



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF
29 DECEMBER 2023 (NO. 12 VAN 2023) IN THE CASE OF
2023.V9-NOORDERLICHT**

As petitioned by:

the Minister of Infrastructure and Water Management
in The Hague,

petitioner,

authorised representative: ing. B.A.C. van Geest,
senior Inspector at the Human Environment and Transport Inspectorate
(ILT)/Shipping in Zwijndrecht

versus

D.J. R.,

the person concerned.

1. Course of the proceedings

On 5 June 2023, the Disciplinary Court received a written request (with appendices) for disciplinary treatment from ing. B.A.C. van Geest, aforementioned (hereinafter the inspector), against the person concerned as first officer of the Noorderlicht vessel sailing under the Dutch flag.

The Disciplinary Court has notified the person concerned of the petition, enclosing a copy of the petition with appendices, and informed the person concerned of the right to submit a statement of defence.

On 20 September 2023, the inspector sent a supplement to the dossier to the Disciplinary Court. The Disciplinary Court sent this supplement to the person concerned.



No statement of defence has been received from the person concerned.

The presiding judge of the Disciplinary Court stipulated that the oral hearing of the case will be held at 10.30 hours on 16 November 2023 at the offices of the Disciplinary Court in Amsterdam.

In a letter of 14 November 2023, the inspector provided the Disciplinary Court with additional, relevant legislation. The person concerned was informed of this.

The court hearing was held on 16 November 2023. The Inspector and his colleague inspector Ing. K. van der Wall appeared at the hearing for the petitioner.

The person concerned also appeared at the hearing.

2. Grounds

The petition for a disciplinary hearing was filed in response to the accident described below.

On Thursday, 23 March 2023, the Noorderlicht sailing vessel was underway from Trondheim to the more northerly located Rørvik (both in Norway). There were 26 persons on board, including 9 crew and 17 passengers: trainees in the Masterskip educational programme, aged 14 to 18 years. The vessel was motorised. The route passed close to fjords and islands, as well as between the islands. During this voyage, the Noorderlicht ran aground on the (rocky) ground on the northern side of the small island of Auken, at 02.40 hours LT. This was due to the Noorderlicht correcting its course close to a narrow strait at the island, and sailing too far south. The person concerned was the OOW at the time. There was a lookout, but he was below deck at that point. All persons on board were evacuated following the grounding, with the exception of the captain and engineer. They used the dinghy to access the



dry part of the island. There, they were picked up by a cargo vessel. They were then transferred by the local lifeboat from the cargo vessel to a passenger vessel, which transported them to Lauvsnes. The Noorderlicht was re-floated with the aid of a tug during the rising tide, at around midday. By 15.00 hours LT, the vessel was moored to a floating jetty in Lauvsnes. There were no personal injuries and only limited damage. The vessel did not make water.

The Noorderlicht (IMO number 8650813) is a Dutch passenger/sailing vessel, sailing for Swan Expeditions in Akkrum. The ship was built in 1910, is 46.2 metres long and 6.6 metres wide.

3. The Inspector's objections

3.1 According to the Inspector, the person concerned acted or failed to act as first officer contrary to the duty of care that he, as a good seaman, should observe with regard to the persons on board, the ship, the cargo, the environment, and shipping traffic (Section 55a of the Seafarers Act).

The accusation consists of the following elements:

1. The Noorderlicht ran aground as the result of actions by the person concerned.
2. The person concerned failed to effectively and comprehensively prepare for the voyage from Trondheim – Rørvik.
3. The person concerned did not communicate effectively with the captain regarding preparation of the voyage from Trondheim – Rørvik.
4. The primary navigation tool used by the person concerned was an ECS which does not comply with the 'IMO performance standards' for ECDIS.

3.2 The Inspector cites as regulations that have not been complied with:



Ships Decree 2004- article 61 paragraph 1

The captain [i.e. the master of any ship, or any person replacing him, comment TvdS] of any vessel with which a voyage is made shall ensure that prior to the voyage and during the voyage the regulations and requirements of chapter V of the SOLAS Regulation are observed.

SOLAS V Regulation 34 – Safe navigation and avoidance of dangerous situations

1 Prior to proceeding to sea, the master shall ensure that the intended voyage has been planned using the appropriate nautical charts and nautical publications for the area concerned, taking into account the guidelines and recommendations developed by the Organization*.

* Refer to the Guidelines for Voyage Planning, adopted by the Organization by resolution A.893(21).

2 The voyage plan shall identify a route which:

- .1 takes into account any relevant ships' routing systems;
- .2 ensures sufficient sea room for the safe passage of the ship throughout the voyage;
- .3 anticipates all known navigational hazards and adverse weather conditions; and
- .4 takes into account the marine environmental protection measures that apply, and avoids as far as possible actions and activities which could cause damage to the environment.

RESOLUTION A.893(21) – Guidelines for voyageplanning

adopted on 25 November 1999

1 Objectives

1.1 The development of a plan for voyage or passage, as well as the close and continuous monitoring of the vessel's progress and position during the execution of such a plan, are of essential importance for safety of life at sea, safety and efficiency of navigation and protection of the marine environment.



STCW Code Part A /Chapter VIII/ Part 2 – Voyage planning

Planning prior to each voyage

5 Prior to each voyage, the master of every ship shall ensure that the intended route from the port of departure to the first port of call is planned using adequate and appropriate charts and other nautical publications necessary for the intended voyage, containing accurate, complete and up-to-date information regarding those navigational limitations and hazards which are of a permanent or predictable nature and which are relevant to the safe navigation of the ship.

Verification and display of planned route

6 When the route planning is verified, taking into consideration all pertinent information, the planned route shall be clearly displayed on appropriate charts and shall be continuously available to the officer in charge of the watch, who shall verify each course to be followed prior to using it during the voyage.

STCW Code Part A /Chapter VIII/ Part 4 – Watchkeeping at sea

Coastal and congested waters

The largest scale chart on board, suitable for the area and corrected with the latest available information, shall be used. Fixes shall be taken at frequent intervals, and shall be carried out by more than one method whenever circumstances allow. When using ECDIS, appropriate usage code (scale) electronic navigational charts shall be used and the ship's position shall be checked by an independent means of position fixing at appropriate intervals.

Resolution A.817(19) – Performance standards for Electronic Chart Display and Information Systems (ECDIS)

Adopted on 23 November 1995



1.2 ECDIS with adequate back-up arrangements may be accepted as complying with the up-to-date charts required by regulation V/20 of the 1974 SOLAS Convention.

Resolution MSC.232(82) – Adoption of the revised performance standards for electronic chart display and information systems (ECDIS)
adopted on 5 December 2006

1.2 ECDIS with adequate back-up arrangements may be accepted as complying with the up-to-date charts required by regulations V/19 and V/27 of the 1974 SOLAS Convention, as amended.

In his letter of 14 November 2023, the inspector also referred to the so-called Blue rules of the Register Holland and the Rules for Commercial Cruising Vessels (CCV). Insofar as these permit the use of an electronic sea chart, this concerns ECDIS and not ECS.

The 'performance standards' for ECDIS are given in SOLAS chapter V, as referenced by the introduction to CCV chapter 8.

3.3 The inspector's demand is to suspend the navigation licence for three weeks, two of which conditionally.

4. The position of the person concerned

The person concerned acknowledges the Inspector's objection.

5. The ruling of the Disciplinary Court

5.1 The means of evidence

The Disciplinary Court bases its assessment of the inspector's objections regarding the acts or omissions of the person concerned on the following means of evidence:



- A. The statement of the person concerned at the hearing, insofar as it contains the following, in concise form:

I understand and acknowledge the correctness of the inspector's objections. I am holding true to my answers already given to the written questions by the inspector. The Noorderlicht does not have an indoor bridge. The navigation room is downstairs. Due to the layout of the ship, it is not possible to work in the sea charts while also keeping a lookout around. I could however see the ECS screen from the steering position. The watch shift changed at midnight. After that, I was the OOW (as 1st officer). We did not discuss the voyage in detail beforehand. At the change of the watch, the captain informed me of two narrow passages which we would pass through during my watch, but not the passage in question at Auken, which was narrower than the other two passages. It was snowing during my watch. Visibility was constantly around half a mile. I was sailing on automatic pilot. I regularly compared the position on the electronic sea chart of the ECS with the radar image and with the surroundings, for example when passing beacons. Shortly before running aground, I dispatched the lookout down to the navigation room in order to be able to change the scale of the ECS image when I requested. We ran aground because the ship moved too far south following a correction to starboard. I oversteered and did not slow sufficiently, and was too late to manoeuvre the ship back north. In my answers to the questions posed by the inspector, I wrote that I was too late noticing that the light beacons at Auken were much too far to port side. I believe these errors were due to the cold and fatigue. I had 3 weeks' experience on the Noorderlicht. My written statement says that I am not suitable to be sailing in this manner. What I mean is: without an indoor bridge, in the cold and snow and not within sight of the sea charts. I have no experience sailing under such conditions; this was the first time for me. It was also the first time that I have sailed this area of Norway. With hindsight, I should have called the captain for assistance when



approaching this narrow passage. I could have done so 15 minutes beforehand, when we were approaching the narrow straight and there was still an opportunity to select an alternative route.

I know the difference between an ECS and ECDIS and I am aware that an ECS is not legally calibrated and may not be used as the primary navigation tool. While it is not compulsory to have an ECDIS on board, if there is no ECDIS, you must be able to navigate using paper sea charts. In this case, the route had only been planned in ECS. The paper sea chart was not constant within my sight, though I could see the ECS screen. It was also not possible to sail from beacon to beacon by sight; there was a large stretch where no form of land could be recognised. The incident has affected me deeply both professionally and personally, particularly because I am aware that the outcome could have been much worse. I have struggled with that. I am also aware of my shortcomings and I have learned from the situation.

B. De Standing (night) watch orders:

‘In addition to the logbook standing orders insert

- Always keep a safe speed
- Fill in the ships logbook every hour
- Put ships position on the map every hour
- Call me if in doubt’

C. The questions by the inspector (included in appendix 39 of the petition) and the answers from the lookout:

‘1. Why were you (by OOW) sent down in the navigation room to look at the chart?

I was asked to zoom in on the screen [...]

2. Did you look at the paper chart or ECS?

I looked at the electronic sea chart we have on the screen’



D. The questions by the inspector (included in appendices 41 and 42 of the petition) and the answers from the captain:

'6. Who drew up the voyage plan from Trondheim to Rørvik?

The first officer was mainly concerned with planning the reporting points during the planned voyage of 18 hours. I myself input the route in the ECS. [...]

7. Did you discuss the voyage plan from Trondheim to Rørvik with the first officer and why were you satisfied with the voyage preparation?

With hindsight, I believe we should have discussed it in more detail. I also believe that the voyage preparation was somewhat lacking, but having personally input the route in the ECS, I did not feel that to be inadequate. I only became acquainted with the first officer when starting the voyage in Bergen, and he has sailing experience which far exceeds mine. My mistake was to trust in that, with regard to voyage preparation and communication on the matter.

8. Why were the course and waypoints not mapped in the paper sea chart?

That should indeed have been part of the voyage preparation. Having said that, I must add that the (largest) scale of the maps of the Norwegian coastline is not always particularly detailed, requiring the use of the pilot.

The ECS is much more detailed, which is why it is commonly used for navigation purposes.

9. Why did you think it sufficient to only track the position in the sea chart once every hour?

Because of the many course changes and mainly having to navigate by sight to follow the seamarks, with or without the aid of radar. [...]

12. Between the "whole hours", how did you know the position of the ship in relation to the surroundings?

Radar and outdoor visibility, the seamarks and our position in relation to those marks. The ECS was also used for this purpose.



13. On the photo of the ECS which you included with the Master Statement of facts, I did not see any water depths. How did you know the water was sufficiently deep?

Pilot and Total tides (for tidal information), I also have a Navionics plotter with recent charts on which the depth is given.

14. How did you determine that the ECS (Electronic Chart System) was reliable, it is after all not ECDIS (which complies with SOLAS performance standards)?

The ECS is always used as a navigational tool and has proven to be very accurate in determining the ship's position. [...]

- E. The findings of the inspectors of the flag state who inspected the Noorderlicht on 26 March 2023, include:
- The voyage plan had not been completed and was not signed.
 - There was insufficient communication regarding voyage preparation.
 - No courses or waypoints had been plotted in the sea charts.
 - An ECS was used as the primary navigation system.
 - The voyage plan was insufficiently monitored. Positions were only tracked in the chart once every hour.
 - Deviation of the (magnetic) compass and autopilot of approximately 20 degrees.

5.2 Considerations

Preamble

5.2. 1 The Noorderlicht is a seagoing vessel sailing under the Dutch flag, IMO number 8650813. According to the owner's declaration: a double-masted schooner, built in 1910 and converted in 1993, gross tonnage 140, length approximately 46 metres (the CvD certificate of soundness states: 30.58 metres, according to the definition of article 2 (1) 1 Annex 1 Netherlands Ships' Decree 1965), width approximately 6.5 metres, draft 3.2



metres and equipped with a 460 hp Caterpillar C12 diesel engine. The maximum permissible number of passengers is 20.

5.2.2 This vessel, described by the owner as a ‘tall ship’ and used for commercial seagoing voyages, is governed by the rules of the Dutch Seafarers Act (see Sections 1 and 2 of that act). Based on Section 55a paragraph 1 of the Seafarers Act, the captain and the ship’s officers of the Noorderlicht are subject to disciplinary rules with regard to any act or omission contrary to the care expected of a good seaman in respect of the persons on board, the (Dutch nationality) vessel, the cargo, the environment and shipping traffic.

The Inspector’s objection

5.2.3 The content of the evidence referred to above has led to the following conclusions being drawn in this case (with an adequate measure of certainty).

The first point of the objection – the steering error

Due to a steering error by the person concerned, the Noorderlicht ran aground to the north side of the small island of Auken, on 23 March 2023 – en route from Trondheim to the more northerly located Rørvik (both in Norway) – at 02:40 hours LT. On approaching the island of Auken too northerly, the person concerned, who as first officer was the OOW, corrected his course to starboard for a more southerly approach. However, he oversteered and could not correct this in time, resulting in the ship sailing too southerly, to the south of the fairway, and running aground on the north side of the island.

This concerns a steering error, contrary to good seamanship. The first objection is well-founded.

The second and third points of the objection – inadequate voyage preparation and insufficient communication

These elements of the objection are also well-founded. Good seamanship assumes a good preparation of the voyage to be undertaken. Voyage



preparation concerns not only the charting/plotting of a route, but also a comprehensive risk analysis, whereby the best possible inventory is made of possible hazards and therefore also potentially tricky navigation sections. This must take into account the specific characteristics of the vessel and the expected weather conditions. The legislation cited by the inspector (see point 3.2 above) defines the obligation to work in this manner, though such obligation always exists even without legislation.

It must be determined that this obligation to undertake good voyage preparation by the person concerned (who drew up the voyage plan) and by the captain (who plotted the courses in the digital ECS chart) was not met in the correct manner. The voyage plan was limited and was not mutually discussed. This (also) particularly applies to the narrow strait/passage at the small island of Auken, where the incident occurred. It was only with hindsight that both persons concluded that they should have conferred on the navigation at that point. Partly due to the layout of the ship – with the engine/rudder controls above deck and the navigation room below deck, resulting in the steering position needing to be abandoned to note and check the position and course of the vessel – it was contrary to good seamanship to sail through narrow straits between islands close to the coast of Norway during night hours, with only the person concerned acting as officer of the watch. This should have been recognised during the voyage preparation, all the more with a view to the (forecast) weather conditions and the fact that the person concerned was inexperienced in sailing under such circumstances and also unfamiliar with this route, while it was also the captain's first voyage on the Noorderlicht.

Incidentally, it should be noted on this point that following the grounding, it was agreed with the shipowner that sailing close to the Norwegian coast would only be allowed in daytime, supervised by two officers alternating between the steering position above deck and the navigation room below deck.



With regard to the opinion of the captain that this was a well-lit fairway, in which a vessel such as the Noorderlicht could easily navigate by sight with only one officer of the watch, without the need for further, more accurate determination of the position, it should be noted that the person concerned stated otherwise; he indicated that he had no land recognition points for a large stretch of the voyage and that he found it difficult and time-consuming to recognise the (position of the) beacons at the island of Auken when they came into sight.

The fourth point of the objection

Based on the current legislation (SOLAS Chapter V Regulations 19 under 2.1.4), all vessels, regardless of their size, must be equipped with seagoing charts and seagoing publications required to plan and display the route of the vessel's proposed voyage, and to plot and track positions during that voyage. An Electronic Chart Display and Information System for sea charts (ECDIS) used for the same purpose is also acceptable. An ECS, as used on board of the Noorderlicht, is not a legally accepted alternative for the presence and use of the seagoing charts and publications.

In this case, the route had only been planned beforehand in the ECS. This track in the electronic chart, which was visible from the steering position, was used en route to determine the vessel's position. The positions and times of course changes and when passing recognisable points were not accurately recorded on the paper sea chart, or at least no more than once per hour (and equally inadequately recorded in the ship's journal).

In this case the ECS was the primary navigation tool. This is indeed not denied by the person concerned. Shortly before running aground, he dispatched the lookout down to the navigation room in order to be able to change the scale of the ECS image if necessary.

If the Noorderlicht is unsuitable for the installation of an ECDIS and/or the owner of the Noorderlicht objects to this for some other reason, this does not justify simply using an ECS system as the primary navigation tool. Some



other form of accepted method of navigation must then be applied. Any passengers enjoying the travel programmes offered on board the Noorderlicht must be able to rest assured that navigation takes place in a safe and legal manner. Although in this sense the duty of care for the required equipment/crew of the vessel lies primarily with the owner, the person concerned has a responsibility in his position as an officer.

For the record, it should be added that the use of the ECS was not the cause of the grounding. Although the inspector's objection to the use of the ECS is indeed justified in itself, it will not result in a more serious measure being imposed in this case, than if it were not involved.

5.3 The disciplinary measure

Following on from the above, the conclusion must be that the person concerned seriously failed in his responsibilities as first officer of the Noorderlicht. The attributable act and omission of the person concerned (to comply with the safety regulations and the associated supervision) constitutes a violation of the regulation of Section 55a of the Dutch Seafarers Act in conjunction with Section 4.4 of that Act: acting or failing to act on board as ship's officer, contrary to the duty of care expected of a good seaman in relation to the persons on board, the vessel, the cargo, the environment and shipping traffic.

The grounding is a direct consequence of the steering error. This steering error cannot be viewed in isolation. In this case, it cannot be seen separately from the inadequate voyage preparation/communication. The reprehensibility for this becomes even more serious because of 17 trainees/children being on board the vessel (for an educational programme). Suspension of the navigation licence is therefore appropriate. The fact that no personal injuries occurred and that the damage was only limited was one of the factors taken into account in favour of the person concerned, when determining the duration of the suspension. Also important is that the person concerned has apparently learned from the situation. For that reason,



the Disciplinary Court is satisfied that the suspension of the navigation licence can be imposed partially conditionally. The decision is thereby in accordance with the Inspector's demand.

6. The decision

The Disciplinary Court,

- rules that the objections against the person concerned are well-founded;
- suspends the navigation licence of the person concerned for a period of three weeks;
- stipulates that of this suspension, a period of two (2) weeks will not be imposed unless the Disciplinary Court stipulates otherwise in a subsequent ruling based on the fact that the person concerned has once again behaved contrary to his duty of care as a good seaman in respect of the persons on board, the vessel, the cargo, the environment or shipping traffic prior to the end of a probationary period, which the Disciplinary Court hereby sets at two years;
- stipulates that the probationary period of the suspension shall commence on the date six weeks following the date of this ruling being forwarded.

Duly delivered by J.M. van der Klooster, presiding judge, W.A. Barten and T.W. Kanders, members, in the presence of V. Bouchla, LL.M., as secretary and pronounced in public session on 29 December 2023.

J.M. van der Klooster
presiding judge

V. Bouchla
secretary

An appeal against this ruling can be lodged within six weeks of the date of forwarding with the Dutch Trade and Industry Appeals Tribunal ('College van



Beroep voor het Bedrijfsleven'), Prins Clauslaan 60, 2595 AJ The Hague, P.O.
Box 20021, 2500 EA The Hague, the Netherlands.

