



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF  
8 SEPTEMBER 2023 (NO. 8 OF 2023) IN THE CASE 2022.V11-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.V. I,

**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 Chief Engineer 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 09 January 2023, 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 O. Yesildag, 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 captain, 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 Chief Engineer 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 left the already activated bilge ejector on 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 m<sup>3</sup> VLSFO (Very Low Sulphur Fuel Oil) was pumped into the Atlantic Ocean by the engine-room personnel.



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 captain 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 captain 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 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 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*

According to the person concerned, a much smaller quantity than the initial rough estimate of 30 m<sup>3</sup> was pumped overboard in reality. In that context he 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 did not hear the alarm go off. I heard that from the engineer on duty. I was not on duty at that time. I was then called by the captain and I went to the bridge. At that time, the vessel was shaking considerably. From one side to the other, there were angles of up to forty degrees at times. At the meeting on the bridge, the situation was discussed. I agree that there were two assumptions: melting snow, or water ingress via the rubber seals. We thought of melting snow, because at that time we were heating the fuel tank to 45 degrees because we were leaving the ecological zone and changing from diesel to heavy fuel. In confirm what the captain said, particularly about the sensors being unreliable at a time when the vessel is shaking heavily. And I have never heard of a hatch falling and damaging the walls of a tank, causing fuel to leak.

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. Sending people on deck at that point would have been the equivalent of murder, because it truly was extremely dangerous.

You ask what we then agreed about the next order. I reply that it was not possible to sleep anyway in those conditions where everything was shaking so much, and I went to look at the data from the sensors regularly from which I could see what was happening on the ejector. Those data showed me that pumping out continued.

As engineers we do not have watches. I had a normal working day from eight in the morning to five in the afternoon, and then I went into night mode and the alarm system was switched to the sleeping quarters of one of the engineers who was on watch at that time.



In response to the position of a member of the Disciplinary Court that it should have been plausible that when I pump out water at seventy cubic metres per hour, the water should have disappeared reasonably quickly, but that instead the ejector held suction pressure and that the bilge alarm did not stop either, I reply that there is no air pressure, but a vacuum. We can only measure the vacuum, not air pressure. In response to a question from a member of the Disciplinary Court that when the bilge well is empty there would not be any suction pressure, I reply that the snow continued to melt and that there was likely water ingress through the hatch covers. That is why we continued to pump.

In response to a question from a member of the Disciplinary Court as to whether it is possible to use ballast pump-two (see pipe chart) to pump bilge water from the holds to a ballast tank, I reply that this would have been possible, but that I was not given the order to do so. I cannot take those decisions myself.

With regard to the third objection:

In response to questions from the presiding judge:

When we had the draft survey carried out in Rotterdam, it became apparent that we had something like 20 to 25 tonnes more cargo, which means you can assume that oil ended up in the cargo. That is hearsay from the chief mate.

The difference in the fuel tank of 54.7 cubic metres is the difference between what we could measure in the tank, but not what we pumped overboard. Nobody can provide an exact answer to the question how much oil went into the ocean. It is perfectly possible that it was just one tonne.

I hear a member of the Disciplinary Court say that when 54.7 tonnes have disappeared from the tank and there were 20 to 25 tonnes more cargo in Rotterdam, the rest of the oil has disappeared.

- 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 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.”
- D. 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 discovery 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 kept 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 m<sup>3</sup> 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 person concerned should have advised the captain to pump into the ballast tank instead of overboard, even if there was no official



procedure for that. The person concerned 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.

Instead, 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.

According to the person concerned, a much smaller quantity than the initial rough estimate of 30 m<sup>3</sup> was pumped overboard in reality. On 11 February 2022 he stated: *“found traces of fuel in the bilge system and inform the captain oil spill to the water”* (appendix 7.3 petition). Although the survey report he submitted also 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 55m<sup>3</sup> 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. On the basis of the above evidence, it has been established in any case that part of the 55 m<sup>3</sup> 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 Chief Engineer, 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. The reason for this is that suspending the navigation licence shall not affect the person concerned, as 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 € 1000.00 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.