

**MARITIME DISCIPLINARY COURT
OF THE NETHERLANDS**

**ANNUAL
REPORT
2019**



MARITIME DISCIPLINARY COURT OF THE NETHERLANDS

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**MARITIME
DISCIPLINARY
COURT OF THE
NETHERLANDS**



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CONTENTS

General	5
New cases and settled cases	6
Rulings of the Maritime Disciplinary Court of the Netherlands in 2019	7
Composition of the Maritime Disciplinary Court of the Netherlands in 2019	18



GENERAL

In 2019, the Disciplinary Court heard 7 cases, including 2 fisheries cases. In the latter cases, the accusation was that the captain and the chief engineer had attempted to evade a fisheries inspection. There was also a case against a captain in which the Disciplinary Board made recommendations for sailing in an ice convoy. In recent years, the call to make practical recommendations has become increasingly pressing and after internal consultation and coordination with the Dutch Safety Board and the Human Environment and Transport Inspectorate (ILT), it was decided – where possible – to do so again. Although it is not formally part of the legal task of the Disciplinary Board, this could contribute to enhancing the safety of shipping.

In the four Coral Patula cases, in addition to convictions of the captain and 3 mates, recommendations were given regarding the practice with gas tankers in particular. Because of their size and complexity, these cases were very difficult to schedule. No fewer than nine objections were made against the captain. A preliminary examination of his case was held prior to the hearing.

Summaries of these seven cases are given further on in this annual report. These summaries give only an impression of the cases handled.

The full text of the judgments can be found in Dutch at www.tuchtcollegevoordescheepvaart.nl and in English at www.mdcn.nl. The ILT submitted 3 new petitions.

There were no personnel changes during the year under review.

Regular consultations are held with the Maritime Affairs Directorate, Shipping Department, of the Ministry of Infrastructure and Water Management, and with the Shipping Domain of the Human Environment and Transport Inspectorate. The presiding and deputy presiding judges attended a symposium on developments in disciplinary law. The secretariat improved the summary of rulings and extensively mapped out the expertise and experience of the members in order to connect the right members to certain cases.

A members' meeting was held in the spring. Following a visit to the Scheepvaartmuseum (Maritime Museum) in Amsterdam, an inspiring meeting was held with the members in response to a survey among seafarers conducted by a student in 2018.

Amsterdam, March 16 2020



Peter Santema, presiding judge

NEW CASES AND SETTLED CASES

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
2017	10	0	0	0	12
2018	13	0	0	0	12
2019	3	0	1	0	7
Total	78	1	8	2	73

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

RULINGS OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS IN 2019

All of the cases heard addressed the question of whether there had been any acts or omissions that came into conflict with the duty of care of the person concerned expected of a good seaman in respect of the persons on board, the vessel, the cargo, the environment and shipping within the meaning of Article 55a of the Dutch Seafarers Act.

JAN SENIOR

RULING OF 07 JUNE 2019
NO. 1 OF 2019
CASE 2018. V10

Person concerned: the captain

In the night of Monday 28 to Tuesday 29 August 2017, inspectors of the NVWA intended to carry out a fisheries inspection on board the Dutch-flagged seagoing fishing vessel 'Jan Senior', fishery number ARM 7. The person concerned was the captain, also a watchkeeping officer on this vessel (hereafter: the ARM 7), which was sailing in the territorial waters of France. Among other things, he, or the ARM 7, is accused of attempting to evade this inspection, and of allowing a dangerous situation to arise in the process. The dangerous situation was caused by hauling the nets above/inside and continuing to sail while an RHIB (Rigid Hull Inflatable Boat), that was being used to take the inspectors on board the ARM 7 was located alongside the ARM 7, causing the RHIB's propeller to become entangled in the nets, make a rotating movement and, with the two crew members and one of the inspectors on board at that time, be pulled backwards by the ARM 7, partly under water. The person concerned defended himself by arguing that he had not noticed the RHIB and the persons on board, or had noticed them only at a late stage, without this being attributable to him. According to the person concerned, he did not see the RHIB and the inspectors until after the inspectors had appeared on board the ARM 7. According to the person concerned, the hauling of the nets, which was already in progress, could not be stopped just like that. The Disciplinary Court ruled that even if it is assumed that what the person concerned has declared is correct, this does not mean that he is not accountable in disciplinary terms. In that case, he did not give proper substance to his watchkeeping duty and did not provide an adequate lookout. If – as his point of view amounts to – the person concerned was unable to haul the nets at the same time and take into account what is happening around the ship – as a result of which he could not be reached by calls and missed light signals from other ships during the hauling of the nets – it was up to him either to provide a proper lookout and good accessibility in some other way, or to refrain from hauling in the nets, since ensuring sufficient safety is paramount. The Disciplinary Court is of the opinion that the person concerned seriously failed in his responsibilities as captain/captain of the ARM 7. As a result, it was possible that a very dangerous situation arose on board the RHIB, in which those on board the RHIB feared for their lives. In view of the seriousness of the conduct a suspension of his navigation licence for six months was imposed on him, two of which conditionally. That was a less onerous measure than that demanded by the inspector. However, this demand was partly based on accusations that have not been fully substantiated. The fact that criminal proceedings were still in progress and that the person concerned may still have had to answer for prohibited net equipment did not play a role in the imposition of the aforementioned measure.

JAN SENIOR

RULING OF 07 JUNE 2019
NO. 2 OF 2019
CASE 2018. V11

Person concerned: the chief engineer

Case: see above.

The accusation against the person involved, who had officer rank and was a chief engineer, is that he did not intervene in order to prevent or put an end to the dangerous situation by urging the captain to stop his dangerous action.

It was established that the person concerned was present on board ARM 7 during the night of 28 to 29 August 2017 in the position of chief engineer and was working, before and during hauling of the nets, in the forecabin and outside on deck. It is sufficiently plausible that he must have noticed – seen and heard – that an inspection was imminent, that inspectors of the NVWA wanted to board the ARM 7 and that orders were given in a loud voice. It is not plausible that the person concerned – who initially made a different statement – did not see anything at all and first heard/noticed something when the engine of the ARM 7 had already been stopped. Assuming that he was previously aware of the arrival of the inspectors, in view of his officer's rank, the person concerned could have been expected to have persuaded the captain to cooperate with the inspection and, to that end, to stop the vessel and to immediately stop hauling in the nets.

The Disciplinary Court judged that the person concerned failed in his duties as an officer on board the ARM 7. Taking into account the seriousness of his offence and what was demonstrated/made sufficiently plausible, a warning was considered sufficient. This was a much lighter measure than what was demanded. However, the demand was also based on accusations that were not sufficiently proven, or on a degree of culpability that was not established. Account was also taken in the favour of the person concerned of the fact that he was no longer working on board a ship. The fact that criminal proceedings were still in progress and that the person concerned may still have had to answer for prohibited net equipment did not play a role in the imposition of the aforementioned measure.

Both decisions were appealed by the persons concerned.

THAMESBORG

RULING OF 5 JULY 2019
NO. 3 OF 2019
CASE 2018. V13

Person concerned: the captain

On Friday, 16 March 2018, the loaded Dutch vessel sailing under the Dutch flag Thamesborg was underway in an ice convoy in the Baltic Sea. The convoy consisted of a Swedish icebreaker, the freighter Mario L and behind that the latter vessel was the Thamesborg.

At around 15:00 LT the ice became thicker and, after an initial reduction of the speed of the Mario L, this ship got stuck in the ice. Despite attempts by the Thamesborg to stop and/or take prompt evasive action, a collision occurred between Thamesborg and Mario L.

The collision took place very slowly, but the Mario L lost its “free fall lifeboat” and the Thamesborg sustained a small crack above the waterline.

There were no personal injuries.

At the time of the incident the person concerned was captain of the Thamesborg and on watch on the bridge. According to inspector Schipper, the person concerned was questioned at various points of the investigation without being cautioned. For that reason Inspector Schipper did not feel that disciplinary measures could be taken against the person concerned on the basis of the statements made and appended to this petition.

According to the inspector, the person concerned had not kept an adequate lookout, as a result of which the sudden speed reduction of the Mario L was noticed too late; or he failed to keep sufficient distance, as a result of which it was impossible to stop the vessel in time to avoid collision. In summary, the person concerned argued that the icebreaker had not given the correct instructions regarding the distance and speed. According to the person concerned, the accident would not have happened if they had been given.

The Disciplinary Court considered that good seamanship requires that every ship in a convoy makes its own full assessment of the situation and of the danger of collision and that each ship uses all available means to do so. In an ice convoy, this calls for active communication between the vessels. The fact that a vessel sails in a convoy does not detract from the captain’s duty of care as a good seaman.

The Disciplinary Court stated that the person concerned was himself responsible for the speed he was maintaining and for adjusting the speed in time if the prevailing circumstances so required. The order in which a smaller ship sails directly behind the icebreaker and a larger ship follows is usual.

The Disciplinary Court ruled that the collision between the Thamesborg and Mario L was due to non-compliance with the standard of good seamanship and upheld the objections raised against the person concerned. Since the Inspector had not requested a sanction for the reason given above, no disciplinary measure was imposed on the person concerned.

Practical recommendations:

The Disciplinary Court seeks to contribute to the safety of the profession by concretising the standard of good seamanship when sailing in an ice convoy. The responsibilities of each vessel to maintain a good lookout and safe navigation and to determine whether there is a risk of collision are, among others:

1. sufficient manpower on the bridge and a clear division of tasks with regard to navigation, steering and keeping an eye on the distance to the other vessels;
2. active communication between the vessels in the convoy;
3. the use of a variable range marker (VRM) and AIS data in the radar;
4. crew members who are competent in ice convoy sailing, for example by taking an appropriate course.

CORAL PATULA

RULING OF 30 OCTOBER 2019
NO. 4 OF 2019
CASE 2018. V6

Person concerned: the captain

On Thursday 9 February 2017, at Yeosu (Korea) OPL anchorage, there was a collision between the Dutch gas tanker Coral Patula and the Belize-flagged seagoing vessel Trueborn. Both ships sustained substantial damage. The investigation showed that the Coral Patula was purging its tanks in the preceding days while at anchor.

Contrary to what defence counsel has argued, the Disciplinary Court did not establish any fundamental objections to the Inspector's conduct of the investigation. It is however the case that the investigation was not complete. All in all, the Disciplinary Court found that there had been no serious violation of the principles of good administration of justice by which, deliberately or with gross disregard for the interests of the person concerned, his right to a proper investigation of his case has been violated. The claim regarding the inadmissibility of the inspector's petition was therefore rejected.

However, the fact that the investigation had not been completed led the Disciplinary Board to find that there was insufficient evidence to substantiate the Inspector's objections with regard to four of the nine objections.

It was clear from the objections that were declared well-founded that the decision of the person concerned to purge at anchor was incorrect. The Disciplinary Court does not in itself rule out the possibility that there may be special circumstances on the basis of which this is a better choice than purging whilst underway. In that case, there must be an experienced crew and the right materials must be on board. In the circumstances of this case, this was not good seamanship. The Coral Patula was held by a single anchor, so it was constantly lying with its head to the wind. There was a lot of wind and swell which made it impossible to purge with the wind. This, together with the use of hoses that were too short led to a dangerous situation for the vessel and her crew. After the CO alarm was triggered, carbon monoxide was measured in the crew quarters. Whether or not there was any carbon monoxide was not established since it remained unclear which equipment was used to measure it and a cross sensitivity with ethylene was recorded by several gas meters. Even after this incident, the captain ignored the advice of others, who had already advised purging the vessel whilst underway, into the wind. The use of longer hoses made it impossible to turn the propeller immediately. As a result, the captain unnecessarily restricted himself in terms of safety. Finally, the person concerned was accused of not having included the degree of readiness of the main engine in the Master's (Night) Orders.

The Disciplinary Court considered that the invocation of the person concerned of the shipping company's consent to purging at anchor was incorrect. According to him, the e-mail granting approval was from the operational department and from the quality and safety departments; he did not receive or ask for any advice. He knew that the gas specialist present on the vessel had no nautical experience. The captain was therefore not entitled to consider himself covered by the shipping company.

The person concerned had not acted as befits a responsible captain, as a result of which the safety

of the vessel and the crew in particular were seriously jeopardised.

In view of the following circumstances the Disciplinary Court saw cause to stipulate that the suspension of the navigation licence would be partially conditional. In the absence of clear instructions from the shipping company for purging, he took the wrong decision in this case to do so at anchor. The captain's actions, which were considered proven in this case, did not directly play a role in the occurrence of the later collision.

The captain was sentenced to 8 weeks' disqualification, 4 weeks of which were conditional.

Practical recommendations:

1. A shipping company must give clear instructions for purging.
2. When purging, a toolbox meeting must always be held in advance with the entire crew, during which the checklists are discussed: who does what and how. This ensures that the checklists are checked and, if necessary, supplemented.
3. The phenomenon of cross sensitivity in gas meters should be made more widely known.

CORAL PATULA

RULING OF 30 OCTOBER 2019
NO. 5 OF 2019
CASE 2018. V7

Person concerned: the chief mate

Case: see above

The person concerned had opted to base the purging on Cargo Operations checklist 1 – Pre-operation according to which the radars were to be switched off.

He also failed to consult with the ship's captain in this particular situation. However, the person concerned as chief mate should also have been aware that switching off the radars was not acceptable under the given circumstances.

The shutting down of the radars had contributed to the occurrence of the collision, although the dragging anchor of the (unlit) Trueborn and the failure of the officers of the watch to keep a lookout aboard the Trueborn and the Coral Patula, at least an adequate one, is what led to the collision in the first place.

The Disciplinary Court found that the person concerned's invocation of the contrary regulations of the shipping company was unfounded. During the hearing it became clear that the documents to which the person concerned referred do not prescribe switching off the radars, but provide the discretion to do so in certain cases. Under the circumstances of this specific case (the purging took much longer than planned, night had fallen and the weather conditions had in the meantime deteriorated considerably) there was no danger for the persons on board or for other persons, but there was a danger of colliding with ships that had slipped their anchors.

The Disciplinary Court found that the person in question had failed in his duty as ship's officer. The person concerned had not acted as befits a responsible officer, as a result of which the safety of the vessel in particular and shipping in general were jeopardised.

In view of the following circumstances the Disciplinary Court saw cause to stipulate that the suspension of the navigation licence will be partially conditional. The person concerned acted from a safety point of view and not for blameworthy motives. His knowledge in these situations was still limited and he did not receive sufficient support from the captain. Also, there were no instructions from the shipping company for purging while at anchor.

The person concerned was disqualified for 4 weeks, of which 2 weeks were conditional.

CORAL PATULA

RULING OF 30 OCTOBER 2019
NO. 6 OF 2019
CASE 2018. V8

Person concerned: the second mate

Case: see above

Although the person concerned knew that all available resources had to be used when keeping watch, he took a very passive approach with regard to the order to turn off the radars and with regard to the fact that under these circumstances (night time, no radar, significantly worsening weather conditions) he had to keep the bridge watch alone. Also, in the opinion of the Disciplinary Court, the captain should have taken more of a leading role here. The person concerned was held accountable for failing to consult with the captain in this particular situation. As second mate, the person concerned should also himself have realised that switching off the radars was not acceptable under the given circumstances.

Although AIS is not intended as a navigational tool, he should have projected AIS onto the ECDIS in this case, given the absence of the radars, and the person concerned should have adjusted the setting so that he also had an overview of the movements of ships in the vicinity of the Coral Patula, such as the Trueborn.

The Disciplinary Court found that shutting down the radars and insufficiently keeping a lookout by other means had contributed to the occurrence of the collision, although the dragging anchor of the (unlit) Trueborn and not, at least not sufficiently, keeping a lookout on board of the Trueborn had in the first place led to the collision. The statement of the person involved that the drifting of the unlit Trueborn (1.14 nautical miles in 6 hours) could not be observed, was not shared by the Disciplinary Court because although it could not have been seen with the naked eye, it could have been seen with the AIS via ECDIS.

The Disciplinary Court judged that the person concerned failed in his duty as Ship's officer. The person concerned had not acted as befits a responsible officer, as a result of which the safety of the vessel in particular and shipping in general were jeopardised.

In view of the seriousness of the conduct, the Disciplinary Court considered that not a serious warning as demanded, but a reprimand was appropriate in this case.

Given the circumstances set out below, the Disciplinary Court decided not to impose an even more severe measure. The captain failed to take a lead in this case. According to the three mates, the culture on board was not such that it was possible to question his performance. Also, there were no instructions from the shipping company for purging while at anchor. Finally, the person concerned said that he had learned from this incident.

CORAL PATULA

RULING OF 30 OCTOBER 2019
NO. 7 OF 2019
CASE 2018. V9

Person concerned: the third mate

Case: see above.

In the opinion of the Disciplinary Court, the captain should have taken a clearer lead with regard to both the switching off of the radars during purging and the manning of the bridge under the conditions (night, no radar, significantly worsening weather conditions). However, as a third mate, the person concerned should also have realised for himself that switching off the radars without additional measures was potentially dangerous under the circumstances and was obliged to inform the captain of this in accordance with the Master's Standing Orders. The fact that the person concerned did not expect the captain to listen to him did not absolve him of that obligation. Although AIS is not intended as a navigational tool, he should have projected AIS onto the ECDIS in this case, given the absence of the radars, and the person concerned should have adjusted the setting so that he also had an overview of the movements of ships in the vicinity of the Coral Patula, such as the Trueborn.

The Disciplinary Court found that shutting down the radars and inadequate watchkeeping by him by other means had contributed to the occurrence of the collision, although the dragging anchor of the (unlit) Trueborn and the lack of or insufficient watchkeeping on board of the Trueborn had in the first place led to the collision.

It follows from the above that the Disciplinary Court did not share the view of the person concerned that the drifting of the unlit Trueborn (1.23 nautical miles in the first hours of his watch) could not be observed; indeed, not with the naked eye but with the AIS via the ECDIS. His assertion that the captain himself had seen that the radar screens were blacked out was disputed by the captain and in any case did not apply to the evening prior to the collision, because according to the shipping company's report the radars were mostly on at that time.

In the following circumstances, the Disciplinary Court saw good cause to impose only a warning as a measure. The captain failed to adequately take a lead in this case. According to the three mates, the culture on board was not such that it was possible to question his performance. Also, there were no instructions from the shipping company for purging while at anchor.

Finally, the person concerned claimed that he has learned from this incident, which occurred early on in his career. In view of this limited experience, it was also noted in a positive sense that he acted adequately after the incident.

Practical recommendations:

1. Ship's officers must be made aware of their duty to keep a better lookout and to be aware of what is happening around them – even from a distance – so that it is noticeable if a vessel (such as the Trueborn without lighting) is behaving suspiciously.
2. Knowledge of radars/AIS/ECDIS and their integration should be improved. AIS remains visible on radars that are on standby.

COMPOSITION OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS IN 2018

PRESIDING JUDGE

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

H. van der Laan
Captain

R.A. Oppelaar
Captain

DEPUTY PRESIDING JUDGES

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

R.E. Roozendaal
Captain

C.R. Tromp
Captain

W. van der Velde
Lector Maritime Law at Maritiem Instituut Willem Barentsz

D. Willet
Chief Engineer

MEMBERS

E.R. Ballieux
Captain

S. Kramer
Skipper in marine fishing

J.L. Schot
Skipper in marine fishing

E.R. IJssel de Schepper
Captain

P.L. van Slooten
Skipper in marine fishing

C. Kuiken
Ship's officer

J.W.T.C. de Vreugd
Chief marine engineer in marine fishing (deep sea fishing)

DEPUTY MEMBERS

A. Aalewijnse
Chief Engineer

J. Berghuis
Captain

G. Jansen
Chief 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

J.K.J. Bout
Skipper in marine fishing

H. Hakvoort
Skipper in marine fishing

H.J. Ijpma
Skipper in marine fishing

H. Schaap
Formerly skipper in marine fishing

T.S. de Groot
Registered pilot

R.J.N. de Haan
Registered pilot

T. Hamburger
Hydrographer

A.J. de Heer
Former shipowner

N.P. Kortenoeven-Klasen
Hydrographer

J. Preesman
Former hydraulic engineer

C.J.M. Schot
Shipowner

E. E. Zijlstra
Hydraulic engineer

SECRETARY

E.H.G. Kleingeld, LL.M

DEPUTY SECRETARY

D.P.M. Bos

