

DECISION AND REASONS FOR DECISION

FISHERMEN CLAIMS APPEAL BOARD (TRAWL BAN)
CASE NO. CP0012

Between

WONG AH FAT (黃亞發)

Appellant

and

THE INTER-DEPARTMENTAL WORKING GROUP

Respondent

Date of Hearing: 11 May 2016

Date of Decision and Reasons for Decision: 10 August 2016

DECISION AND REASONS FOR DECISION

JUDGMENT (Chairman Mr. FEE Chung-ming, Johnny, Member Ms. AU Sin-lun, Catherine, Member Ms. WONG Pie-yue, Cleresa, Member Mr. CHAN Weng-yew, Andrew and Member Mr. KONG Tze-wing, James):-

Introduction

1. Case number CP0012 is an appeal by Mr. WONG Ah Fat (黃亞發) (“**Mr. Wong**”) against the decision of the Inter-departmental Working Group (“**IWG**”) dated 21 December 2012 (“**the Decision**”¹) determining that Mr. Wong’s fishing vessel (with Certificate of Ownership Number CM60937P) (“**the Vessel**”) was an eligible inshore hang trawler (摻罾) of length 24.69m that was heavily reliant on (相當依賴) Hong Kong waters in its operations, and awarding him an *ex gratia* allowance of \$4,545,078 under the one-off assistance scheme in respect of the Vessel.
2. The appeal hearing was conducted in Mr. Wong’s absence. Mr. Wong had

¹ Hearing Bundle p 117

indicated in writing on 29 April 2016 that he would not attend the hearing, nor would he have any authorised representative to represent him at the hearing². The Board did not commence the hearing, scheduled for 3:30 pm, until about 4:15 pm on 11 May 2016, ensuring that Mr. Wong would be given an opportunity to attend it should he change his mind.

The Trawl Ban and the EGA

3. 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 statutory notice for the Trawl Ban was published in the Government Gazette in March 2011 and came into effect on 31 December 2012.
4. The Finance Committee (“**FC**”) of the Legislative Council 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 Guiding Principle

5. 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**”).
6. 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.
7. 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.
8. 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

² Hearing Bundle p 347.

³ Paras. 5 to 10 of FC Paper

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

9. In the present appeal, Mr. Wong contends⁵ that:
 - (1) the *ex gratia* allowance amount was “unsatisfactory”,
 - (2) the adverse effect of the Trawl Ban on his operations cannot be estimated.

10. In a letter⁶ dated 14 January 2013, Mr. Wong raised 4 additional points.
 - (1) Some owners of similarly sized and powered inshore hang trawlers were awarded *ex gratia* allowances with amounts differing by as much as \$1 to 2 million.
 - (2) Some owners who were awarded *ex gratia* allowances of up to \$6 million could still operate off-shore as their trawlers were large and powerful even though they were banned to operate within Hong Kong waters.
 - (3) Some owners were awarded *ex gratia* allowances of \$3 to 4 million even though their trawlers were mostly moored at the typhoon shelter near Sam Shing Estate, Tuen Mun, and barely went out to trawl.
 - (4) He and his wife were already in their mid- to late-50s. Their household depended on the fishing business. They have a son in his 30s who would have been interested in carrying on the business but for the Trawl Ban. It is hoped that the FCAB could increase the award.

11. By lodging the present appeal, Mr. Wong further seeks to reserve his rights⁷ to receive his share of *ex gratia* allowance that has been reserved by the IWG pending FCAB’s hearing of all the appeals of the affected trawler owners.

The Appeal Hearing

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

⁴ Paras. 9 and 10 of FC Paper

⁵ Hearing Bundle p 4

⁶ Hearing Bundle p 9

⁷ Hearing Bundle p 3

- (1) Mr. Wong was absent; and
- (2) IWG conducted the appeal through their representatives, Ms. Louise Li, Dr. William Siu and Ms. Teresa Yuen.

Decision & Reasoning

13. Having considered all the evidence and submissions from the parties, this Board has regrettably decided to dismiss Mr. Wong's appeal.
14. This Board accepts and adopts IWG's reasoning set out in Part B of IWG's statement of submissions in the Hearing Bundle⁸.
15. Mr. Wong has not sought to challenge IWG's reasoning set out in Part B of IWG's statement of submissions in the Hearing Bundle⁹. As far as his own case is concerned, he is simply complaining that his award is not large enough and he wants more because of his family circumstances and needs. Apart from that, he has not raised any ground that concerns himself or his vessel. In fact, he concedes that his loss cannot be estimated.
16. As to the contention that some owners of similarly sized and powered hang trawlers were awarded amounts differing by as much as \$1 to 2 million, Mr. Wong has not identified the vessels or owners in question. From the materials adduced by the IWG in the hearing bundle¹⁰, one can see that his vessel was the only hang trawler in the "upper tier" category with a length in the range of 7.01m to 32m. His vessel was 24.69m in length. Therefore, there simply was no similarly sized and powered hang trawler whose owner was awarded an *ex gratia* allowance differing from Mr. Wong by \$1 to 2 million. There was certainly none such similarly sized hang trawler bringing its owner \$1 to 2 million more allowance than the \$4,545,078 allowance Mr. Wong was awarded for his vessel in this appeal. In other words, Mr. Wong's complaint has not been established.
17. As to the two next contentions, i.e. that some owners who were awarded *ex gratia* allowances of up to \$6 million could still operate off-shore as their trawlers were large and powerful, and that some owners were awarded \$3 to 4 million even though their trawlers were mostly moored at the typhoon shelter near Sam Shing Estate, Tuen Mun, and barely went out to trawl, Mr. Wong has not identified which trawlers he is referring to. In our view, it must be incumbent upon him to first identify the vessels in order for the

⁸ Hearing Bundle pp 15 - 22

⁹ Hearing Bundle pp 15 - 22

¹⁰ Hearing Bundle p 293

IWG to make any meaningful response either in evidence or submissions. These contentions therefore fall to be rejected.

18. As mentioned above, Mr. Wong seeks to reserve his rights to receive his share of *ex gratia* allowance that has been reserved by the IWG pending FCAB's hearing of all the appeals of the affected trawler owners. In our view, those rights go without saying. In the policy paper in Appendix D in the Hearing Bundle¹¹, i.e. CB(2)572/12-13(05), paragraph 23, it is clearly stated that 30% of the overall *ex gratia* allowance budget has been reserved to cater for both the successful appellants as well as all other eligible trawler owners. There is no need for any owner to pursue an appeal solely on this ground. Such an appeal would not affect the right to the balance, if any. In the particular situation of Mr. Wong, the figure of \$4,545,078 stated as his *ex gratia* allowance is his 1st instalment. He may receive more after all the pending appeals have been determined. The additional sum could be in the region of close to \$2 million, depending on the outcome of the other appeals. The Board sincerely hopes that Mr. Wong's family circumstances can be substantially alleviated in due course.

Conclusion

19. In the circumstances, this appeal is dismissed.

¹¹ Hearing Bundle pp 208-209

Case No. CP0012

Date of hearing : 11 May 2016

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

(signed)
Mr. FEE Chung-ming, Johnny, JP
Chairman

(signed)
Ms. AU Sin-lun, Catherine
Member

(signed)
Ms. WONG Pie-yue, Cleresa
Member

(signed)
Mr. CHAN Weng-Yew, Andrew
Member

(signed)
Mr. KONG Tze-wing, James, MH, JP
Member

The Appellant, WONG Ah Fat, absent

Ms. LI Wai-hung, Louise, Senior Fisheries Officer, AFCD, representative on behalf of the IWG

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

Ms. YUEN Wing-sum, Teresa, Fisheries Officer (Sustainable Fisheries) 4, AFCD, representative on behalf of the IWG

Mr. Paul LEUNG, Legal Advisor to the Board