

DECISION AND REASONS FOR DECISION

FISHERMEN CLAIMS APPEAL BOARD (TRAWL BAN)
CASE NO. AB0419

Between

CHEUNG KAM HEI (張金喜)

Appellant

and

THE INTER-DEPARTMENTAL WORKING GROUP

Respondent

Date of Hearing: 9 December 2015

Date of Decision and Reasons for Decision: 15 March 2016

DECISION AND REASONS FOR DECISION

JUDGMENT (Chairman Ms. HUI Mei-sheung, Tennessee, Member Miss AU Sin-lun, Catherine, Member Ms. CHOW Kin-tak, Alice, Member Miss KUNG Ching-ye, Athena and Member Ms WONG Pie-yue, Cleresa):-

Introduction

1. Case number AB0419 is an appeal by Mr. CHEUNG Kam Hei (“**Mr. Cheung**”) against the decision of the Inter-departmental Working Group (“**IWG**”) dated 30 November 2012 (“**the Decision**”¹) determining that Mr. Cheung’s fishing vessel (with Certificate of Ownership Number CM90036V) (“**the Vessel**”) was an eligible trawler that was not ordinarily operating in Hong Kong waters (一艘一般不在香港水域作業的合資格拖網漁船) and awarding him an *ex gratia* payment of \$150,000 under the one-off assistance scheme in respect of the Vessel.

¹ Hearing Bundle p 87

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. Cheung contends that the Vessel operated 20% of the time in Hong Kong waters² and that from 2009 to 2011 up until the present (2009 年至 2011 年期間到現在), he operated the Vessel in Hong Kong waters, in particular, around Po Toi Island and Cheung Chau, each year from the 9th month to the 1st month of the lunar year. The reasons he gave for doing so were 2-fold: (i) because of the relatively rough seas during the winter months and (ii) because of the fishing season (漁汛) in the area during that time³.
7. Mr. Cheung lodged a witness statement dated 10 November 2015 for the purpose of the appeal hearing⁴. In essence, he states that traditional fishermen do not tend to keep large quantities of documentation or complete accounting records. According to him, this has led to an unfair situation where those who are truly affected by the Trawl Ban cannot adduce evidence in support of their claims for compensation over and over the general category. Further, he corrects himself by restating that his reliance on Hong Kong waters for trawling was 10%, as opposed to 20%.

The Appeal Hearing

8. At the hearing, (**“the Appeal Hearing”**):

² Hearing Bundle pp 3, 4

³ Hearing Bundle p 8

⁴ Hearing Bundle p 264

- (1) Mr. Cheung was absent; and
 - (2) IWG conducted the appeal through their representatives, Dr. William Siu Ho-lim and Dr. So Chi-ming.
9. Mr. Cheung had prior to the hearing informed the Board in writing that he would not attend the hearing⁵.

Decision & Reasoning

10. Having considered all the evidence and submissions from the parties⁶, this Board has decided to dismiss Mr. Cheung's appeal.
11. There was no evidence from Mr. Cheung to support his contention that he was operating 10% or 20% of the time in Hong Kong waters, despite ample opportunities having been given him prior to the appeal hearing. His contention of operating in Hong Kong waters remains nothing but mere assertions unsupported by evidence. He has also given no particulars of how the Vessel was operated at the material time. It remains unclear to the Board how Mr. Cheung ran his trawling business. His situation is further compounded by IWG's unchallenged allegation during the course of the hearing that the IWG could not find any record of workers having been granted permission to work on board the Vessel under the Mainland Fishermen Deckhands Scheme, despite Mr. Cheung's claim in his answer to the questionnaire that his trawler had 7 such workers during the year ending 13 October 2010⁷.
12. We find that Mr. Cheung has failed to discharge the burden of proof, which is on him, to show on a balance of probabilities that the Vessel was operating in Hong Kong waters to the extent as claimed by him. We further find the analysis of the IWG in the present case to be well founded.

⁵ Hearing Bundle p 313

⁶ The Appellant was absent at the hearing but he had made submissions in writing beforehand: see Hearing Bundle p 264

⁷ Hearing Bundle p 39

Conclusion

13. In the circumstances, this appeal is dismissed.

Date of hearing : 9 December 2015

Heard at : Conference Room 1801, 18th Floor, East Wing,
Central Government Offices, 2 Tim Mei Avenue,
Tamar, Hong Kong.

(signed)

Ms. HUI Mei-sheung, Tennessee, JP
Chairman

(signed)

Ms. AU Sin-lun, Catherine
Member

(signed)

Ms. CHOW Kin-tak, Alice
Member

(signed)

Miss KUNG Ching-yee, Athena
Member

(signed)

Ms. WONG Pie-yue, Cleresa
Member

The Appellant, Mr. Cheung Kam Hei (Absent)

Dr SO Chi-ming, Fisheries Officer (Sustainable Fisheries) 1, representative on behalf of the IWG

Dr SIU Ho-lim, William, Fisheries Officer (Sustainable Fisheries) 3, AFCD, representative on behalf of the IWG

Mr Paul LEUNG, Legal Advisor to the Board