

DECISION AND REASONS FOR DECISION

FISHERMEN CLAIMS APPEAL BOARD (TRAWL BAN)
CASE NOS. CC0132 & CC0138
(HEARD TOGETHER)

Between

CHAN TO KAN (陳桃根)

Appellant

and

THE INTER-DEPARTMENTAL WORKING GROUP

Respondent

And between

KWOK WAH YEUNG (郭華養)

Appellant

and

THE INTER-DEPARTMENTAL WORKING GROUP

Respondent

Date of Hearing: 1 March 2017

Date of Decision and Reasons for Decision: 15 June 2017

DECISION AND REASONS FOR DECISION

JUDGMENT (Chairman Mrs. CHEUNG Po-yee, Peggy, Member Mr. CHAN Wai-chung, Member Mr. AU Pak-ching Romeo, Member Ms. CHOW Kin-tak, Alice and Member Dr. TYEN Kan-hee Anthony):-

Introduction

1. Case number CC0132 is an appeal by Mr. CHAN To-kan (陳桃根) (“**Mr. Chan**”) against the decision of the Inter-departmental Working Group (“**IWG**”) dated 30 November 2012 (“**the CC0132 Decision**¹”) determining

¹ Hearing Bundle p 96 of CC0132

that Mr. Chan's fishing vessel (with Certificate of Ownership Number CM63963A) ("**the CC0132 Vessel**") was an eligible trawler that generally did not operate 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 CC0132 Vessel.

2. Case number CC0138, on the other hand, is an appeal by Mr. KWOK Wah-yeung (郭華養) ("**Mr. Kwok**") against the decision of IWG dated 30 November 2012 ("**the CC0138 Decision**²") determining that Mr. Kwok's fishing vessel (with Certificate of Ownership Number CM64017A) ("**the CC0138 Vessel**") was also an eligible trawler that generally did not operate 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 CC0138 Vessel.
3. The appeals of Mr. Chan and Mr. Kwok were with the Appellants' express consent heard together on 1 March 2017 for the reason that the 2 vessels in questions had, according to the Appellants, at the material time before the Trawl Ban (as defined hereinbelow) been operating in tandem as "pair trawlers" (雙拖).

The Trawl Ban and the EGA

4. 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.
5. 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**").

² Hearing Bundle p 89 of CC0138

The Policy and Guiding Principle

6. 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**”).
7. According to Paragraph 12 of the FC Paper, the guiding principle is that the EGA apportioned to different groups of claimants should be proportional to the impact on them caused by the Trawl Ban.
8. Owners of inshore trawlers which operated wholly or partly in Hong Kong waters were expected to be most affected when the Trawl Ban took effect as they would lose their fishing grounds in Hong Kong waters. They would receive a greater amount of EGA than owners of larger trawlers³.
9. Owners of larger trawlers which generally did not operate in Hong Kong waters were also affected by the Trawl Ban since they would lose the option to trawl in Hong Kong waters in the future. However, as the impact of the Trawl Ban on them was far much less when compared with owners of inshore trawlers, an owner of larger trawler is only granted a lump sum EGA of HK\$150,000⁴.

The Appeal Grounds

10. In both their appeals, the Appellants contend⁵ that:
 - (1) their dependency on Hong Kong waters for their trawling operations amounted to 30%;
 - (2) their vessels were made of wood and had been in service for 22 years (in the case of CC0132) and for 24 years (in the case of CC0138);
 - (3) they had gradually moved towards operating in Hong Kong waters;
 - (4) IWG may not be objective in their methodology; they may lack professionalism; they merely spent 10 minutes to determine the amount of award for each vessel;
 - (5) some other vessel owners were awarded grossly excessive ex-

³ Paras. 5 to 10 of FC Paper

⁴ Paras. 9 and 10 of FC Paper

⁵ Hearing Bundle pp 3-5 of CC0132 and pp 3-5 of CC0138

gratia payments.

The Appeal Hearing

11. At the hearing, (**“the Appeal Hearing”**):
 - (1) Both Appellants conducted their appeals in person; and
 - (2) IWG conducted the appeal through their representatives, Dr. William SIU and Dr. Albert LEUNG.

12. The Appellants’ oral evidence can be summarized as follows:
 - (1) They rarely operated in Hong Kong. They only operated here when the winds were high.
 - (2) As their vessels became older, they would have no choice but to operate closer to shore. Operating their old vessels in the outer seas would be hazardous. They did not want to risk their lives. Now that trawling has been banned, they have lost their chance to return to Hong Kong waters to operate.
 - (3) They considered it unfair that for those vessels that were spotted by IWG, awards in millions of dollars were made by the government. By contrast, the Appellants’ vessels were not spotted at sea and the awards for the Appellants were so small, like lunch-box money.
 - (4) In 2014, there was an accident with the CC0132 Vessel. Mr. Chan no longer has that vessel. In 2015, Mr. Kwok sold the CC0138 Vessel. He took the view that he had been forced by the government to sell his vessel and to rely on social welfare benefits.
 - (5) After the accident with the CC0132 Vessel, the Appellants no longer kept any receipts and documents of their operations. They have no further documents to provide in support of their appeals. They cannot recall why they did not provide further supporting documents despite being asked to do so in as early as September 2012.
 - (6) Mr. Kwok clarified that the Appellants were not saying their operations mainly relied on Hong Kong waters before the trawl ban.

They only contended that the ban had made it no longer possible for them to return to Hong Kong to trawl in the future. They should therefore be compensated for the loss of chance.

Decision & Reasoning

13. Having considered all the evidence and submissions from the parties, this Board has decided to dismiss both appeals.
14. First and foremost, the Appellants have conceded that they rarely operated in Hong Kong. Not surprisingly, they have not adduced any evidence to support a case of dependency on Hong Kong waters. Their complaint is simply that the trawl ban has taken away their chance to trawl in Hong Kong when, some time in the future, they decided to move back here.
15. Secondly, the Board is satisfied that IWG's classification⁶ of the Appellants' vessels as "larger trawlers" was correct. IWG's conclusion was based on uncontroversial, objective facts such as the length of the vessels (31.8m and 30.0m respectively), engine power (693.78kW and 727.35kW respectively) and fuel tank capacity (48.20 cubic metres and 61.53 cubic metres respectively).
16. Thirdly, we are satisfied on the evidence that IWG's decision to classify the 2 vessels as eligible trawlers that generally did not operate in Hong Kong waters (一般不在香港水域作業的合資格拖網漁船) was a correct one.
17. As to the Appellants' contention that \$150,000 was unfairly small an amount to compensate for the loss of a chance to return to Hong Kong waters to trawl, one only needs to refer to Annex 4 of the Hearing Bundle (which is in a separate booklet), p. A45, paras. 9 and 10. It is clear from this document, which was the discussion paper for the Finance Committee in June 2011, that the \$150,000 allowance was specifically to compensate for the loss of opportunity to return to trawl in Hong Kong waters insofar as "larger trawlers" were concerned, including the situation where the age of the vessel has reached a stage when the vessel would no longer be suitable for sailing afar. In other words, it was part of the policy to make \$150,000 as the figure for such an allowance.
18. The Board is mindful of the Terms of Reference upon which it has been established. In essence, they are as follows:

⁶ Hearing Bundle p 17 of CC0132 and CC0138

- (1) To see that the criteria established by the IWG for processing and/or vetting applications for the EGA comply with the government policy, and are fair and reasonable to the applicants;
 - (2) To see that the IWG's decisions on eligibility and the amount of EGA granted comply with the government policy and are fair and reasonable to the applicants;
 - (3) To examine any new or additional information / evidence provided by the appellants (or their representatives) who have lodged an appeal against the IWG's decisions or by the relevant departments, and to consider the relevance of and the weight to be given to such information/ evidence;
 - (4) To consider whether to uphold the IWG's decisions on the appellants' cases or to revise the decisions, and to determine the type and amount of EGA payable to the appellants, as appropriate.
19. In light of the Terms of Reference and the policy as set out in the Finance Committee discussion paper, we are of the view that the decision of awarding \$150,000 allowance to each of the Appellants was correct. Other vessel owners could well have been awarded payments in excess of \$150,000, but each case must be examined based on its own facts and situation. Having carefully considered all the evidence and submissions in the present 2 appeals, we are satisfied that none of the grounds of appeal has any merits.

Conclusion

20. In the circumstances, these appeals are dismissed.

Case Nos. CC0132 & CC0138

Date of hearing : 1 March 2017
Heard at : 9/F, Rumsey Street Multi-storey Carpark Building,
2 Rumsey Street, Sheung Wan, Hong Kong

(signed) _____
Mrs. CHEUNG Po-yee, Peggy, JP
Chairman

(signed) _____
Mr. CHAN Wai-chung, MH
Member

(signed) _____
Mr. AU Pak-ching, Romeo, JP
Member

(signed) _____
Ms. CHOW Kin-tak, Alice
Member

(signed) _____
Dr. TYEN Kan-hee, Anthony
Member

The Appellants, CHAN To-kan and KWOK Wah-yeung appearing in person
Dr. LEUNG Wai-yin, Albert, Supervisory Fisheries Management Officer, AFCD,
representative on behalf of the IWG
Dr SIU Ho-lim, William, Fisheries Officer (Sustainable Fisheries), AFCD,
representative on behalf of the IWG
Mr Paul LEUNG, Legal Advisor to the Board