerned has promised to better his ways and also that a lengthy unconditional suspension would be likely to destroy the company. On the other hand it was taken into consideration these are serious violations which, in view of the past violations involving the GO 20, cannot be viewed in isolation. The company's financial position was taken into account in determining the amount of the conditional fine of 2,500 euros.

Without detracting from the seriousness of the other violations, it was noted in the ruling that the measures would also have been imposed if the violations in question had been limited to the violation of Section 27 (2) of the Dutch Maritime Crews Act in combination with the failure to take appropriate measures to prevent accidents when keeping the bridge watch.

KLAAS ADRIANA ARM 22

RULING 11 IN 2014 CASE NUMBER 2014.V5

Person concerned: the skipper

The petition for disciplinary proceedings was based on the accusation that the person concerned, as skipper of the ARM 22, violated on several occasions the Belgian shipping regulations in force in the area around the Thorton Windmolenpark C-Power. The person concerned was charged on this basis with acting in breach of the following regulations and provisions:

(i) Convention on International Provisions for the prevention of collisions at sea, 1972, Regulation 2 and (ii) the Maritime Crews Act, Section 4.3.

The Disciplinary Court considered it unacceptable that the person concerned entered the security zone that was closed to him on several occasions. The violation of 24 February 2014 was considered especially serious in view of the fact that following the previous violation, which took place on 30 September 2013, he was interviewed by the Belgian police and again informed of the existence of the security zone and the prohibition on entering it. This should have given him serious cause to avoid repeating the offence. The fact that he was found in the security zone again despite this is unbecoming behaviour. This would not be any different if there had been no direct danger of damage being caused to the (cabling of) the wind farm.

An incidental aspect of this behaviour is that it can serve to gain an economic benefit not enjoyed by others who keep to the rules. For that reason, too, the person concerned can be expected to keep to the rules.

The Disciplinary Court considered the imposition of a conditional two-week suspension of the navigation licence and a partly unconditional fine appropriate disciplinary measures against the violations. In determining the duration of the conditional suspension and the amount of the fine of 4,000 euros the Disciplinary Court took into consideration in the favour of the person concerned that he had not previously been brought before the disciplinary court, that he had admitted the error of his ways, had expressed remorse and had given a firm undertaking to remain outside of the exclusion zone from now on. The financial situation of the person concerned was also taken into account. Part of the fine, 2,000 euros, was therefore imposed conditionally, also as an incentive against repeat offences. In the view of the Disciplinary Court this purpose was also served by the conditional suspension.

COMPOSITION OF THE MARITIME COURT OF THE NETHERLANDS

ON 1 JANUARY 2014

PRESIDENT

E.A. Bik
Lawyer practising in Rotterdam

DEPUTY CHAIRMEN

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

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

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Formerly captain in the merchant navy

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

H. van der Laan
Captain in the merchant navy

P.J. Lensen
Chief Engineer in the merchant navy

J.M. Bais
Skipper in marine fishing

A. Dekker
Skipper in marine fishing

H. Romkes
Skipper in marine fishing

W. Toering
Skipper in marine fishing



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

J. van Vuuren
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S. Kramer
Skipper in marine fishing

P.L. van Slooten
Skipper in marine fishing

J.W.T.C. de Vreugd
Chief Engineer in marine fishing

A.J. de Heer
Shipping company

C.J.M. Schot
Shipping company

E.C. Holman
Hydraulic engineer

J. Preesman
Hydraulic engineer

T.S. de Groot
Registered pilot

R.J.N. de Haan
Registered pilot

T. Hamburger
Hydrographer

N.P. Kortenoeven
Hydrographer

SECRETARY

E.H.G. Kleingeld

DEPUTY SECRETARY

D.P.M. Bos

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