

DECISION AND REASONS FOR DECISION

FISHERMEN CLAIMS APPEAL BOARD (TRAWL BAN)
CASE NO. AB0051

Between

LAM AH CHIN (林亞千)

Appellant

and

THE INTER-DEPARTMENTAL WORKING GROUP

Respondent

Date of Hearing: 13 March 2015

Date of Decision and Reasons for Decision: 15 March 2016

DECISION AND REASONS FOR DECISION

JUDGMENT (Chairman Ms. HUI Mei-sheung, Tennessy, Member Miss Barbara Wong, Member Miss KUNG Ching-ye, Athena, Member Mr. Lee Ka-chung, William and Member Mr. Chau How-chen):-

Introduction

1. Case number AB0051 is an appeal by Mr. Lam Ah Chin (“**Mr. Lam**”) against the decision of the Inter-departmental Working Group (“**IWG**”) dated 27 December 2012 (“**the Decision**”¹) determining that Mr. Lam’s fishing vessel (with Certificate of Ownership Number CM71744A) (“**the Vessel**”) was an eligible silver shrimp trawler (梅蝦拖) of 7.4m in length and awarding Mr. Lam an *ex gratia* payment of \$423,461 under the one-off assistance scheme in respect of the Vessel.

¹ Hearing Bundle p 73

The Trawl Ban and the EGA

2. According to Paragraph 3 of Food and Health Bureau Paper dated 29 January 2013 (“**FHB Paper**”), the Chief Executive announced in his 2010-11 Policy Address that the Government would implement a basket of fisheries management measures including banning trawling in Hong Kong waters (“**the Trawl Ban**”) through legislation in order to restore our seabed and marine resources as early as possible. The legislation for the Trawl Ban was passed by the Legislative Council (“**LegCo**”) in May 2011 and came into effect on 31 December 2012.
3. The Finance Committee (“**FC**”) of LegCo also approved in June 2011 a one-off assistance package to trawler owners affected by the Trawl Ban, which included making ex-gratia allowance (EGA) to affected trawler owners for permanent loss of fishing grounds arising from the Trawl Ban (“**EGA Package**”).

The Policy and Eligibility Criteria

4. According to paragraph 7 of the FHB Paper, the policy and guiding principles underlying the EGA Package are set out in FC Paper FCR(2011-12)22 (“**FC Paper**”).
5. The eligibility criteria for application of EGA (“**the Eligibility Criteria**”) are set out in Part (A) of Enclosure 1 to the FC Paper :

“(A) EGA

The eligibility criteria are to be determined by an inter-departmental working group (IWG) established before the commencement of the registration for applying for EGA. Only applicants who can meet the criteria are eligible for the EGA. The criteria should include, inter alia, the following:

- (a) the applicant must be the owner of a trawler vessel which is used for fishing only and not engaged in other commercial activities as at 13 October 2010, and at the time of application is still the owner of that trawler;
- (b) the applicant must be the holder of a valid certificate of ownership and operating licence of a Class III vessel issued by the Marine Department (MD) under the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D) in respect of the

trawler vessel on or before 13 October 2010; or has obtained an approval-in-principle letter for construction of a Class III vessel issued by the MD on or before 13 October 2010, and submit a document proving that the vessel under construction is a trawler vessel;

- (c) where the application is in respect of an inshore trawler, the trawler vessel in the application must wholly or partly fish within Hong Kong waters.

The Appeal Grounds

6. In this appeal, Mr. Lam has grievances with the amount of compensation awarded to him². He contends that his Vessel only operated in Hong Kong waters and on average, he could make a net income of about \$150,000 each year after deducting expenses. The present EGA amount of \$423,461 is disproportionately small when compared with his net income.

The Appeal Hearing

7. At the hearing, (**“the Appeal Hearing”**):
- (1) Mr. Lam conducted the appeal through his authorised representative, Mdm. 李間好; and
 - (2) IWG conducted the appeal through their representatives, Ms. Louise Li (**“Ms. Li”**) and Dr. So Chi-ming (**“Dr. So”**).
8. Mr. Lam produced a bundle of sale receipt copies at the hearing. Those receipts were said to be an incomplete set of receipts covering 2005, 2008 to 2012, totalling some \$507,796 in value, which he claimed to be referable to prawns caught using his efforts and the Vessel. Those receipts, as well as certain tables produced by Mr. Lam, have made their way into Hearing Bundle (Part II) pp 345 to 460 since the hearing.
9. Mr. Lam argued that owners of some smaller powered silver shrimp trawlers received the same amount in EGA as he did and that should not be right. The IWG’s representative explained that the principal consideration for the EGA amount in respect of silver shrimp trawlers was the length of the trawlers, not their engine power. He further explained that there were only 2 silver shrimp trawlers of length 7 – 8m on record and data was lacking in respect of this size range of silver shrimp trawlers.

² Hearing Bundle pp 3, 5

10. Towards the end of the hearing, this Board directed the IWG to provide further information on their calculation of compensation awards for silver shrimp trawler owners. The directions given can be found in Hearing Bundle (Part II) at p 464. The IWG was given 1 month to lodge such information with the Board and with Mr. Lam; Mr. Lam was given 3 weeks to make any submission in response to IWG's filing and the IWG was given 2 weeks to make any further submission in response to Mr. Lam's submissions, if he had any.
11. Subsequent to the hearing, the IWG provided supplemental documents on 13 April 2015³. Mr. Lam subsequently filed his reply dated 3 May 2015⁴. The IWG did not lodge any further submissions in reply.

Decision & Reasoning

12. Having considered all the evidence and submissions from the parties, this Board has decided to dismiss Mr. Lam's appeal
13. In coming to our decision, we have carefully examined the sale receipts produced by Mr. Lam and his explanations. What we see is that there were considerable fluctuations in the sales volume. For example, the amount of sales in May 2005 as compared with May 2008 and 2009 exhibit great fluctuations. Based on those receipts and figures, it is difficult to see a trend or make any reliable extrapolation to estimate Mr. Lam's average annual sales or income as claimed.
14. We have also carefully considered IWG's figures and analysis. We find that IWG's basis is reasonable. We are not persuaded that IWG has underestimated Mr. Lam's income in their analysis.
15. We therefore take the view that Mr. Lam has not established a basis to challenge IWG's analysis and award-calculations. As the burden of proof to overturn IWG's decision on the EGA amount rests on Mr. Lam and he has failed to discharge that burden, this appeal stands to be dismissed.

³ Hearing Bundle (Part II) pp 469-474

⁴ Hearing Bundle (Part II) p 475

Conclusion

16. In the circumstances, this appeal is dismissed.

Date of hearing : 13 March 2015

Heard at : Conference Room 7, Ground Floor
Central Government Offices, 2 Tim Mei Avenue,
Tamar, Hong Kong.

(signed)

Ms. HUI Mei-sheung, Tennessy, JP
Chairman

(signed)

Miss KUNG Ching-yee, Athena
Member

(signed)

Mr. Lee Ka-chung, William, JP
Member

(signed)

Miss Barbara WONG
Member

(signed)

Mr. CHAU How-chen
Member

The Appellant, Mr LAM Ah Chin appearing in person
Mdm. 李間好 (The Appellant's authorised representative)
Ms LI Wai-hung, Louise, Senior Fisheries Officer (Sustainable Fisheries) (Ag.),
representative on behalf of the IWG
Dr SO Chi-ming, Fisheries Officer (Sustainable Fisheries) 1, representative on
behalf of the IWG
Mr Paul LEUNG, Legal Advisor to the Board