

**MARITIME DISCIPLINARY COURT
OF THE NETHERLANDS**

**ANNUAL
REPORT
2016**



MARITIME DISCIPLINARY COURT OF THE NETHERLANDS

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**MARITIME
DISCIPLINARY
COURT OF THE
NETHERLANDS**



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GENERAL

The Maritime Disciplinary Court of the Netherlands found itself in calm waters in 2016. Owing to various circumstances it only proved possible to hear six of the cases brought before the Disciplinary Court by the ILT/Shipping inspector.

Three cases related to a traffic separation scheme being crossed incorrectly. In one case a recreational fishing vessel sailed as a passenger ship during the hours of darkness without the ship having the certificates required for this purpose. In another case a collision was caused by the failure to keep a proper lookout. A serious work related accident occurred on a sea tug as a result of the unsafe use of electricity.

The Disciplinary Court was asked for the first time to rule that a previously imposed conditional disciplinary measure be imposed partially unconditionally owing to two new offences in which the same person concerned had acted contrary to the principles of good seamanship.

The summaries of the relevant rulings are given below in this report.

As always, the rulings have been published in anonymised form and in full on the website www.tuchtcollegevoordescheepvaart.nl, and – translated into English – at www.mdcn.nl

The manning of the Disciplinary Court – there are still no women – underwent one change in 2016: the passing of Mr E.C. Holman, deputy member – hydraulic engineer. The secretariat remained unchanged.

The composition of the Disciplinary Court in 2016 is given at the end of this annual report, in alphabetical order for each category.

In 2016 consultations were held on a number of occasions with the Shipping Department of the Maritime Affairs Directorate of the Ministry of Infrastructure and the Environment and with the Human Environment and Transport Inspectorate, Shipping Domain.



A.N. van Zelm van Eldik
presiding judge

Amsterdam, May 2017

NEW AND SETTLED CASES

In 2016 the Maritime Disciplinary Court of the Netherlands published 6 rulings. Ten new petitions for a hearing under disciplinary law were submitted on behalf of the minister by M. Schipper, the inspector at the Human Environment and Transport Inspectorate of the Ministry of Infrastructure and the Environment.

The Disciplinary Court did not receive any complaints from interested parties during 2016. 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
2016	10	0	0	0	6
Total	52	1	7	2	42

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

RULINGS OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS IN 2016

TRAVELLER

RULING OF 17 FEBRUARY 2016
NO. 1 OF 2016
CASE 2015.V8

Person concerned: the first officer

On 5 February 2014 the cargo ship Traveller was underway from Antwerp to Puerto Cortés, Honduras, with two high shore cranes on its deck.

Owing to the poor weather forecasts and the increasing swell the captain decided to seek shelter off the English coast in Margate. For that purpose he needed to cross the traffic separation scheme Dover Strait.

At around 14:56 hours the Traveller crossed the traffic separation scheme from the north-easterly shipping lane. The second officer was still on watch at that time. The person concerned, who was already on the bridge at the time, took over the watch from him at 15:00 hours. The south-westerly shipping lane was crossed from 15:02 hours. In that shipping lane the following vessels were sailing in the general direction of the traffic: the Minerva Grace, the Maersk Belfast and, behind them, the Endurance. Shortly after the Traveller had entered to the south-westerly shipping lane the person concerned changed the course of the Traveller to starboard, after which a course was followed that was virtually the opposite of the general sailing direction, also to that of the approaching Endurance. Despite repeated attempts to make contact by both the Endurance and the Do-

ver Coastguard on among others VHF channels 11 and 16, no contact was made with the Traveller. At 15:08 hours the Endurance responded to the situation by making a sharp turn to starboard in order to avoid a possible collision with the Traveller. The Traveller maintained its course and speed until it had passed the Endurance. After that it changed course to port. Contact between the Traveller and the Dover Coastguard was finally established at 15:13 hours.

The Disciplinary Court's findings were as follows. In view of the approaching shipping in the south-westerly shipping lane, the Traveller's crossing of the shipping lane was commenced at the wrong time; this led to a direct danger of collision. There was sufficient space behind the three approaching ships to cross the shipping lane as nearly as practicable at right angles.

Even if the person concerned was not aware of the commencement of the crossing – which cannot be automatically assumed – he can be held responsible for failing to take appropriate measures to rectify the error and sufficiently clearly averting the danger of collision that had been caused by that error, e.g. by (i) not sailing into the south-westerly shipping lane or (ii) leaving this lane as soon as possible, or (iii) making every effort to do so. The person concerned should also have sought contact with the Endurance to clarify the intentions of the Traveller. The correct VHF channels should have been monitored in any event.

It has not been demonstrated that the change of course of the Traveller made by the person concerned shortly after entering the south-westerly shipping lane was enough to sufficiently avert the danger of collision with the Endurance and to remove any doubts about this.

The person concerned thus acted contrary to Regulations 5, 7, 8, 14 and 16 of the Colregs and the principles of good seamanship.

The Disciplinary Court judged that the person concerned had seriously culpably failed in his responsibilities. By failing to take adequate action to avert the danger caused by the Traveller's incorrectly commenced crossing manoeuvre, he placed the safety of vessels including the Endurance in jeopardy. In view of the various circumstances of the case, the navigation licence of the person concerned was suspended for two months, fully conditionally, as a disciplinary measure.

TINA

RULING OF 17 FEBRUARY 2016
NO. 2 OF 2016
CASE 2015.V5

Person concerned: the first officer

On 25 February 2015 the person concerned, on board the Tina, which was en route to Koege, Denmark, failed to cross the southbound shipping lane of the traffic separation scheme Off Texel on a heading as nearly as practicable at right angles to the general direction of the traffic flow in that lane. There is nothing to show that there was any need for this. This deviated from the course previously set out with the approval of the person concerned. It has not been demonstrated that it was not possible to maintain a course that approached the flow of traffic at right angles.

It was concluded that the person concerned had acted contrary to Regulation 10c of the Colregs. This constitutes a violation of the standards of good seamanship.

The Disciplinary Court ruled that the person concerned had seriously culpably failed in his responsibilities as a ship's officer. The traffic separation schemes are there for the safety of shipping. The prescribed manner of sailing should therefore be observed, even if the individual officer of the watch does not consider this to be strictly necessary; compliance with the shipping traffic regulations cannot be subordinated to the individual views of shipping lane users on the need to comply with them.

The navigation licence of the person concerned was suspended fully conditionally for two weeks.

DAGERAAD

RULING OF 01 JUNE 2016
NO. 3 OF 2016
CASE 2015.V9

Person concerned: the captain

The recreational fishing vessel Dageraad took to sea with seventeen passengers during the dark hours of the night of 20-21 May 2015. The Dageraad did not have the certificates required for this purpose. The captain is obliged to ensure that the necessary certificates are kept on board.

A ship is deemed to be sailing as a passenger ship if there are more than twelve passengers on board. A passenger ship must in principle meet the leakage stability requirements, which were not met by the Dageraad. An exemption from these requirements had been granted in accordance with Article 40 of the Seagoing Vessels Regulation, but only for sailing during daylight hours. The rules for sailing with passenger ships are – in view of the explanation and purpose of Directive 2009/45/EU – aimed at guaranteeing an appropriate level of safety for passengers. Apparently this is intended not so much to prevent accidents, but sooner to limit their consequences, particularly preventing the loss of human lives. The captain's failure to comply with these rules constitutes a violation of the principles of good seamanship.

The Disciplinary Court considers it implausible that the person concerned, who had been the owner of the Dageraad for 30 years, was not precisely aware of the regulations applicable to the business being run with the Dageraad: commercial recreational fishing, for which voyages were made at sea as a passenger ship.

The person concerned had already been given a warning about a similar violation in July 2014. The Disciplinary Court found that the person concerned, as the captain responsible for the Dageraad, had deliberately violated the restrictive condition of not taking the ship to sea as a passenger ship during the hours of darkness, presumably for commercial motives. The reason for this restrictive condition is that the consequences of an incident involving the Dageraad, such as a collision or a grounding, could be more serious if the incident took place in the dark and with (sleeping) passengers on board. As pointed out by the inspector, the passengers form the most vulnerable group of people on board because passengers – unlike crew members – cannot be expected to have sufficient knowledge and experience to respond appropriately in the event of an incident occurring.

Also in this case, the applicability of and compliance with the regulations cannot be subordinated to the individual views of an experienced captain on their necessity or reasonableness. This is not altered by the fact that there have never been any incidents with the ship with such consequences in the past.

The Disciplinary Court found that the person concerned had not acted as befits a responsible captain, as a result of which the safety of the people on board, especially the passengers, was placed in jeopardy. After considering the various merits of the case, the Disciplinary Court imposed a suspension of the navigation licence of the person concerned for six months, four months conditionally.

MARIA GO 20

RULING OF 01 JUNE 2016
NO. 4 OF 2016
CASE 2015.V10

Person concerned: the skipper

The Disciplinary Court's ruling of 5 March 2014 (case 2013.V2) concerned a collision between the sea fishing vessel Maria GO 20 and a gas platform in the North Sea on 23 September 2012. The person concerned, who was the acting skipper, had handed over the watch beforehand to a seaman who was not qualified to act as officer of the watch. The seaman was so tired that he fell asleep on watch, as a result of which the ship collided with the platform. The Disciplinary Court had imposed on the person concerned a partially conditional suspension of his navigation licence and a fully conditional fine for this offence. The operational period for the conditionally imposed measure was from 1 May 2014 to 1 May 2016.

It subsequently emerged that the person concerned, as the skipper of the Maria GO 20, had failed to cross a traffic separation scheme at an angle as close as possible to right angles to the general direction of the flow of traffic both on 29 September 2014 and on 9 February 2015. There were no circumstances that justified this manner of navigation. This was in violation of regulation 10c of the Colregs, which also constituted a violation of the standards of good seamanship.

The traffic separation schemes and the regulations attached to them are there for the safety of shipping. The prescribed manner of navigation should therefore have been observed, even if this was not considered strictly necessary in the judgement of the individual skipper or officer of the watch. The person concerned has evidently deliberately committed the offences.

In view of the seriousness of the offences and their repetition, a suspension of the navigation licence would be appropriate, and that is not altered by the fact that no accidents took place or that there was no imminent danger of an accident. In view of the fact that the person concerned has already been convicted under criminal law for these offences, no disciplinary measure was imposed for these two new offences.

The Disciplinary Court did however judge that these violations, which were committed during the operational period for the measures conditionally imposed in the ruling of 5 March 2014, constituted a reason to execute those conditional measures. The Disciplinary Court took account of the fact that the person concerned had promised during the previous ruling to mend his ways and of the position of his fishing business, and that the conditional measures were intended as a deterrent and an incentive to henceforth take the various regulations seriously. However it appears that the person concerned has failed to do so. In view of the circumstances the Disciplinary Court unconditionally imposed the fine conditionally imposed in that previous ruling.

CFL PROSPECT

RULING OF 09 NOVEMBER 2016
NO. 5 OF 2016
CASE 2016.V1

Person concerned: the second mate

On 25 January 2015 the tanker Monte Rosa collided with the cargo ship CFL Prospect in the Baltic. The Monte Rosa was obliged to take evasive action as the approaching vessel. The Monte Rosa could have avoided the collision by taking evasive action, but it must be assumed that the CFL Prospect went unnoticed on board the Monte Rosa.

Although the cause of the collision can be attributed first and foremost to the Monte Rosa, the person concerned, who was the officer of the watch on board the CFL Prospect at the time of the collision, can be held accountable for the fact that he did not do enough to avoid the collision. His claim that the ECDIS monitor was not working correctly does not form an adequate excuse since fully/correctly assessing the situation involved more than consulting the ECDIS display. This is all the more so given the fact that the person concerned had been informed during the handover of the watch of the presence of various ships approaching astern of the CFL Prospect and should have carefully monitored their positions. With that aim in mind he should also have instructed the lookout to look carefully all around, i.e. not only at the screen, but also to include the starboard side. It now appears that only the vessel approaching on the port side – the Calypso – was being monitored, so that the vessel approaching astern of the CFL Prospect, the Monte Rosa, was not in the picture at all. This is what caused the person concerned, possibly disturbed by the Calypso, to turn hard to starboard whilst the Monte Rosa was on a collision course on the starboard side of the CFL Prospect.

It is clear that a proper lookout was not being kept (regulations 2 and 5 of the Colregs and the STCW Code watchkeeping rules). As a result of this the person concerned did not have a clear view of the approaching ships and was not in command of the situation as a whole. He thus deprived himself of the chance of noticing the danger of a collision in a timely manner and taking measures to prevent it. He has thus acted contrary to the standards of good seamanship, an important part of which entails keeping a proper lookout.

In view of the serious failures of the person concerned regarding his responsibilities on the one hand and the personal circumstances and the fact that the collision caused no more than material damage on the other, the Disciplinary Court imposed a suspension of the navigation licence of the person concerned for four months, two months conditionally.

SEA GOLF

RULING OF 30 NOVEMBER 2016
NO. 6 OF 2016
CASE 2016.V2

Person concerned: the chief engineer

On 15 November 2015 the sea tug Sea Golf was moored in the port of Stavanger, Norway. A fan heater was to be used during painting activities on the quarterdeck. This device is usually connected to a 380V power supply. However, there was no suitable extension lead on board.

The person concerned decided to use the 220V outlet on the device for the power supply. For this purpose he used a 220V cable that he had modified himself, which on both ends had a male plug with two pins but without any protection against being held.

The person concerned first inserted the one plug of this cable in the socket of a reel with a 220V extension lead, and then the plug on the outer end of the extension lead in a 220V socket in a deck house, and then picked up the other plug of this cable on deck. He was not wearing any gloves. The person concerned was electrocuted by the current in this plug. He lost consciousness. His circulation and respiration stopped.

The life of the person concerned was saved by the immediate bold and effective action of the other crew members and by the fact that the person concerned was quickly taken to hospital for treatment. It seems that he has recovered well from the accident.

The above shows that the person concerned acted extremely recklessly and dangerously, first by deciding to use the heater incorrectly by attempting to use it on a 220V connection via a 220V outlet, secondly by using a self-modified 220V cable that had an unprotected two-pin male plug on both ends, thirdly by making the connection in such a way that the current went to the unprotected male plug that was lying on the deck and fourthly by picking up this plug without the protection of safety gloves, in such a way that he was electrocuted.

The person concerned thus placed not only himself but also other persons on board in danger. The other persons on board were placed in a situation in which they were also placed in direct danger of electrocution, possibly whilst rendering assistance. The conduct of the person concerned was contrary to the principles of good seamanship. A disciplinary measure would therefore certainly be appropriate. However, in view of the fact that the life of the person concerned was threatened by the accident, and that the person concerned has shown that he understands that his actions were irresponsible and dangerous and has given an undertaking never to repeat such behaviour, the Disciplinary Court also saw good reason to refrain from imposing a disciplinary measure in this case.

The Disciplinary Court concurred with the wish of the inspector that the publication of this ruling will enhance awareness among seafarers of the possibly fatal dangers involved in the reckless and irresponsible use of electricity on board.

COMPOSITION OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS IN 2016

PRESIDING JUDGE

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

R.J. Gutteling
Former captain

E.R. IJssel de Schepper
Captain

DEPUTY PRESIDING JUDGES

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

H. van der Laan
Captain

P.J. Lensen
Chief Engineer

P.C. Santema
Senior judge A District Court in Rotterdam

R.A. Oppelaar
Captain

R.E. Roozendaal
Captain

MEMBERS

E.R. Ballieux
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
Former 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
(deep sea fishing)*

A.J. de Heer
Former shipowner

C.J.M. Schot
Shipping company

E.C. Holman
*Died in August 2016
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

DEPUTY SECRETARY

D.P.M. Bos

