

Seafarers Act (English translation of Wet Zeevarenden)

CHAPTER 5A. Disciplinary justice

§1. General

Art. 55a

1. The master and the ship's officers are subjected to disciplinary justice in respect of any act or failure to act contrary to the care they have to observe as a good seaman with respect to the persons on board, the ship, the cargo, the environment or maritime traffic.
2. The disciplinary justice of first instance is carried out by the maritime disciplinary committee. The maritime disciplinary committee has its seat in Amsterdam.
3. The disciplinary justice in appeal is carried out by the Trade and Industry Appeals Tribunal. The Trade and Industry Appeals Tribunal decides at the highest level.

§2. The maritime disciplinary committee

Art. 55b

1. The disciplinary committee shall consist of a president, two deputy presidents, twelve members and twenty deputy members. They shall be appointed by Our Minister for a period of four years and are immediately eligible for reappointment.
2. The president and the two deputy presidents are persons to whom has been granted the bachelor degree and also the master degree on the basis of the final examination of an education in the field of the law at a university or the Open University to which the Higher Education and Research Act relates, or
 - a. who have obtained the right to use the master title on the basis of the final examination of an education in the field of the law at a university or the Open University to which the Higher Education and Research Act relates.
3. Eight members and eight deputy members have sailed at least five years as master or as ship's officer on board of another ship than a fishing vessel during the period of ten years prior to their appointment.
4. Four members and four deputy members have sailed at least five years as a boatmaster or as a ship's officer on board of a fishing vessel during the period of ten years that precedes their appointment.
5. Besides, the following persons are appointed as deputy members:
 - a. two shipowners;
 - b. two hydraulic engineers;
 - c. two register pilots;
 - d. two hydrographs.
6. Our Minister dismisses the president, the deputy presidents, the members and the deputy members anyhow as from the month, following that in which they have reached the age of seventy years, and between times upon their own request.

Art. 55c

1. There may be no close personal or business relation between the president, the deputy presidents, the members, and the deputy members of the disciplinary committee.
2. Before starting their duties, they take the oath or affirm in the hands of the president of the Trade and Industry Appeals Tribunal. The form for the oath or promise is established by Ministerial Regulation.

Art. 55d

1. The provisions for the members of the judiciary in the Articles 46c, second paragraph, 46d, second paragraph, 46f, 46g, first and second paragraphs, 46i, first paragraph, heading and items a and b, and second paragraph, 46l, first paragraph, heading and item a, 46m, 46o and 46p, first through fifth paragraphs, of the Legal Status of Judicial Officials Act is equally binding regarding the president, the deputy presidents, the members and the deputy members of the disciplinary committee.
2. The Articles 13a, 13b, except for the first paragraph, items b and c, and fourth paragraph, and 13c through 13g of the Legal Status of Judicial Officials Act are equally binding with regard to acts of the president, the deputy presidents, the members and the deputy members of the disciplinary committee, provided that:
 - a. for the analogous application of those Articles «the court management involved» shall mean: the president of the disciplinary committee; and
 - b. the Procurator-General is not obliged to accede to the request, as referred to in Article 13a, if the plaintiff reasonably has insufficient interest in a survey as referred to in the same Article.

Art. 55e

The president, the deputy presidents, the members and the deputy members of the disciplinary committee receive fee attendance money to be established by Ministerial Regulation, as well as a compensation for traveling and subsistence expenses and for other disbursements.

Art. 55f

- a. 1. The disciplinary committee has a secretary and a deputy secretary
- b. to whom has been granted the bachelor degree and also the master degree on the basis of the final examination of an education in the field of the law at a university or the Open University to which the Higher Education and Research Act relates, or
- c. who have obtained the right to use the master title on the basis of the final examination of an education in the field of the law at a university or the Open University to which the Higher Education and Research Act relates.

2. The secretary and the deputy secretary are appointed, suspended and dismissed by Our Minister.

Art. 55g

1. The president, the members and the secretary, as well as their deputies, may not in any way intervene in parties or their advisers or representatives about any case that is pending with the maritime disciplinary committee, or of which they know or can suspect that it will be brought before the maritime disciplinary committee.

2. They have the duty of confidentiality as regards the information they dispose of during the performance of their task and of which they know the confidential character or reasonably should suspect, except for insofar as any legal requirement obliges them to notify or the need to notify results from their task.

3. They have the duty of confidentiality of anything that has been expressed in the in closed session about pending cases.

§ 3. The procedure in first instance

Art. 55h

1. In first instance a case is brought before the disciplinary committee upon request of Our Minister or by a complaint of an interested party.

2. A request and a complaint are submitted in writing or digitally with the president of the disciplinary committee and while stating the reasons. A complaint of an interested party mentions the name, the address and the residence of the complainant. A request and a complaint also contain at least the following information:

- a. the name and, when known, the address and the residence of the master or the ship's officer to whom the request or the complaint relates, and if the request or the complaint is related to a ship's officer, the function on board of the ship that was performed by the ship's officer at the time of the contested act;
- b. the name and, when known, the type of the ship, on board of which the contested act has taken place;
- c. a description of the act, to which the request or the complaint is related;
- d. the objections that have risen against the contested act.

3. If the complainant asks for it, the secretary of the disciplinary committee will help him to phrase the complaint.

4. The disciplinary committee does not deal with a request or a complaint if the act on which the request or the complaint is based, has taken place more than two years before the submission of the request or the complaint.

Art. 55i

1. The president may decide to open a preliminary investigation, in which case he assigns the performance of the preliminary investigation to one or more members or deputy members or to the secretary or the deputy secretary of the disciplinary committee.
2. The person who conducts the preliminary investigation is entitled:
 - a. in order to conduct an on-spot investigation, to enter any place he considers necessary, if necessary with the help of the police, with the exception of a dwelling without permission of the inhabitant;
 - b. to take note of all written documents and data in automated data files that are on board, the notification of which he considers to be in the interest of the investigation, and to make copies of them;
 - c. to hear the complainant, as well as the master or ship's officer involved;
 - d. to hear witnesses and experts, to which the provisions in Article 55o, fifth, sixth and seventh paragraphs, are equally binding;
 - e. to ask for all information about a case as referred to in Article 55h, first paragraph.
3. The person who has conducted the preliminary investigation shall take no part in the handling of the case at a session of the disciplinary committee.
4. As soon as the decision to open a preliminary investigation has been taken, the secretary shall send a copy of the request or the complaint to the master or ship's officer involved.

Art. 55j

1. The president can immediately reject a request or a complaint after a brief investigation by a reasoned decision if he is of the opinion that the complainant is clearly inadmissible, or the request or the complaint is clearly unfounded.
2. The secretary immediately sends a copy of the written decision of the president to Our Minister and to the complainant.
3. Our Minister and the complainant can lodge opposition in writing or digitally with the disciplinary committee against this decision within two weeks after the day of dispatch of the decision of the president for rejection of a request or a complaint. As a result of the opposition, the decision of the president is cancelled.
4. If the president is of the opinion that a request or a complaint is capable of an amicable settlement, he summons Our Minister or the complainant as well as the master or ship's officer involved in order to try such a settlement. If an amicable settlement has been reached, the request or the complaint is withdrawn.
5. The president immediately informs the disciplinary committee of requests and complaints that have not been rejected by him or that have not been settled amicably.

Art. 55k

1. Five members take part in the handling of a case at a session of the disciplinary committee, namely the president or one of his deputies, as well as:
 - a. the four members, as referred to in Article 55b, third paragraph, if the request or the complaint is related to the master or a ship's officer of another ship than a fishing vessel, with the possibility of deputizing, or
 - b. the four members, as referred to in Article 55b, fourth paragraph, if the request or the complaint is related to the boatmaster or a ship's officer of a fishing vessel, with the possibility of deputizing.
2. The president can, if the case requires so, determine that one or two deputy members as referred to in Article 55b, fifth paragraph, take part in the handling of that case at a session of the disciplinary committee, instead of the members designated for handling in the first paragraph, under a and b. The deputy members, as referred to in the first phrase, do not cast their votes when taking a decision. In case of equality of votes, the vote of the president or his deputy is casting.
3. The president can, if a case seems suitable to him, determine that three members take part in the handling of that case at a session of the disciplinary committee, contrary to the provisions in the first paragraph, namely the president or one of his deputies, as well as two of the four members, as referred to in the first paragraph under a or b.
4. In the case of the handling of a case at a session of the disciplinary committee after opposition as referred to in Article 55j, third paragraph, the president is replaced by one of his deputies.

Art. 55l

1. The president and the members, as well as their deputies, may request the disciplinary committee to exclude themselves and may be objected should there be facts or circumstances with regard to them, as a result of which the impartiality of the disciplinary committee could be affected.
2. The other members of the disciplinary committee as soon as possible decide on a request for exclusion or objection of their fellow member. In case of equality of votes, the request for exclusion or objection is allowed.

Art. 55m

1. As soon as the disciplinary committee has taken up a request or a complaint, the secretary shall notify this in writing to the master or ship's officer concerned. If no preliminary investigation as referred to in Article 55i has taken place, the secretary shall send a copy of the request or complaint therewith.
2. The master or ship's officer involved may submit a written or digital defence within six weeks after the day of dispatch of the written notification, as referred to in the first paragraph. The president can extend this term on the request of the master or ship's officer involved.

3. The secretary shall send a copy of the defence to the person who has submitted the request or the complaint with the president.

Art. 55n

1. The president shall determine the time for the oral proceedings of the case at a session. The secretary shall summon the person who has submitted the request or the complaint and the master or ship's officer involved by registered post as well as regular post at least four weeks before the session. The master or ship's officer concerned is obliged to observe the summons.

2. When the master or ship's officer concerned does not appear at the session after the summons, the disciplinary committee may handle the case at the session by default or may ask the public prosecutor to have a writ served on the person involved. He is obliged to appear after a writ.

3. When the master or ship's officer concerned does not appear at the session after the writ, the disciplinary committee may request the public prosecutor to have a writ served on the person involved, with an order to appear. Article 556 of the Code of Criminal Procedure is equally binding.

4. The disciplinary committee is entitled to enter a default when the master or ship's officer involved has not followed the summons as referred to in the first paragraph.

5. The person who has submitted the request or the complaint can have himself represented at the session by someone who has been authorized to that end or can have himself assisted by an adviser.

6. The master or ship's officer concerned can have himself assisted by an adviser.

7. The disciplinary committee may refuse to admit certain persons as advisers or as representatives at a session, who are no solicitors. In the event of such a refusal the disciplinary committee shall adjourn the case until a subsequent session.

8. At least two weeks before the session, the disciplinary committee shall enable the master or ship's officer concerned and his adviser to take note of all documents related to the case.

9. The disciplinary committee shall handle the case in a public session. The disciplinary committee may determine on important grounds that the handling will entirely or partly take place behind closed doors.

10. The secretary shall draw up a report of the proceedings at the session that is signed by the president and the secretary.

Art. 55o

1. The disciplinary committee may summon witnesses and experts for the session. The members and the associate members of the Dutch Safety Board, the general secretary and the staff of the office of the Board, as well as the experts to whom it may concern who are designated by Our Minister upon request of the Board, cannot be summoned by the disciplinary committee as witnesses or experts.

2. The secretary summons witnesses and experts for the session by registered post. Anyone who has been summoned as a witness or as an expert by the disciplinary committee, is obliged to observe that summons.
3. If a witness or expert does not appear at the session after the summons, the public prosecutor has him served a writ upon request of the disciplinary committee. He is obliged to appear after a writ.
4. If a witness or expert does not appear at the session after a writ, the public prosecutor has him served a writ again at the request of the disciplinary committee, with an order to appear. Article 556 of the Code of Criminal Proceedings is equally binding.
5. The president swears witnesses to tell the truth and nothing but the truth. Witnesses are obliged to answer the questions.
6. The president swears experts to fulfill their task discreetly. Experts are obliged to render the services demanded by the disciplinary committee.
7. As regards the witnesses and experts, the Articles 217 through 219 of the Code of Criminal Procedures are equally binding.
8. Upon request and on presentation of their summons or writ, the witnesses and experts receive a compensation to be established by the president in accordance with the provisions of or pursuant to the Criminal Cases (Fees) Act.

Art. 55p

1. The disciplinary committee can, if it is of the opinion that an objection risen against a master or a ship's officer is grounded, impose one or more of the following disciplinary measures:
 - a. warning;
 - b. reprimand;
 - c. fine of not more than € 4 500;
 - d. suspension of the competency for a period of not more than two years.
2. When imposing one or more of the disciplinary measures mentioned in the first paragraph, the disciplinary committee can also determine that its decision, while mentioning or not mentioning the grounds on which it is based, will be published in one or more of the magazines or newspapers indicated in the decision.
3. When imposing a fine, the disciplinary committee determines the period or the periods, within which the fine must be paid. The sums of money to be paid belong to the State. Payment of the sum of money is done to Our Minister. For the purpose of title 4.4 of the General Administrative Law Act, the judgment of the disciplinary committee is considered to be an order as referred to in Article 4:86 of that Act.
4. When imposing the disciplinary measures, mentioned in the first paragraph, under c and d, the disciplinary committee may determine that they will be entirely or partly not implemented, unless the disciplinary committee might determine otherwise by a later decision on the basis of the fact that the master or ship's officer

involved, before the end of a probationary period of not more than two years to be determined by that imposition, has behaved contrary to the care he has to observe as a good seaman towards the persons on board, the ship, the cargo, the environment or the maritime traffic.

5. The disciplinary measures, mentioned in the first paragraph under c and d, and the additional measure of publication, mentioned in the second paragraph, can only be implemented after the decision of the disciplinary committee has become irrevocable.

Art. 55q

1. The decision of the disciplinary committee is based on sound grounds. It is delivered in a public session. If the master or ship's officer involved has not appeared at the session, the disciplinary committee may give judgment by default.

2. The secretary immediately sends a copy of the written decision of the disciplinary committee:

- a. by registered post to the master or ship's officer involved;
- b. by regular post to Our Minister;
- c. by regular post to the complainant.

3. If the disciplinary committee has imposed a suspension of the competency in its judgment, the secretary informs the master or ship's officer involved by registered post of: the date on which the suspension starts, the obligation to hand in his appropriate certificate before that date to the Central Manning Information Register mentioned in Article 65, as well as the consequences of not having the appropriate certificate handed in timely on the basis of the fourth paragraph. The secretary sends a copy of the written decision of the disciplinary committee as well as of the registered letter to the master or ship's officer involved also for registration to the Central Manning Information Register.

4. If the master or ship's officer involved does not hand in his appropriate certificate in time to the Central Manning Information Register, the period of suspension of the competency is automatically extended with the period elapsed between the date on which the suspension starts and the date on which the appropriate certificate has actually been handed in.

5. As soon as the period of suspension has elapsed, the Central Manning Information Register returns the appropriate certificate to the master or ship's officer involved.

§ 4. The appeal procedure

Art. 55r

An appeal can be lodged with the Trade and Industry Appeals Tribunal against a decision of the disciplinary committee within six weeks after the day of the dispatch of the letter as referred to in Article 55q, second paragraph:

- a. by the master or ship's officer involved if the request or the complaint entirely or partly has been declared founded;
- b. by Our Minister;
- c. by the complainant if his complaint entirely or partly has been declared unfounded.

Art. 55s

1. The appeal is lodged by a notice of appeal. Together with the notice of appeal, a copy of the written decision of the disciplinary committee, against which the appeal is aimed, is submitted.

2. Within one week upon receipt of the notice of appeal, the registrar of the Trade and Industry Appeals Tribunal sends a copy of it to the master or ship's officer involved, to Our Minister and to the complainant, insofar as the appeal has not been lodged by them, and also to the disciplinary committee, and if the disciplinary committee has imposed a suspension of the competency in its judgment, also for registration to the Central Manning Information Register.

3. Within three weeks after receipt of the copy of the notice of appeal, the disciplinary committee sends all documents related to the case to the registrar of the Trade and Industry Appeals Tribunal.

4. The Trade and Industry Appeals Tribunal shall deal with the case again to its full extent. The Articles 55j, first, second and third paragraphs, 55l, 55m and 55n through 55q are equally binding to the handling of the appeal.

§ 5. Revision

Art. 55t

1. Upon request of a master or a ship's officer to whom a disciplinary measure has been imposed, the Trade and Industry Appeals Tribunal may revise an irrevocable decision of the disciplinary committee or of the Trade and Industry Appeals Tribunal on the basis of facts or circumstances that:

- a. the disciplinary committee or the Trade and Industry Appeals Tribunal did not know and reasonably could not know during the handling of the case at the session, and that
- b. if they would have been known by the disciplinary committee or the Trade and Industry Appeals Tribunal during the handling of the case at the session, could have resulted in a different decision.

2. The Articles 55j, first, second and third paragraphs, 55l, 55m and 55n through 55q are equally binding to handling of the request for revision.

3. Members who have taken part in the handling of the case, the revision of which is requested, do not take part in the handling of the application for revision at the session of the Trade and Industry Appeals Tribunal.