



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF
30 OCTOBER 2024 (NO. 10 OF 2024) IN THE CASE 2024. V5–JORIS SENIOR
ARM18**

As petitioned by:

the Minister of Infrastructure and Water Management
in The Hague,
petitioner,
authorised representative: (ir) K. van der Wall,
senior inspector Human Environment and Transport Inspectorate
(ILT)/Shipping in Zwijndrecht

versus

D.J.C. O.,
the person concerned.

1. The course of the proceedings

On 13 August 2024, the Disciplinary Court received a written request (with annexes) for disciplinary treatment from (ir) K. van der Wall, aforementioned (hereinafter the inspector) against the person concerned as first officer of the Joris Senior ARM 18 vessel sailing under the Dutch flag.

The Disciplinary Court has notified the person concerned of the petition, enclosing a copy of the petition with annexes, 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 hearing of the case will be held at 11:00 hours on 18 October 2024 at the courtroom of the Disciplinary Court in Amsterdam.



The court hearing was held on 18 October 2024. Inspector (ir) 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.

In the night of Wednesday 28 to Thursday, 29 September 2022, the fishing vessel Joris Senior, fleet number ARM 18 (hereinafter: the vessel), collided with the anchored Golden Daisy tanker (hereinafter: the tanker). This occurred in anchorage area 8, to the north of the approach to IJmuiden. The ARM 18 was under steam to IJmuiden after a week of fishing the North Sea. The tanker suffered a hole in the sludge tank during the collision. Approximately 2 m³ of sludge was discharged into the sea. The ARM 18 itself suffered damage to the prow. All the damage was well above the waterline. There were no personal injuries.

The Joris Senior ARM 18 (IMO number 9048677) is a Dutch fishing vessel, owned by J. Meulmeester C.V. in Arnemuiden. Built in 1992, the vessel has a length of 46 metres and a gross tonnage of 572. At the time of the accident, the crew consisted of six people in total. The person concerned was signed on as deputy skipper and was the officer of the watch at the time of the collision.

3. The Inspector's objection

3.1 According to the Inspector, the person concerned acted or failed to act as first officer/officer of the watch 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 objection against the person concerned consists more specifically of the following elements:

1. the person concerned left the bridge for approximately five minutes, while nobody else was present on the bridge;
2. the person concerned misjudged the risk of collision before leaving the bridge to go to the toilet;
3. the person concerned did not wake the skipper, despite it nearly being time to do so;
4. the collision occurred partly because of the above-mentioned objections.

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

COLREG – Part B, Section I, Rule 5

Every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.

COLREG – Part B, Section I, Rule 7 (a)

Every vessel shall use all available means appropriate to the prevailing circumstances and conditions to determine if risk of collision exists. If there is any doubt such risk shall be deemed to exist.

STCW-F – Annex, Chapter IV, Reg. 1 Basic principles to be observed in keeping a navigational watch on board fishing vessels

- 2 [...] the officers of the watch are responsible for navigating the fishing vessel safely during their periods of duty, when they will be particularly concerned with avoiding collision and stranding.
4. En route to or from fishing grounds



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.

4.5 Navigational duties and responsibilities

4.5.1 The officer of watch shall:

.1 keep watch in the wheelhouse;

.2 in no circumstances leave the wheelhouse until properly relieved

4.6 Look-out

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:

.2 fully appraising the situation and the risk of collision, stranding and other dangers to navigation.

3.3 The inspector's demand is: a fine of 3000 euros of which 1000 euros conditionally, with a note that the inspector requests the Disciplinary Court to take into account the personal circumstances of the person concerned, which have become known at the hearing, in the judgement.

4. The position of the person concerned

In summary, the person concerned acknowledged all of the inspector's objections.

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 – in so far as it contains the following:

“I was officer of the watch. I most certainly did not fall asleep. I desperately needed to go to the toilet and therefore left the bridge for approximately 5 minutes, without anyone else being there. The skipper had prepared the voyage plan and plotted a course to enter the harbour. I didn't follow that course precisely. I was able to traverse the anchorage area, because it was not busy and was therefore a quicker route in. I saw the tanker and planned to pass behind it at 0.3 miles. When I came back, we had collided. I don't know what went wrong. On going down below, I did not realise that I was two miles from the tanker. The agreement was that I would wake the skipper at around 8 miles before IJmuiden. With hindsight, that would have been better because there would have been someone on the bridge. It was not sensible of me to leave the bridge, with so many people asleep on board. I'm aware that the situation could have ended much more seriously. I agree with you that 0.3 miles is not enough with such a current.

I don't know how I will pay the fine. My financial situation is not very healthy. I have already been fined by the public prosecutor (for not possessing the correct documents). I have a wife and two children, and my own home. My health is suffering. I will undergo a hernia operation on 31 October. They will remove two neck vertebrae. The doctors believe that the accident contributed to my physical health problems. I will no longer be able to work as a crew member.”

- B. The coastguard report of the accident to the ILT – insofar as it contains the following:

“The text contains the 11-point form completed as a result of a report from the Golden Daisy. The vessel was in the anchorage 8 area of IJmuiden. There, the fishing vessel ARM 18 collided with the Golden Daisy. The vessel did not initially report any outflow, but leakage was observed at a later point in time. Approximately 2– 3 m³ of sludge was lost. The hole is above the waterline, therefore there is no intake.”



C. The Maritime Police Team report, formulated on 13 October 2022 – insofar as it contains the following:

“Thanks to the digital shipping monitoring system available to us, it was possible to retrieve the historic data regarding the time, position, course and speed of the fishing cutter ARM 18 Joris Senior. We could also retrieve the position of the anchored tanker, Golden Daisy. An animated representation of the fishing cutter ARM 18 Joris Senior can be given, showing the appropriate data. I, the reporting officer, assessed the animated representation of the collision, and described the track of the ARM 18 Joris–Senior in chronological sequence. The ARM 18 Joris–Senior could be seen entering the “Off Texel” traffic separation scheme at a 90° angle at 21.46 hours UTC on 28 September 2022. The heading over the ground at that time was 137 degrees and the speed 10.4 knots. The ARM 18 Joris–Senior exited the traffic separation scheme at 22.03 hours UTC, with a heading of 140 degrees and speed of 10 knots. The ARM 18 Joris–Senior could then be seen holding a constant heading of 126 degrees towards IJmuiden. The course varied by 1 to 2 degrees to port/starboard during this track. The speed varied from 9.9 to 10.1 knots. On Thursday, 29 September 2022 at 00.14 hours UTC, the ARM 18 Joris–Senior was navigating in a position which would require the vessel to report to the VHF vessel traffic service in IJmuiden. At 00.23 hours UTC, the ARM 18 Joris–Senior entered the IJmuiden anchorage area still with a constant heading and speed. At 00.26 hours UTC, the ARM 18 Joris–Senior collided with the anchored Golden Daisy tanker at a position of 52.30,902 North and 004.19,413 East. The historical data for the track of the ARM 18 Joris–Senior shows that it did not change course or reduce speed to avoid a collision.”

5.2 Considerations

The person concerned was the officer of the watch at the time of collision. He was alone on the bridge. There was no lookout. The skipper had retired to his accommodation, as had the remaining crew members. The skipper had



prepared the voyage plan following the fishing activities. According to the plotted route, the vessel would navigate north of the anchorage area to IJmuiden. The person concerned opted to deviate from the plotted route and to navigate through the anchorage area. There, he collided with the anchored tanker. He has stated that he left the bridge to go to the toilet shortly before the collision. He had previously observed the tanker. It should have been clear to him that constant alertness was essential on the bridge when navigating through the anchorage area. He should therefore have called the skipper to the bridge prior to his planned visit to the toilet. In this case, this is even more obvious as the vessel had (approximately) approached the position at which the skipper should have been called anyway, as agreed. The person concerned should not have assumed that no risk of collision could develop at a CPA set to 0.3 miles. He should have taken account of the influence of the wind and current. The conclusion must therefore be that this incident was caused by him acting contrary to good seamanship. The situation could have ended much more seriously. The inspector's objections are well-founded: the behaviours of which the person concerned is accused – which were contrary to the behavioural regulations named by the inspector and the conditions of the Seafarers Act – have been proven founded.

The Disciplinary Court sees cause to draw attention to the fact that collisions are unfortunately not uncommon during return voyages, following a tough fishing week. With a view to safe homecoming therefore, it is recommended that extra attention be paid to good/alert bridge crewing.



5.3 The disciplinary measure

The Disciplinary Court judges that the person concerned failed in his responsibilities as first officer/officer of the watch, which resulted in the collision. Aside from the damage caused to the fishing vessel and the tanker as a result of that collision, the behaviours of which the person concerned is accused also endangered the safety of the crew members.

With a view to the severity of the proven behaviours, imposing the fine demanded by the inspector is most certainly justified.

Due to the circumstances which became apparent at the hearing:

- that the person concerned was fined € 1,500.00 by the public prosecutor due to him not being authorised to act as deputy skipper on the vessel;
- that he is unable to work for health reasons and is facing an operation, partly due to injury sustained during the accident;
- that he is the sole earner and has children still living at home;

the Disciplinary court sees cause to determine that a slightly larger share of the fine be imposed conditionally.

6. **The decision**

The Disciplinary Court,

- rules that the objection against the person concerned is well-founded;
- imposes a fine of € 3,000.00 on the person concerned, of which € 1,500.00 conditionally, with the stipulation that the non-conditional part of this fine must be paid within three months from today;
- stipulates that the conditional part of the fine 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 ship, the cargo, the environment, and



- 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 conditional part of the fine shall commence on the date six weeks following the date of this ruling being forwarded.

Duly delivered by J.M. van der Klooster, LL.M., presiding judge, H.J. Ijpma and P.L. Van Slooten, members, in the presence of V. Bouchla, LL.M., as secretary and pronounced in public session on 30 October 2024.

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.