



**RULING OF THE MARITIME DISCIPLINARY COURT OF THE NETHERLANDS OF
19 JULY 2024 (NO. 8 OF 2024) IN THE CASE 2024.V1 – CORA JO**

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

O. N.,
the person concerned.

1. The course of the proceedings

On 7 February 2024, the Disciplinary Court received a written request (with annexes) for a disciplinary hearing from (ir) K. van der Wall, aforementioned (hereinafter the inspector) against the person concerned as captain of the Cora Jo vessel sailing under the Dutch flag.

The Disciplinary Court has notified the person concerned of the petition (enclosing a copy of the petition with 13 annexes, as well a video file), and informed the person concerned of the right to submit a statement of defence.

A statement of defence was received from the person concerned on 16 April 2024.



The presiding judge stipulated that the hearing of the case will be held at 14:00 hours on 24 May 2024 at the courtroom of the Disciplinary Court in Amsterdam.

The court hearing was held on 24 May 2024. Inspector (ir) K. van der Wall, accompanied by her colleague (ir) B.A.C. van Geest, appeared at the hearing on behalf of the petitioner.

The person concerned attended the hearing via an online video link from Ireland. He was assisted by a Ukrainian–Dutch interpreter.

2. Grounds

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

On 19 October 2023, the Cora Jo vessel was navigating in the opposite traffic lane of the traffic separation scheme of Norra Kvarken, in Swedish waters, with restricted visibility due to heavy snowfall. This was a conscious choice by the captain, who was also the officer of the watch.

The Cora Jo (IMO number 9268875) is a Dutch multi–purpose dry cargo vessel, owned by Eems Beheer XVI B.V. in Delfzijl. The vessel was built in 2006, is 111.40 metres long and 13.35 metres wide.

3. The Inspector's objections

3.1 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 objection consists of the following elements:



1. Despite restricted visibility due to heavy snowfall, the person concerned opted to navigate in the incorrect traffic lane of the Norra Kvarken traffic separation system. In doing so, the person concerned took insufficient or no account of the following factors:
 - a. There was restricted visibility due to snowfall;
 - b. The heavy snowfall could cause interference on the radar, which might make radar detection difficult.

By navigating in this way, the person concerned not only increased the distance to the CEMSEA III but at the same time took a serious risk. After all, he could not preclude that other shipping traffic might be navigating in the south-westerly direction, not being visible on the radar, and not being timely visually detected as a result of the restricted visibility.

2. Despite restricted visibility due to heavy snowfall and navigating in an opposite traffic lane of a TSS, there was no lookout on the bridge.

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

Commercial Code, second book, third title

Section 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.

COLREG 1972, Part B, Section I, Rule 5: Look-out

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.

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

16 [...] The officer in charge of the navigational watch may be the sole lookout in daylight provided that, on each such occasion:

1. the situation has been carefully assessed and it has been established without doubt that it is safe to do so;



2. full account has been taken of all relevant factors, including, but not limited to:

- state of weather;
- visibility;
- traffic density;
- proximity of dangers to navigation;
- the attention necessary when navigating in or near traffic separation schemes; and

3. assistance is immediately available to be summoned to the bridge when any change in the situation so requires.

COLREG 1972, Part B, Section I, Rule 8: Action to avoid Collision

c. If there is sufficient sea room, alteration of course alone may be the most effective action to avoid a close-quarters situation provided that it is made in good time, is substantial and does not result in another close-quarters situation.

e. If necessary to avoid collision or allow more to assess the situation, a vessel shall slacken her speed or take all way off by stopping or reversing her means of propulsion.

COLREG 1972, Part B, Section I, Rule 10: Traffic Separation Schemes

b. A vessel using a traffic separation scheme shall:

- (i) proceed in the appropriate traffic lane in the general direction of traffic flow for that lane;
- (ii) so far as practicable keep clear of a traffic separation line or separation zone

COLREG 1972, Part B, Section III, Rule 19: Conduct of Vessels in Restricted Visibility

b. Every vessel shall proceed at a safe speed adapted to the prevailing circumstances and conditions of restricted visibility. [...]

c. Every vessel shall have due regard to the prevailing circumstances and conditions of restricted visibility when complying with the Rules of Section I



of this Part.

SOLAS Chapter V, Regulation 10

7. A ship shall use a mandatory ships' routing system adopted by the Organization as required for its category or cargo carried and in accordance with the relevant provisions in force unless there are compelling reasons not to use a particular ships' routing system. Any such reason shall be recorded in the ships' logbook.

IMO Resolution A.1106(29) Revised guidelines for the onboard operational use of shipborne automatic identification systems (AIS) – Annex

2 CAUTION

Not all ships carry AIS.

The OOW should always be aware that other ships, in particular leisure craft, fishing boats and warships, and some coastal shore stations including VTS centres, might not be fitted with AIS.

The OOW should always be aware that AIS fitted on other ships as a mandatory carriage requirement might, under certain circumstances, be switched off on the master's professional judgement.

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33 The OOW should always be aware that other ships fitted with AIS as a mandatory carriage requirement might switch off AIS under certain circumstances by professional judgement of the master.

34 In other words, the information given by the AIS may not be a complete picture of the situation around the ship.

3.3 A the hearing, the inspector explained that she had collaborated with the maritime police regarding this violation, and opted for a disciplinary hearing rather than criminal proceedings. No Dutch parties were involved, except for the fact that the vessel was sailing under the Dutch flag. The



person concerned comes from the Ukraine and the shipping company is Irish. It did not seem likely that the Cora Jo would be in the Netherlands in the near future, and there were no opportunities to hear the person concerned by telephone and to determine his identity in the correct manner. Moreover, the person concerned had failed to act with good seamanship in this violation (in the opinion of the inspector). It was for these specific reasons and not simply a policy choice, that the case has been brought before the Disciplinary Court.

3.4 The inspector's demand is: an unconditional fine of € 1,750.00. In doing so, the inspector is in agreement with the transaction which the Public Prosecutor (OM) would offer.

4. The position of the person concerned

The person concerned admits that he entered the incorrect traffic lane. He had done so because according to him, there was no traffic entering the other traffic lane, enabling him to keep a minimum distance of 0.5 nm versus another vessel, the CEMSEA III.

With hindsight, the person concerned believes that it would have been more sensible if he had decided to slacken his speed to keep a safe distance or to turn round to port before entering the TSS, which would have increased the distance. The person concerned believes the cause to lie in the human factor, in a sense that he incorrectly concentrated on simply maintaining a safe CPA. The person concerned disputes that there was no lookout on the bridge. The lookout was indeed present, though this had not been recorded in the logbook. The person concerned states that this was also a lesson to him, that he must work more accurately on inputting data in the logbook.



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:

The facts referred to in the brief description of the accident on page three of the petition are correct. I agree with the inspector's objection. I chose to sail in the incorrect traffic lane, and while doing so I did not take sufficient account of the restricted visibility and the possible interference on the radar due to heavy snowfall. I was more focused on the CPA of the vessel and another vessel, the CEMSEA III, in order to remain at a distance of at least 0.5 miles from that vessel.

The CEMSEA III was sailing transversely to SB at a distance of 0.5 nm with the same course and approximately 0.2 kt quicker and was approaching the Cora Jo. As soon as the distance was increased to 0.5 nm, the Cora Jo returned to the correct traffic lane.

You ask whether it would not have been a better solution to slacken speed instead of opting to sail through the incorrect traffic lane. Yes, I believe it would with hindsight, as explained in my letter, and that it would also have been better to have turned round to port earlier. The CEMSEA III would then have been able to overtake the Cora Jo at a higher speed. I realised that I was sailing in a prohibited area, but once the snow became lighter, I gained better sight and I could see – also on the radar – that there were no vessels. I agree with the inspector that this resulted in me taking the risk that I might not identify other vessels in time.

There was a lookout on the bridge, but I forgot to record that in the logbook. It was one of the seaman. I had requested that he come to the bridge, because of the worsening visibility. He came to the bridge somewhere between 8:15 and 8:20 hours. The times in the logbook that a lookout was indeed recorded, are the compulsory lookout times during the hours of



darkness. In daytime, there is only a lookout when there is restricted visibility.

I started sailing in 1982. I have been an officer since 2005 and captain since 2011. This is my first violation and I hope that it will be my last. I have been sailing on Dutch vessels since 2009. I still work for a Dutch shipping company. The shipping company did not undertake any measures as a result of this violation.

I admit I committed a violation. I have had time to think long and often about what happened. I agree to a fine being imposed and I am willing to pay the fine proposed by the inspector.

- B. The “Incident Report Info” of the Swedish Maritime Administration with a screenshot (annex 4 of the petition), in so far as it contains the following:

“Incident date and time: 2023-10-19 07:07

Report vessel: CORA JO

Geographical Area: TSS in Norra Kvarken

Vessel Traffic Rules Infringement Description:

Traffic separation schemes B.(I) Proceed in the appropriate traffic lane.

CORA JO PROCEEDS IN WRONG TRAFFIC LANE IN 'TSS IN NORRA KVARKEN'.

SWEDEN TRAFFIC INFORMED OOW ABOUT THE VIOLATION ON VHF 16/62.

OOW INFORMED SWEDEN TRAFFIC THE REASON WAS TO AVOID CLOSE SITUATION TO NEARBY VESSEL.”

- C. The logbook (annex 8 of the petition) with a note on 19 October 2023: “Took SW traffic lane to avoid close quarters with CEMSEA III visibility -0,2 snow batches”.



5.2 Considerations

The objection is well-founded. It has been proven that the person concerned, as an experienced captain, consciously chose to sail in the incorrect traffic lane, and while doing so did not take sufficient account of the restricted visibility and the possible interference on the radar due to heavy snowfall. The person concerned has personally acknowledged this. As the person concerned himself admitted (with hindsight), there were other ways in which he could and should have given way to the CEMSEA III. He could have slackened his speed to allow the CEMSEA III to overtake.

There is no proof that there was no lookout on the bridge. During the hearing, the person concerned stated that there was a seaman on lookout, but that he had forgotten to record this in the logbook because it was not a compulsory registration moment. Taking into account the explanation given by the inspector at the hearing, that the second element of the objection did not contribute to determining the amount of fine, this does not result in the Disciplinary Court reducing the fine demanded by the inspector. The person concerned has been sailing vessels under the Dutch flag since 2009, will not suffer financial difficulty as a result of the fine and himself agrees with the (amount of the) fine.

5.3 The disciplinary measure

The Disciplinary Court judges that the person concerned has seriously failed in his responsibilities as captain. Luckily this did not result in a collision.

In view of the seriousness of the evident behaviours, a fine of the amount mentioned below is appropriate. The Disciplinary Court also agrees to the amount of fine equal to the transaction which the Public Prosecutor (OM) would offer if the case were to be heard by the criminal courts (as apparent from the email of 31 January 2024, sent from the OM to the inspector).



6. The decision

The Disciplinary Court,

- declares the first element of the objection to be well-founded and the second element to be unfounded.
- imposes a fine of € 1,750.00 on the person concerned, with the stipulation that this fine must be paid within three months from today.

Duly delivered by P.C. Santema, LL.M., presiding judge, O.F.C. Magel and C.R. Tromp, members, in the presence of V. Bouchla, LL.M., secretary, and pronounced in the public hearing on 19 July 2024.

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.