



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF
8 SEPTEMBER 2023 (NO. 7 OF 2023) IN THE CASE 2022.V10-ALASKABORG**

As petitioned by:

the Minister of Infrastructure and Water Management
in The Hague,

petitioner,

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

versus

A.N. V.,

the person concerned.

1. Course of the proceedings

On 31 August 2022, the Disciplinary Court received a written request for disciplinary treatment from ing. B.A.C. van Geest, aforementioned, against the person concerned as captain of the vessel sailing under the Dutch flag Alaskaborg. Twenty-two appendices were attached to the petition.

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 December 2022, a statement of defence with appendix was received from the person concerned.

The presiding judge stipulated that the oral hearing of the case would be held at 11.00 hours on 14 July 2023 at the offices of the Disciplinary Court in Amsterdam.



The court hearing was held on 14 July 2023. Ing. B.A.C. van Geest appeared at the hearing for the petitioner.

The person concerned attended the hearing via a video link. He was heard with the assistance of an interpreter. The counsel in attendance was Mr A. Jumelet, LL.M.

2. Grounds

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

The Alaskaborg had left Baie Comeau, Canada, on 07-02-2022 at 21.10 ST (08-02-2022 GMT 02.10), bound for Rotterdam. The cargo consisted of *crushed carbon anodes* divided between the two holds. While loading the Alaskaborg, it was snowing hard. While loading hold 1, it snowed less than whilst loading hold 2.

On 09-02-2022 at 18.30 ST (22.30 GMT) on the Alaskaborg, the bilge alarm (hereinafter: the alarm) went off of the bilge well portside forward in hold 2. The ship was sailing south of Newfoundland at the time. The person concerned, the chief engineer, and chief mate consulted with each other and concluded that the bilge alarm was caused by melting snow in the hold or water ingress. With the ship rolling and pitching, they felt it was too dangerous to allow crew members to go on deck and into the hold for inspection. They agreed to keep the bilge ejector, which had been additionally activated, running on the bilge well in question and to keep that up until the next morning or until the weather improved.

The next morning 10-02-2022 at 08.00 ST (11.00 GMT), the bilge ejector was stopped. The chief mate went into hold 2 with deck crew and discovered a hole in fuel tank 7SB from which VLSFO (Very Low Sulphur Fuel Oil, hereinafter: oil) was leaking. That oil mixed with the cargo, and also ran into the bilge well portside fore. This had triggered the alarm earlier.



The hole in the fuel tank had been caused by the lashing rings (d rings) of a between decks hatch having broken loose, and as a result the between decks hatch had fallen into the hold against the wall of fuel tank 7SB.

Part of the leaked oil had been pumped overboard during the more than 12 hours of continuous bilge discharge in the bilge well portside forward in hold 2.

The Alaskaborg (IMO number 9466374) is a Dutch General Cargo Vessel, sailing for the shipping company Wagenborg Shipping B.V.. Built in the year 2012, the vessel has length of 133.36 metres and a width of 21.50 metres and a cargo capacity of 11885 gross tonnes. At the time of the accident, the crew consisted of 14 people in total.

3. The Inspector's objections

According to the Inspector, the person concerned acted or failed to act as captain 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 inspector's objection against the person concerned consists of the following elements:

1. The person concerned did not consider any other possible cause of the alarm on only one bilge well, other than that it might have been caused by melting snow or water ingress.
2. The person concerned gave the order to leave the already activated bilge ejector running until the next morning or until the weather improved without knowing what was being pumped overboard.
3. (Amended as followed at the hearing:) Under the command of the person concerned, part of 55 m³ VLSFO (Very Low Sulphur Fuel Oil) was pumped into the Atlantic Ocean.



At the hearing, the inspector summarised his most important objections as follows.

Due to incorrect assumptions, the person concerned left the bilge ejector on bilge well portside forward in hold 2 activated for more than 12 hours, without having ascertained what that sent overboard. In doing so, he caused a quantity of oil to end up in the Atlantic Ocean.

The Inspector cites as the regulations not complied with:

STCW part 4 – watchkeeping at sea

Protection of marine environment

12 The master, officers and ratings shall be aware of the serious effects of operational or accidental pollution of the marine environment and shall take all possible precautions to prevent such pollution, particularly within the framework of relevant international and port regulations.

MARPOL Annex I, Chapter V

Regulation 37 – Shipboard Oil Pollution Emergency plan

Prevention of Pollution from Ships Act

Article 5

1. By or pursuant to general order in council, rules shall be laid down to protect and preserve the environment with regard to:

a. Prohibited discharges of harmful substances into the sea from ships

Prevention of Pollution from Ships Decree

Article 29 prohibited discharges under the MARPOL Convention

1. It is prohibited to discharge from a ship into the sea oil or oily mixtures referred to in regulation 1 of Annex I of the Convention, [...].

The inspector's demand is to suspend the navigation licence of the person concerned for eight weeks, four of which conditionally.



4. The position of the person concerned

The person concerned disputes that he acted in breach of Section 55a of the Seafarers Act and that he did not take account of the customs of good seamanship. In summarised form, the person concerned has put forward the following arguments to that end.

with regard to the first objection

It had snowed whilst loading the Alaskaborg, less hard whilst loading hold 1 than whilst loading hold 2. On 9 January 2022, the day-time temperature was above freezing, which enabled the snow to melt. The snow could also have melted due to heating of the fuel tanks.

It had happened before that the hatches of the vessel demonstrated leakage. Therefore, the person concerned – following consultation with the chief engineer and chief mate – could arrive at the conclusion that the alarm was caused by melting snow or water ingress in hold 2. The person concerned had no reason to take account of leaking fuel tanks adjacent to hold 2. The person concerned could not have foreseen that the between decks hatch could break loose and eventually cause a hole in fuel tank 7SB, which caused oil to leak in hold 2. The between decks hatch had been lashed properly, and inspected. The fact that the SOPEP manual deals with various causes of oil and other discharges, but not the scenario where the crew pumps leaking fuel from a fuel tank overboard from a hold bilge well, underlines that this is not an every-day scenario the person concerned should have taken into account. Generally speaking, the bilge ejector is activated when there is water in the hold.

with regard to the second objection

Following consultation with the chief engineer and chief mate, the person concerned arrived at the conclusion that, in the circumstance of a heavy rolling and pitching ship, with seawater on deck, with swell coming from various directions that were difficult to assess in the dark, it was too dangerous, irresponsible and unsafe to have crew members go on deck or



into the hold for an inspection. Therefore, it was decided to wait with inspection until the next morning or until the weather improved. The person concerned was under the impression that water was pumped overboard. The bilge system of the Alaskaborg does not have a filter to check what is pumped overboard.

with regard to the third objection

The person concerned recognises that oil was pumped overboard, but refers to the survey report he submitted, which concludes that it is not obvious that a lot of oil was pumped overboard and that it is likely that much of the oil remained in the hold (*“it seems unlikely that much fuel oil was actually pumped by the ejector out of the hold and we would expect that much of the 55 mt remains in the hold”*).

In the event the Disciplinary Court is of the opinion that the petition is declared founded in full or in part, the person concerned requests that the following is taken into account.

The person concerned is a *“first offender”*.

As soon as the person concerned became aware of the accident, he acted adequately and took mitigating measures.

Transport Canada may still impose a fine on the person concerned.

The person concerned has learned lessons from the accident.

5. The ruling of the Disciplinary Court

The evidence

In assessing the petition, the Disciplinary Court takes the following evidence as its starting point:

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

With regard to the first objection:



In response to questions from the presiding judge:

“I was the person who heard the alarm. I was on the bridge at that time, and I contacted the duty mechanic. Then I called the chief engineer. It is correct that you say that at that point there was a consultation on the bridge that also involved the chief mate.

During the consultation, it was our assumption that the bilge alarm was caused by melting snow in the hold where the well was and which was heated. We were only heating one tank and that was in the forward hold of the vessel. There were no heating activities at the aft, which meant we assumed that nothing was happening there and that little could happen to the snow there anyway. The amount of snow that had ended up in the second hold was much greater than that in the first hold.

An additional assumption or conclusion was that there was water ingress through the rubber seals. There is always a possibility of water ingress via the hatches. Therefore, I said that we took that as a secondary reason for the alarm and not as the primary one.

In answer to your question why we did not have the notion to look at the tank sounding system, I reply that the sensors can produce readings with different data during these weather conditions, with considerable shaking of the vessel. They may show plus fifty cubic meters or minus fifty cubic metres, and would be unreliable. Therefore, we did not consider that. At that moment neither I, nor the other crew members, could have assumed that the walls of the fuel tank had become damaged and that fuel had started to leak from the tank, because this had never happened before. I have never experienced that something fell on a wall and caused damage. I also cannot say that this chance was greater than usual due to the bad weather, as you suggest, because I have never experienced this before or since. I can only say that this happened during bad weather, when everything was shaking heavily.

In response to a question from the member of the Disciplinary Court as to whether I could not have foreseen that the lashings of the between deck hatch could break when the ship was rolling 35 to 40 degrees to



both sides, I reply that at the time we had finished lashing, the chief mate had observed that everything was in order in terms of lashing.”

With regard to the second objection:

In response to questions from the presiding judge:

“It is correct that you say that due to the rolling and pitching vessel we considered it too dangerous to have crew members go on deck or into the hold for an inspection.

We agreed to keep the bilge ejector, which had been activated by now, running on the bilge well in question and to keep that up until the weather improved and not until the next morning and that I would give the next order.

I was the person who gave this order and the chief engineer was in agreement. You ask what we then agreed about the next order. After my watch had finished, I went to the bridge regularly to see what was going on and how the weather was developing and whether it was possible to send people to the hold after all to take a live look at the situation.

In response to your question that, when you look at the tank sounding system hours later, you should have seen that there was a leak, I repeat what I said before, in that those sensors can show all sorts of things whilst a vessel is rolling and shaking, what they don't show is reliable data.

In response to the question from the inspector as to whether I disagree with the part in red on page 43 of the stowage plan/stability plan of the shipping company, where it says that it has been decided to stop with discharging on the basis of the sensors of the tanks, I reply that we, contrary to what it says there, took the decision to stop discharging when the chief mate went down together with the seamen and saw exactly what was going on. That decision was certainly not taken on the basis of the information from the sensors.

In response to the question from the inspector in how many places the tank contents can be read, I reply that we performed manual



measurements and that I was able to establish that the level in the tanks had decreased on that basis.

In response to the question from the inspector as to whether there is also a remote indication of the tanks, I reply that there is one on the bridge and another one in the engine section but, as I said, these are extremely unreliable when a vessel rolls and pitches.”

In response to questions from the presiding judge (continued)

“You ask whether I agree with the inspector that the weather improved over the course of the night. I repeat once more that as soon as it was permitted by the weather and the other circumstances, I sent people there immediately to survey the situation.

You refer to page 150 (appendix 19.7 petition) with under A the statement of the weather data from the journal of the Alaskaborg, under B the weather data from the Banquereau buoy (appendix 19.2 petition) in the area in question and under C those of the nearest land station (appendices 19.4 and 19.5 petition). You say that in the journal of the Alaskaborg wind force six Beaufort has been entered for the entire night to eleven hours the following morning (appendix 8.2 petition), but that according to the data from the buoy the wind speeds reduced over the course of the night (starting with twenty knots and then from sixteen, thirteen, twelve, nine, eight, seven, five to six knots). I reply that the swell moved at the same time from three point three to seven point eight at eleven hours UTC. The condition of the sea does not only depend on the wind. Naturally, the wave height was important to me, because the higher the waves, the more the vessel shakes and rolls.

The first time the alarm sounded, which was on 9 February at six hours, I tried to change course, see page 41, but this did not reduce the shaking. We were in a kind of channel that was less deep from two sides, and where the direction of the waves differed enormously. You say I have not stated this previously. It may be that it escaped my attention but that is difficult to say for me at this point.



In response to questions from a member of the Disciplinary Court as to whether a vessel on this route rolls 35 to 43 degrees according to a photo of the clinometer (appendix 10.8 petition), how I normally deal with this, and whether I considered heaving to, I reply that I have been on this route several times but that I have never experienced these conditions before. It was extremely deep and impossible to anchor there or lie still. As I said before, I tried to undertake various manoeuvres and to change course and make other changes, but nothing helped. We continued to have this problem and the vessel was shaking all the time.

In response to a question from a member of the Disciplinary Court as to whether I was aware that it was possible to discharge with the ballast pump on the holds and that from there it would be possible to pump to a ballast tank, I reply that at that time I did not have a need to know that and that I did not know that at the time. At that time, we did not know there was oil in the hold. In such a situation, the normal procedure is that you pump overboard from the bilge well. I cannot say whether this normal procedure is described in the procedures of the shipping company. The normal procedure during an alarm in the bilge wells in the holds, is that you check what is going on.”

With regard to the third objection:

In response to questions from the presiding judge:

“Nobody knows the exact amount of oil that was pumped overboard but it is perfectly possible that the quantity is less than 30 MT, as the flying coast guards of Canada – who were taking measurements and looking from above and below – were also unable to confirm this.

The difference in the tank was 54.7 cubic metres. I do not know how much of that went into the ocean. The amount of oil that ended up in the cargo is not documented anywhere.

In response to the question from a member of the Disciplinary Court as to whether Transport Canada provided an explanation of the level of the



fine, I reply that not to me, nor in Saint John's when we were there, nor since."

- B. The emails of 10 and 12 February 2022 from the shipping company to the ILT (appendices 5 and 5.1 to the petition), insofar as it contains the following:

"Hereby I want to inform you about a reported oilspill on board of the mv Alaskaborg. The following information was received from the captain:

(..) Some fuel suspected to be pumped overboard, that amount to be determinated later" and "it was estimated that about 30 cbm was pumped overboard by accident per bilge ejectorpump".

- C. The statement of the chief engineer of 11 February 2022 (Appendix 7.3 to the petition), in so far as it contains the following:

"Herewith I, Chief Engineer of MV Alaskaborg/PBUX would like to state following:

09-Feb-2022

22:30 UTC during under way to Rotterdam from Baie-Comeau I have information from duty engineer (2nd engineer) we have alarm: LAH BILGE WELL CARGO HOLD 2PS FORE.

Start pump out the bilge overboard as normal procedure. But the vacuum on the ejector still show-0.6/0.7. And alarm still not back to normal.

After consultation with captain have decision keep pumping bilge up to next morning or when weather improved and have possibility to check cargo hold. The loading cargo was done during heavy snow and looks like snow start melting.

10 - Feb - 2022

11:00 UTC- Bilge ejector was stopped, but HIGH LEVEL alarm after one minutes came again.

I informed captain about it and crew went into cargo hold for check.



11:45 UTC have information from captain we have holed the tank 75B and fuel leaked into cargo hold.

11:50 UTC start HFO transfer pump and transfer fuel from tank 75B to tank 95B. 13:20 UTC start opened the discharge pipe from ejector to overboard for check.

13:40 UTC found traces of fuel in the bilge system and inform the captain oil spill to the water.

18:20 UTC transferring the fuel completed to tank 95B. After resounding and calculated we have lost 54.7 m³ into hold 2.”

D. The statement of 19 March 2022 from the shipping company to the ILT (Appendix 9 to the petition), in so far as it contains the following:

“With ref to your questions regarding the bilge system of the mv "Alaskaborg".

1. Q: Is it possible to pump from the bilge wells in the hold to a collection tank instead of overboard?

A: The vessel does not have a collection tank for hold bilge water. Normally, the hold bilge wells are pumped out using an ejector, with the bilge water going overboard.

2. Q: If so, which tank(s)?

A: Technically, it is possible to pump bilge water with bilge-ballast pumps to ballast tank(s) but this is not a normal procedure.”

E. The questions in the email of 10 June 2022 from the ILT to the chief engineer and his answers in the email of 15 June 2022 (Appendix 15 to the petition), in so far as it contains the following:

“I have some new questions regarding the bilge & ballast & fire system. I understand that the oil from bilge well PS fwd (hold 2) was pumped out via the ballast/bilge stripping ejector.

1. Was it possible to pump also some liquid (assumed water) through ballast/bilge pump no.2?



2. If yes, is it possible to check what is pumped out by checking the filter or drain the system a little bit?"

"Regarding your questions:

- 1. Yes, it possible to pump by ballast/bilge no.2*
- 2. No no possible because no have any filters on this system."*

- F. The "detention order" of the *Environment and Climate Change Canada Wildlife Enforcement* of 13 February 2022 (Appendix 16 to the petition), in which the *wildlife officer* writes: *"I have reason to believe and do believe that the (...) Alaskaborg (...) did unlawfully deposit a substance, to wit; heavy fuel, that is harmful to migratory birds (...) in waters frequented by migratory birds"*.

Findings

The first objection is unfounded.

It has been established that the lashing rings (d rings) of the between deck hatch were broken loose and that as a result the between deck hatch had fallen against a fuel tank, which caused a hole in that fuel tank from which oil leaked. The person concerned had never experienced this before, and it occurs almost never. On board there was no procedure for dealing with bilge (hold water) from the holds. However, it does happen that sharp cargo causes fuel tanks to leak or that this happens (due to stone fall) during loading with a grab but that was not the case here. Because the person concerned could also rely on the statement from the chief mate that lashing had taken place properly, it is logical against this background and not attributable that the person concerned did not think in first instance that the alarm went off because oil was leaking from a fuel tank. At the hearing, the inspector also indicated that such a scenario is not immediately obvious. In first instance, the person concerned thought that the alarm went off in hold 2 due to melting water or water ingress. It had snowed harder whilst loading hold 2 than whilst loading the other holds and the fuel tank was heated. Water ingress had occurred previously. Under these circumstances,



with his knowledge at the time of the accident, the person concerned should not have considered another cause.

The second objection is well-founded. On the basis of the aforementioned evidence in this case, it has been established with a reasonable degree of certainty that the person concerned issued the order to keep the already activated bilge ejector activated to the next morning or until the weather improved, whilst he did not know what was being pumped overboard. In total, oil was pumped overboard for more than 12 hours.

In first instance the person concerned could think that melt water or water ingress caused the alarm to go off, but when the alarm continued to go off he should have considered that something else was going on, particularly because just one of the bilge wells continued to produce an alarm, and with an ejector capacity of 70 m³ per hour, and the vessel was rolling 30/40 degrees, there is a real chance of damage in the holds in that situation. As the heavy weather conditions initially prevented a check of why the alarm was going off, the captain should have given an order to pump into the ballast tank instead of overboard, even if there was no official procedure for that. The Chief Engineer stated that there was a ballast tank on board, and that ballast pump-two could have been used to pump bilge water from the holds to that tank. The shipping company also stated that in the email of 10 March 2022 to the ILT. The person concerned stated that he was not aware of that, but as captain he should have known which systems are present on the vessel he sails. In any case he should have asked the Chief Engineer. Instead, under the responsibility of the person concerned the alarm was blocked and the bilge ejector was stopped the following morning at 08.00 ST. At variance with the inspector, the Disciplinary Court does not deem it proven that it was responsible to have crew members go on deck or into the hold sooner for an inspection.

The third objection is well-founded.

The person concerned acknowledges that oil was pumped overboard. Although the survey report he submitted concludes that *“it seems unlikely that much fuel oil was actually pumped by the ejector out of the hold and we*



would expect that much of the 55m³ remains in the hold” (appendix statement of defence, page 27), it follows from the conclusion that the expert also assumes that oil was pumped overboard. The Chief Engineer also stated on 11 February 2022: *“found traces of fuel in the bilge system and inform the captain oil spill to the water”*. On the basis of the above, it has been established in any case that part of the 55 m³ oil was pumped into the Atlantic Ocean.

The failure 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 environment.

The disciplinary measure

The Maritime Disciplinary Court judges that the person concerned seriously failed in his responsibilities/duties as captain, which resulted in oil discharge.

The inspector's demand to suspend the navigation licence of the person concerned for eight weeks, four of which conditionally, would be in order in view of the seriousness of the shortcomings. However, the Disciplinary Court will impose a fine on the person concerned. This is partly because the Disciplinary Court believes it suitable that the same measure is imposed on the person concerned as on the Chief Engineer, and the Chief Engineer will not be affected by a suspension of the navigation licence, because he no longer sails under the Dutch flag.

Given that the person concerned has learned a lesson from the incident, the Disciplinary Court sees good cause to order a partially conditional fine.



6. Practical areas of attention

Following on from, but also separately from, the decision in this case, the Disciplinary Court sees cause to draw attention to the following points:

1. The manuals on board should include how to deal with the bilge alarm from a hold.
2. When it is not clear what is leaking, this liquid should not be pumped overboard, as safety dictates it should be pumped into the ballast tank on board of the vessel if possible.

7. The decision

The Disciplinary Court,

- dismisses the first objection against the person concerned;
- rules that the remaining objections against the person concerned are well-founded;
- orders the person concerned to pay a fine of € 2,000.00;
- stipulates that a sum of € 1,000.00 of this amount 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 people on board, the vessel, its 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 shall commence on the date six weeks following the date of this ruling being forwarded.
- stipulates that the unconditional part of this fine in the amount of € 1,000.00 must be paid within three months of today.

Duly delivered by P.C. Santema, presiding judge, A. Aalewijnse, R.A.
Oppelaar, S.W. Postma and A.W. Taekema, members, in the presence of V.



Bouchla, LL.M., as secretary and pronounced in public session on 8 September 2023.

P.C. Santema
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.