



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS 10  
NOVEMBER 2023 (No. 9 OF 2023) IN THE CASE 2023.V7–UK34 KOBUS JR.**

As petitioned by:

the Minister of Infrastructure and Water Management  
in The Hague,

**petitioner,**

authorised representative: ing. K. van der Wall,  
senior inspector Human Environment and Transport Inspectorate,  
(ILT)/Shipping in Zwijndrecht,

versus

A. R.,

**the person concerned.**

**1. The course of the proceedings**

On 22 March 2023, the Disciplinary Court received a written request for disciplinary treatment from ing. K. van der Wall, aforementioned, against the person concerned as skipper of the Dutch fishing vessel UK34 Kobus Jr. Fourteen 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.

No statement of defence has been received from the person concerned. The presiding judge stipulated that the oral hearing of the case would be held at 11.00 hours on 29 September 2023 at the offices of the Disciplinary Court in Amsterdam.



The court hearing was held on 29 September 2023. Inspector Ing. K. van der Wall appeared at the hearing for the petitioner accompanied by her colleague ing. B.A.C. van Geest.

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 23 July 2021, the fishing vessel UK34 Kobus Jr. collided with the platform Q4-A in the Netherlands North Sea. In doing so, the UK34 struck the platform, causing damage to both the vessel and the platform. The UK34 was returning from the fishing week. The catch had been processed and the vessel cleaned. The fishing tackle was on board and the crew was drinking coffee in the galley. The person concerned was responsible for navigation, in the role of skipper, but was busy working the administration on the computer in the skipper's cabin, located behind the wheelhouse. The person concerned normally fulfils the role of engineer, while also keeping watch in the wheelhouse of this vessel. His brother normally fulfils the role of skipper. Due to his brother being on holiday, the person concerned was skipper in the week of the collision and in the week prior to the collision. The person concerned was struggling to input all administration effectively in the computer software. He was therefore absent from the wheelhouse for an extended period of time, which resulted in him not anticipating the collision with the platform.

The UK34 Kobus Jr. (IMO number 9039212) is a Dutch fishing vessel, sailing on behalf of Zeevisserijbedrijf K. Romkes B.V. Built in 1992, the vessel has a length of 40 metres, a width of 8 metres and a cargo capacity of 150 gross tonnes. At the time of the accident, the crew consisted of 6 people in total.



### 3. The Inspector's objections

According to the Inspector, the person concerned acted as skipper contrary to the duty of care that he, as a good seaman, should observe with regard to the persons on board, the vessel, the cargo, the environment and shipping traffic (article 55a of the Seafarers Act).

The objection against the person concerned consists of the following elements:

1. Despite the person concerned being the officer of watch at the time of the collision, he was absent from the wheelhouse for an extended period of time.
2. During his watch, the person concerned was involved in other business for an extended period of time, rather than his navigation tasks.
3. The person concerned did not appoint another crew member as his replacement to conduct the navigation and keep watch.
4. The watch alarm was not switched on.
5. An electronic chart was used as the primary form of navigation, which has not been approved as ECDIS.
6. The deck rating eyes and ears (hereinafter: 'E+E') was lacking, despite being compulsory in accordance with the *Minimum Safe Manning Document* (hereinafter: 'MSMD').
7. The muster roll had not been correctly completed. The various functions were not correctly stated and the engineer was missing on the muster roll.

The Inspector cites as the regulations not complied with:

#### **Ships Act – article 4(1k)**

Prior to undertaking any journey with his vessel, the captain must ensure that the vessel is adequately crewed by personnel suitable for the tasks, physically capable of conducting their work, with a view to the safety of the vessel.



### **Seafarers Act, article 33(2)**

The muster roll, [...], contains the names and functions of all crew members deployed on board.

### **Seafarers Act, article 18**

Section 1 any person fulfilling a function on board a vessel as intended in the second section, and subject to the requirements of this act, must hold a valid navigation licence for that function.

Section 2j Deck rating sea fishery.

### **Commercial Code, second book, third title**

Article 343(1): The captain is obliged to act strictly in conformity with the usual rules and the existing regulations to secure the seaworthiness and safety of the vessel, the safety of those on board and the goods on board.

### **STCW-F 1995**

#### **Chapter IV Watchkeeping**

4 En route to or from fishing ground

4.1.1 The composition of the watch shall at all times be adequate and appropriate to the prevailing circumstances and conditions, and shall take into account the need for maintaining a proper look-out.

4.1.2 When deciding the composition of the watch the following factors, inter alia, shall be taken into account:

.1 at no time shall the wheelhouse be left unattended.

4.3.4 The officer in charge of a navigational watch shall not be assigned or undertake any duties which would interfere with the safe navigations of the vessel.

4.5.1 The officer of watch shall:

.1 keep the watch in the wheelhouse.

.2 in no circumstances leave the wheelhouse until properly relieved.

4.6.1 A proper look-out shall be maintained in compliance with Rule 5 of the International Regulations for Preventing Collisions at Sea, 1972. It shall serve the purpose of:



- .1 maintaining a continuous state of vigilance by sight and hearing as well as by all other available means, with regard to any significant changes in the operating environment;
- .2 fully appraising the situation and risk of collision, stranding and other dangers to navigation.

At the hearing, the inspector explained that a reprimand was demanded in this disciplinary case, as the economic police courts have already imposed a financial penalty as a result of this collision.

#### **4. The position of the person concerned**

To summarise, at the hearing, the person concerned admitted that the first four objections were correct. The person concerned stated that he was unaware of the conditions of the final three objections.

#### **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 by the person concerned at the hearing, in so far as it contains the following, with regard to the objections given in point 3 of this ruling:

Despite being responsible for navigation of the UK34 Kobus Jr., the person concerned stated that he was absent from the wheelhouse for a period of approximately 30 minutes prior to the collision with platform Q4-A. He was inputting the fishing catch in computer software in the skipper's cabin. With hindsight, this administrative task proved to be lengthy due to the person concerned having little experience with the software in question, and having received comments and criticism regarding incorrect input in the



previous week. When charting the course, he had never expected to spend so much time on his administrative work. According to the person concerned, he had underestimated the situation and believed he had enough time (for approximately 15 minutes' work).

He should have gone down and instructed someone else to keep watch in the wheelhouse. The person concerned believes that this is attributable to him.

The person concerned stated that he had switched off the watch alarm while conducting his work in the wheelhouse. He always switches off the alarm when conducting work, to avoid having to constantly walk back and forth to deactivate the button. He subsequently forgot to reactivate the watch alarm. The CPA (*Closest Point of Approach*) alarm on the radar was activated as standard, but the person concerned could not hear or see the alarm or light signals from the skipper's cabin.

When questioned, the person concerned stated that he was not aware of the fact that the electronic charts on board, *Quodfish* and *TimeZero*, must qualify as an *Electronic Chart Display Information System* (hereinafter: 'ECDIS'). Furthermore, he had not been involved in the purchase of the electronic navigation and charts system on board. As far as the person concerned can remember, the current *Quodfish* system has been on board the vessel (from his 18<sup>th</sup> year on) while *TimeZero* was added over the past eight years. The device is not fitted with a sticker showing the text *for training only*. Finally, the person concerned stated that despite there being a paper chart on the mapping table, *Quodfish* and *TimeZero* are the primary means of navigation. The person concerned also stated that he should have been aware that he needed to stay away from the platform Q4-A, the electronic chart clearly showed its position, marked by a ring around the platform. However, the person concerned did not see this, as he was not in the vicinity of the electronic chart.



When questioned, the person concerned stated his awareness of the requirements for a vessel's crew, and his lack of awareness of the MSMD. He also stated that he was unaware of the lack of a deck rating E+E on board. The UK34 has a regular crew on board. The crew were chosen by the brother of the person concerned, who normally fulfils the role of skipper of the UK34. The person concerned and his brother jointly assess whether the crew is adequate and proficient. The crew members are subjected to a physical examination annually, whereby an eyesight and hearing test takes place.

When questioned, the person concerned stated that he no longer remembered how the muster roll was drawn up, as this is a standardised process. He believes that his brother had drawn the muster roll beforehand, and that he himself had automatically activated it on Monday without paying it any real attention.

- B. The report by the Maritime Police (PL2600–2021153024) included as appendix 11 to the petition, is as follows:

On Friday, 23 July 2021, at approximately 10.25 hours local time, the duty officer of the Maritime Police team received a telephone call from the Chief of the Netherlands Coastguard Monitoring department, that the Dutch fishing cutter UK34 had collided with platform Q4–A in the North Sea. There were no injuries and the cutter had been able to continue its course to the port of Harlingen.

Name of the vessel: Kobus Jr.

On Friday, 23 July 2021, at approximately 17.15 hours, two reporting officers spoke with a man who declared himself to be the skipper of the UK34, on board the UK34. He stated his name to be: A. R.

The reporting officers also observed the left-hand computer screen in the port side console in the skipper's cabin of the UK34, shown in photo 18 of appendix 4 of this report. The computer screen shows the *Timezero*



navigation programme, with the course taken by the UK34. It shows that the course sailed runs more or less through the centre of the safety zone of the platform Q4-A. The Q4-A platform is located in the centre of this zone.

### Findings

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

- the person concerned was the officer of watch at the time of the collision, and that he was absent from the wheelhouse for an extended period of time (objection 1);
- during his watch, the person concerned was involved in other business for an extended period of time, rather than his navigation tasks (objection 2);
- the person concerned did not appoint another crew member as his replacement to conduct the navigation and keep watch (objection 3);
- the watch alarm was not switched on (objection 4).

The failure of the person concerned to comply with the safety regulations and the associated supervision constitutes a violation of the regulation of article 55a of the Dutch Seafarers Act in conjunction with article 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 fifth objection is unfounded. It is indeed true that *Quodfish* and *TimeZero* are not qualified as ECDIS. However, the Disciplinary Court is of the opinion that *TimeZero* is updated weekly and that any changes observed by fishing vessels at sea are communicated by them to *TimeZero* via *WhatsApp*. This makes *TimeZero* an extremely reliable and current electronic charting and navigation system for sea fishery, so that its use as a primary means of navigation within sea fishery is not contrary to good seamanship.





The sixth objection is unfounded. In the opinion of the Disciplinary Court, some degree of doubt has arisen regarding whether the person concerned acted contrary to good seamanship within the scope of this objection. The person concerned is personally inadequately aware of the true requirements to be able to make a statement on this.

The email message of 5 August 2021 at 14:44 hours, from the Shipping Kiwa Register NL to the inspector, enclosed as appendix 10 of the petition, does however show only three of the six crew members to have a navigation licence. As the MSMD requires four crew members to hold a navigation licence rather than three crew members, the aforementioned email message might indicate that the UK34 was at that time lacking one crew member with an “E+E” navigation licence, and therefore did not comply with the MSMD. However, the aforementioned email message does not show which appendices were actually provided by the inspector to the Shipping Kiwa Register NL, so that it remains unclear whether the correct names were provided for assessment. Also the fact that the maritime police report states that a crew check conducted on 23 July 2021 showed the UK34 to be manned in accordance with the requirements of the Shipping crewing act (see page 31 of the petition), results in too much doubt for the Disciplinary Court to declare the objection founded.

The seventh objection is unfounded. The Disciplinary Court judges that the mere fact that the muster roll was incorrect does not automatically imply a serious failure in the duty of care that should be observed by a competent seaman in relation to the people on board, the vessel, its cargo, the environment and shipping traffic. Good seamanship refers to actually sailing with an adequate and proficient crew, and there is insufficient evidence that this was not the case.

#### The disciplinary measure

The Disciplinary Court judges that the person concerned has seriously neglected his responsibilities as skipper, which resulted in the vessel colliding with platform Q4-A and in damage to the vessel. Although there is



empathy considering the complicated nature of the fishing log book administration, the person concerned should have ensured that the watch took place (by another person). If he had switched on the watch alarm, it would have needed to be reset in the wheelhouse, or otherwise the general alarm would have sounded and the collision could probably have been avoided.

As the person concerned has already had a considerable financial penalty imposed by the economic police courts (€ 4,100, of which € 2,050 conditionally) and the person concerned recognises the error of his actions, the Disciplinary Court will simply impose a reprimand.

#### 6. Professional development pointers

Separately from the decision in this case, the Disciplinary Court sees cause to draw attention to the following points:

If the Belgian policy with regard to the muster roll (possibly automated) would be adopted in the Netherlands, more accidents could be prevented.

The digital system in Belgium operates as follows: The Belgian government digitally links any diplomas and certificates required in sea fishery, to the fisher in question who has attained the diploma or certificate. The skipper adds the names of his crew members to the group list, and submits this list digitally. The appropriate documents are also required to be kept on board. If the documents are incorrect or any persons on the list are missing on board, mustering is not allowed and/or the vessel may not leave the harbour. Last but not least, the Belgian government actively monitors compliance with these rules.



## **7. The decision**

The Disciplinary Court,

- declares objections 1 through 4 as founded;
- dismisses objections 5 through 7 as unfounded;
- imposes the measure of a reprimand on the person concerned.

Duly delivered by P.C. Santema, presiding judge, J.L Schot and J.K.J. Bout, members, in the presence of K. de Ridder as secretary and pronounced in public session on 10 November 2023.

P.C. Santema  
presiding judge

K. de Ridder  
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.