

**MARITIME DISCIPLINARY COURT
OF THE NETHERLANDS**

**ANNUAL
REPORT
2015**



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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 2015 the Maritime Disciplinary Court of the Netherlands pronounced six rulings. These rulings concerned a captain being drunk and incapable during a voyage and when putting into the Port of Rotterdam, a fatal accident on board a ship caused by carbon monoxide poisoning and the related activities, a collision in the Bay of Biscay between a merchant ship and a fishing vessel, the intentional beaching of a ship in India for scrapping and the grounding and loss of a sailing ship off the Irish coast.

No rulings were pronounced concerning a skipper or ship's officer of a sea fishing vessel.

The key points of these rulings are given further on in this report. All of the rulings have been published in anonymised form on the website www.tuchtcollegevoordescheepvaart.nl and – translated into English – at www.mdcn.nl.

Since recently a brief specification of the nature of the case has been given on the site, under both the agenda and the ruling.

On 1 August 2015 E.A. Bik, LL.M., stepped down as presiding judge of the Disciplinary Court on reaching the statutory age limit of 70.

Mr Bik held the position of presiding judge for two years and had been the deputy presiding judge since the founding of the Disciplinary Court at the beginning of 2010. Prior to that he held the position of deputy presiding judge of the Maritime Court of the Netherlands for many years.

The Disciplinary Court is grateful to Mr Bik for all the work he has done for it. The undersigned succeeded him as presiding judge on 1 August of this year. Mr P.C. Santema was appointed on the same date as the new deputy presiding judge.

During 2015 there were no changes to the members and deputy members or the position of secretary and vice-secretary.

The composition of the Disciplinary Court in 2015 is given at the end of this annual report, in alphabetical order for each category.

Ms L. Batelaan worked at the Disciplinary Court's secretarial department until the end of 2015. The Disciplinary Court would like to thank her for her contribution and the enjoyable working relationship with her.

During the course of 2015 a number of meetings were held with the Ministry of Infrastructure and the Environment, Maritime Affairs Directorate. A meeting was also held with that Ministry's Human Environment and Transport Inspectorate, Shipping Directorate.



A.N. van Zelm van Eldik, presiding judge

Amsterdam, 4 March 2016

NEW AND SETTLED CASES

In 2015 nine petitions for a hearing under disciplinary law were submitted on behalf of the minister by M. Schipper, the new inspector at the Human Environment and Transport Inspectorate of the Ministry of Infrastructure and the Environment, who was appointed in 2014. Six of these were heard and settled by the Disciplinary Court in 2015. Two other petitions have since been heard and settled in 2016, and one other petition will be heard in due course. In 2015 the inspector also submitted one petition to have a previous conditional ruling converted into a partly unconditional one. This petition has yet to be heard.

The Disciplinary Court did not receive any complaints from interested parties during 2015. Neither did the Disciplinary Court conduct any preliminary investigations.

A comparison of the figures with those of previous years is given in the table below.

Year	Petitions of the Minister	Complaints	Preliminary investigations	Number of cases settled by the presiding judge's decision	Number of cases ruling
2010	8	0	4	0	0
2011	2	1	1	1	6
2012	7	0	2	1	6
2013	10	0	0	0	6
2014	5	0	0	0	12
2015	10	0	0	0	6
Total	42	1	7	2	36

In 2011 one case and in 2014 two cases were withdrawn by the minister.

It is expected that the inspector will be submitting a larger number of petitions in 2016. The Disciplinary Court's budget is based on 15 cases.

RULINGS OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS IN 2015

LEAH

RULING 1 OF 2015 – DATE OF RULING 1 JULY 2015
CASE NUMBER 2015.V3

Person concerned: the captain

The ms. Leah arrived at the roads of Rotterdam during the night of 3/4 August 2014 and was to enter harbour under pilotage. The person concerned was the captain of the Leah. It emerged that he was strongly under the influence of alcohol and was therefore incapable of performing his duties as ship's captain. The state of the person concerned and the fact that he tried to interfere with the navigation and to prevent the pilot from doing his job led to an unsafe situation for the ship, its crew and other shipping. Since the person concerned was not open to reason, the pilot took the commendable decision of turning about and going to an anchorage. It also emerged that the person concerned had been seriously under the influence of alcohol and unable to perform his duties as captain in the previous couple of days – in fact during the larger part of the voyage from Iceland.

The Disciplinary Court judged that the person concerned had failed extremely seriously in his position as captain and had completely neglected his responsibilities, and the Disciplinary Court took an especially severe view of the fact that the incident took place during the night and in the run-up to the Port of Rotterdam, a busy shipping area. In view of the exceptional seriousness of the evident behaviours a suspension of the navigation licence was imposed for a period of two years.

LADY IRINA

RULING 2 OF 2015 – DATE OF RULING 23 OCTOBER 2015
CASE NUMBER 2015.V1

Person concerned: the captain

On the evening of 13 July 2014 the Lady Irina was en route with a cargo of wood pellets. The person concerned was keeping watch on the bridge when the first officer reported that he had found the chief engineer, apparently dead, in the bow thruster compartment.

The person concerned decided to put into a nearby harbour and instructed the first and second officers to go to the victim in the bow thruster compartment, protecting themselves with breathing apparatus. The person concerned himself remained on the bridge, from where he navigated the ship into the port and alerted the emergency services. On arrival at the seaport the fire brigade found high concentrations of carbon monoxide in the forecabin and the bow thruster compartment. The chief engineer turned out to have died, highly probably from the effects of carbon monoxide poisoning. The other crew members, including the ship's officers, who had also been in the forecabin, all turned out to have been affected to a greater or lesser degree by the atmosphere there and were also suffering from carbon monoxide poisoning. These crew members were not wearing breathing apparatus when they entered the forecabin and bow thruster compartment. The areas were not ventilated and no use was made of gas meters. The investigation has shown that wood pellets in the cargo generated carbon monoxide which entered the forecabin and the bow thruster compartment via a ventilation shaft and an inspection hatch that was not properly sealed.

It seems that these spaces in the forecabin were not regarded by the crew as being enclosed spaces with a possibly hazardous atmosphere, which were subject to various precautionary measures under the IMSBC Code.

The Disciplinary Court found that instructions given by the person concerned to the ship's officers were essentially correct. Also, it was reasonable for him to assume that the ship's officers would follow their orders and take appropriate action while he was engaged with the navigation. In the given situation, the choices he made were not contrary to what could be expected of him as captain and a good seaman. The objections made against the person concerned were dismissed, and no disciplinary measure was therefore imposed.

The Disciplinary Court regarded this case as an opportunity to set out six points that could be important to the professional grouping of seafarers involved in the transport of substances that may constitute a hazard and who enter enclosed spaces with a potentially hazardous atmosphere for the performance of their duties on board.

LADY IRINA

RULING 3 OF 2015 – DATE OF RULING 23 OCTOBER 2015
CASE NUMBER 2015.V2

Person concerned: the second officer

For the actual course of events reference is made to the ruling in the case against the captain. The person concerned was looking for the chief engineer. When he entered the spaces in the fore-castle he did not have breathing apparatus with him. It seems that he did not have a gas meter either. It is possible that the person concerned had already been affected by the carbon monoxide at that time. He was thus the victim of his own actions.

The Inspector has intentionally not presented the subsequent conduct of the person concerned to the Disciplinary Court for judgement, in particular the rescue under his command but without the prescribed protection and measures, during which the rest of the crew other than the captain were placed in serious danger. It is possible that his judgement had by that time already been affected by the initial carbon monoxide poisoning.

The Disciplinary Court did not consider the fact that in the given circumstances the person concerned entered the space or spaces in the forward part of the ship for the first time without taking any precautionary measures to be contrary to his duty of care as a good seaman in respect of the other people on board. A relevant aspect of this was that it could not be assumed that the person concerned actually feared that the chief engineer had suffered an accident, and nor is there anything to show that the person concerned knew or should have known that exposure to the carbon monoxide present in that space or those spaces could have affected his judgement and that, as a result of this, his subsequent action in the rescue could have been dangerous rather than effective. The conclusion was that the charges were not well-founded and no disciplinary measure was therefore imposed.

ARKLOW BEACH

RULING 4 OF 2015 – DATE OF RULING 6 NOVEMBER 2015 CASE NUMBER 2015.V4

Person concerned: the second mate

During the afternoon of 22 August 2014, in good visibility and calm seas, the Dutch seagoing vessel Arklow Beach collided with the French fishing vessel Elluma in the Bay of Biscay. The Elluma was the rearmost vessel in a group of six fishing vessels, which viewed from the Arklow Beach were arriving from the port side. The courses of the Arklow Beach and the fishing vessels crossed each other. Although the Arklow Beach was not obliged to take evasive action, the person concerned, as second mate on watch on the bridge, changed the course of the Arklow Beach slightly to port, which resulted in a CPA of 0.6 NM with the Elluma. It can be assumed that this slight change of course was not clearly perceivable to the Elluma. When the first five fishing vessels had passed the Arklow Beach, the person concerned noticed that the Elluma had reduced speed, as a result of which the CPA quickly decreased, firstly to 0.2 NM, whilst following a change of course to starboard by the Elluma reduced the distance to the bow of the Arklow Beach to 0.1 NM. The ships then approached each other rapidly on opposing courses. Attempts made on board both vessels to avoid each other by changing course did not have the intended effect, and a head-on collision followed.

The Disciplinary Court judged that the person concerned had not recognised the danger of collision in time. His decision to change the course of the Arklow Beach slightly to starboard without any mutual consultation did not make the situation any safer. In the given circumstances neither could the passing distance of 0.6 NM that was thus created be considered safe; account should have been taken of the fact that the Elluma, which was obliged to take evasive action, had reduced speed, as a result of which the passing distance would quickly reduce and increase the danger of collision. When the danger of collision did indeed increase, the person concerned did not promptly take all of the measures that could have contributed to preventing the collision, such as reducing speed and veering sharply to starboard. The person concerned thus acted contrary to Regulations 2b, 7, 8 and 17 of the Colregs and did not act as befits a responsible officer on watch, which meant the safety of the crew, the vessel, its cargo, and the environment were jeopardised. The collision can be attributed in part to this.

In view of the seriousness of the conduct the Disciplinary Court considered it right and proper to suspend his navigation licence for six weeks. In the favour of the person concerned the Disciplinary Court has taken account of the fact that the actions of the Elluma contributed to the occurrence of the collision. Given that no previous measures have been imposed, the Disciplinary Court saw good cause to rule that four weeks of the suspension of the navigation licence would be imposed conditionally.

H.M.S. LAURENCE

RULING 5 OF 2015 – DATE OF RULING 18 NOVEMBER 2015
CASE NUMBER 2015.V6

Person concerned: the captain

On 26 May 2013 the Dutch seagoing vessel HMS Laurence was beached close to Alang, India, under the command of the person concerned and following a voyage from the EU in order to be scrapped.

The Disciplinary Court found that these behaviours on the part of the person concerned as captain constituted an act or omission contrary to the care expected of a good seaman in respect of the persons on board, the vessel, the cargo, the environment and shipping. In particular, the person concerned was held accountable for allowing himself to be induced to deliberately beach the vessel in India. Under European environmental legislation it is prohibited to transfer ships to India for scrapping. Since the person concerned has not made a statement the Disciplinary Court is not aware of the instructions under which he beached the vessel. The view of the coastline in the film as described placed on the internet does however show that the person concerned must have been aware that the ship would be left there to be scrapped.

The Disciplinary Court judged that the person concerned has seriously failed in his duty as captain. The consequences of having ships scrapped on beaches of countries including India were already generally known in the professional grouping in May 2013: harrowing working conditions, environmental damage and a serious threat to the health of workers and the local inhabitants. In view of the seriousness of the conduct the Disciplinary Court considered a lengthy suspension of the navigation licence to be appropriate, since this involved an intentional act that could have had very serious consequences. On the other hand, it was also known that this is common practice and that a large number of vessels are scrapped in a similar, illegal manner. As explained by the inspector, this was the first time that he had referred a case such as this to the Disciplinary Court and this change of policy had not been communicated to the professional grouping by other means. It is purely for this reason that the Disciplinary Court, in this first case, decided to suspend the navigation licence fully conditionally for a period of six months.

ASTRID

RULING 6 OF 2015 – DATE OF RULING 4 DECEMBER 2015 CASE NUMBER 2015.V7

Person concerned: the captain

On 24 July 2013 the Dutch sailing vessel (tall ship) Astrid ran onto the rocks off the South Irish coast. The person concerned was the captain and he was responsible for the navigation. As well as some permanent crew members, there were 24 passengers on board.

The vessel took a southerly course, sailing exclusively on the engine leaving the bay of Oysterhaven directly into the strong southerly wind of 5 to 6 Bft, against the sea with waves 2 to 3 metres high and against a current of 2 knots.

On exiting the bay the vessel changed course to starboard, taking a roughly south-westerly course. Shortly after this the engine failed at a distance of 100 to 300 m to the coast. Five fore and aft sails were raised. The intention of the person concerned was to sail away from the rocks, for which purpose the ship would have to turn about. However the vessel was not moving fast enough for a tacking manoeuvre. Nearby vessels were asked for assistance, but no effective assistance was forthcoming. The people on board abandoned ship when the vessel was close to the rocks. There were no fatalities or injuries. The Astrid ran onto the rocks and sank.

The Disciplinary Court's findings included the following. After sailing out of the bay the person concerned turned to starboard, fairly close to the lee shore and with a strong wind and current in the direction of that lee shore. The ship could not safely proceed by sail alone there, and a tacking manoeuvre would also be required; however it would not have been possible to gain the speed needed for this purpose with all fore and aft sails. The person concerned was therefore dependent on the engine working properly for safe navigation. When the engine failed, the person concerned was dependent on the aid of other vessels. The fact that he was not given sufficient help in time does not absolve the person concerned of his responsibilities. The Disciplinary Court found that the person concerned chose an incorrect, unsafe route. In view of the prevailing conditions, by directly turning to starboard after leaving the Oysterhaven bay, he exposed the vessel to danger. If he had sailed further out the ship would have been in a clearly better situation in the event of engine failure (not least owing to the possibility of anchoring), which – it can now be assumed – would have prevented the shipping disaster. As captain of the vessel the person concerned was solely responsible for the planning and taking of this unsafe route and did not act in accordance with the duty of care befitting a good seaman, which resulted in an emergency situation and the loss of his vessel.

The Disciplinary Court imposed a suspension of the navigation licence for twelve weeks, six weeks of which conditionally. Account was taken on the one hand of the fact that the person concerned was sailing with passengers on board and that he placed almost 30 people on board in serious danger and on the other that he succeeded in abandoning ship in a fairly orderly manner in perilous conditions apparently in accordance with a practised procedure, so that all of those on board were taken to safety, and account was also taken of the personal and financial implications of the grounding and loss of the ship for the person concerned.

COMPOSITION OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS IN 2015

PRESIDING JUDGE

E.A. Bik (until 1 August 2015)
Lawyer practising in Rotterdam

A.N. van Zelm van Eldik, (from 1 August 2015)
*Former deputy presiding judge of the District
Court in Rotterdam*

DEPUTY PRESIDING JUDGES

A.N. van Zelm van Eldik (until 1 August 2015)
*Former deputy presiding judge of the District
Court in Rotterdam*

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

P.C. Santema (from 1 August 2015)
Senior judge A District Court in Rotterdam

MEMBERS

E.R. Ballieux
Captain

R.J. Gutteling
Former captain

E.R. IJssel de Schepper
Captain

H. van der Laan
Captain

P.J. Lensen
Chief Engineer

R.A. Oppelaar
Captain

R.E. Roozendaal
Captain



C.R. Tromp
Captain

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

DEPUTY MEMBERS

J. Berghuis
Captain

S.M. den Heijer
Formerly marine engineer

T.W. Kanders
Ship's officer

O.F.C. Magel
Captain

D. Roest
Captain

P.H.G. Schonenberg
Ship's officer

J. van Vuuren
Captain

D. Willet
Chief Engineer

S. Kramer
Skipper in marine fishing

J.L. Schot
Skipper in marine fishing

P.L. van Slooten
Skipper in marine fishing

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

A.J. de Heer
Former shipowner

C.J.M. Schot
Shipping company

E.C. Holman
Hydraulic engineer

J. Preesman
Former 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, LL.M

DEPUTY SECRETARY

D.P.M. Bos
Senior legal counsel at Koninklijke Ahold N.V.

