

DECISION AND REASONS FOR DECISION

FISHERMEN CLAIMS APPEAL BOARD

CASE NO. CP0047

Between

LEUNG SHUP NG (梁十五)

Appellant

And

THE INTER-DEPARTMENTAL WORKING GROUP

Respondent

Date of Hearing: 27 May 2016

Date of Decision and Reasons for Decision: 13 December 2016

DECISION AND REASONS FOR DECISION

1. This is an appeal by the Appellant Mr. Leung Shup-ng of Case No. CP0047 against the decision of the Inter-departmental Working Group (“**IWG**”) dated 21 December 2012 to issue to him an amount of HK\$4,473,224.00 in respect of the ex-gratia allowance (“**EGA**”) provided by the government (“**the Appeal**”).
2. The Appeal was heard on 27 May 2016 whereby the Appellant, who was absent, was represented by his son Mr. Leung Kai-kin (“**Mr. Leung**”) and daughter Miss Leung Sin-yan (“**Miss Leung**”). The IWG was represented by Mr. Albert Leung, Dr. So Chi Ming and Ms. Teresa Yuen.
3. After considering all materials submitted by the parties, the Board now gives

its decision and reasons for the decision.

Pertinent facts and the IWG's decision

4. On 13 October 2010 (“**the Cut-off Date**”), the Chief Executive announced that the Government would implement a basket of 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 Trawl Ban took effect on 31 December 2012.
5. In light of the Trawl Ban, an assistance package was approved by the Legislative Council Finance Committee in June 2011. This was a *“One-off assistance package to trawler vessel owners, local deckhands and fish collector owners affected by the trawl ban and other related measures”*. This led to the setting-up of the IWG which was responsible for handling all matters relating to applications received under the assistance scheme. The Appellant was one such applicant.
6. In assessing EGA applications, the IWG would assess the type of the subject vessel and consider whether it fell into the category of a larger trawler that generally did not operate in Hong Kong waters or inshore trawler. If it were the former, a lump sum EGA of HK\$150,000 would be paid to the applicant. If it were the latter, the IWG would further assess and categorize the subject vessel into specific tiers in terms of its dependence on Hong Kong waters and other special cases. This meant that subject to the category of the subject vessel and the applicable apportionment criteria, an applicant could be eligible to apportion a total amount of the HK\$1,190 million of EGA with other eligible inshore trawler owners.
7. According to the IWG's records, the Appellant's fishing vessel (license no. CM64926A) (“**the Vessel**”) had 1 engine and measured 21.95 metres in length, with propulsion engine power coming up to 223.80 kilowatts,

whereas the fuel tank capacity was 21.65 cubic metres.

8. On 3 October 2012, the IWG made the preliminary decision that the Vessel fell into the category of an inshore trawler, and in observing that the time claimed to be spent fishing in inshore waters (100%) was higher than that spent by trawlers of comparable type and length (according to statistical data collected by the Agriculture, Fisheries and Conservation Department (“AFCD”)), the Appellant was requested to provide more evidence/documents to substantiate his claims.
9. By way of reply dated 14 October 2012, the Appellant explained that he had often seen government vessels on patrol in the fishing areas within Hong Kong waters. During their patrols, they would take photographs of the Vessel for record and the AFCD may examine their records for such evidence. The Vessel did not have sufficient horsepower to conduct fishing operations for long periods at locations outside Hong Kong waters, and his catch was transported daily to the market for sale so as to ensure freshness.
10. Subsequently, the IWG wrote back to the Appellant on 21 December 2012 to inform him that all relevant materials and evidence had been considered and that their assessment of his application was completed. In accepting that the Appellant was an inshore trawler owner who was affected by the Trawl Ban, the IWG made the following decision:

Type of Vessel:	Shrimp trawler
Length of Vessel (in metres):	21.95
Category of dependency on Hong Kong waters:	Highly dependent on Hong Kong waters for trawling operations
Amount of EGA payable:	\$4,473,224.00

11. By the same letter, the IWG also informed the Appellant that around 30% of the EGA payable to all eligible inshore trawler owners had been reserved and will be distributed by apportionment after the Board had determined all

successful appeals.

Grounds of Appeal

12. Subsequently, the Appellant sought to appeal the IWG's decision, and by letter dated 20 January 2013, stated the following grounds of appeal:

(1) The Appeal was necessitated by the fact that the compensation provided as a consequence of the Trawl Ban was inadequate;

(2) Since the implementation of the Trawl Ban, they were forced to fish further offshore but the Vessel was unable to withstand the turbulent seas so as to enable them to fish there. This created a serious impact upon their livelihood, and amounted to forced retirement. At the same time, the compensation provided by the government was inadequate to support their needs of living in the future; and

(3) As such, he was dissatisfied with the amount of compensation and requests the Board to increase the sum, so as to safeguard his and his family's future living.

13. In the Notice of Appeal dated 6 February 2014, the Appellant stated that he was getting old which made it impossible for him to tolerate the heavy physical demands of fishing in remote seas. As such, he could only fish in the inshore areas of Hong Kong waters. With the increase of fuel costs, his income was greatly affected and this caused the Vessel to be sold in April of the year 2013. Presently, he is unable to rely on his fishing skills to earn a living. The EGA compensation is insufficient to support his and his family's future living for the next few decades.

Matters argued before the Board

14. In their written submissions to the Board, the IWG explained how their decision as to the amount of EGA payable to the Appellant was determined. Although the IWG tended to adopt a very similar format in their analysis of the applicable criteria as between different cases, the Board accepts that the IWG had appropriately addressed their mind to the particular circumstances of the Appellant. In particular, they had taken into account the materials that were available to them, including information about the Vessel's type, length, material and design (which amongst other things, led to their conclusion that the Vessel only had limited capacity to travel far into offshore waters for fishing), statistical data from the AFCD concerning homeport and inshore sightings of the Vessel, the employment profile of the crew, fishing permits held by the Appellant, and also the explanations/evidence submitted by the Appellant. We are satisfied that the Vessel is an eligible inshore trawler as assessed by the IWG (not that there is any dispute over this).

15. At the hearing, Mr. and Miss Leung informed the Board that the Vessel had been an inshore shrimp trawler which depended totally on Hong Kong waters for fishing. At times when the Vessel was not at sea, it had also served as the living quarters of the family which comprised of themselves, the Appellant, their mother and grandparents. They had a younger brother, Mr. Leung Kai-ging (transliteration), who used to help with fishing operations after school. After the Vessel was sold (for around \$1.2 million), the family moved into a flat onshore.

16. The decision was made to sell the Vessel because it was not strong enough to withstand the turbulent seas of remote offshore waters. However, due to the Appellant's age and low level of literacy, he had not been able to secure employment other than as a general construction worker. The financial situation of the family became particularly dire after the Appellant suffered a stroke and had to undergo an operation and post-operative complications.

Their mother is a housewife and their grandparents were non-productive owing to health problems. According to Mr. and Miss Leung, the EGA was wholly insufficient for the family's livelihood, not to mention the medical expenses of those in the family.

17. In response to the Appellant's grievances as well as questioning from the members of the Board, the IWG explained that:

(1) In respect of the Appellants' complaint that the EGA granted to them was insufficient compensation for their future loss of livelihood, the IWG emphasized that it needed to be borne in mind that the EGA was set up for the specific purpose of ameliorating the negative impact that the Trawl Ban might have on the livelihood of the fishermen who were affected. It was not to compensate, but to assist with transitioning into a means of earning a livelihood which did not involve fish trawling;

(1) The owners in receipt of the EGA could choose to conduct fishing operations in Hong Kong which did not involve the use of trawling methods, or venture further into offshore (non-Hong Kong) waters for trawling;

(2) For those opting to sell their vessels, there was in place a voluntary buy-out scheme whereby trawler owners can decide in light of their own circumstances whether they would surrender their vessels to the Government or make their own arrangements to sell their vessels in the market. How much the Government would offer for the Vessel under the voluntary buy-out scheme depended on the result of an assessment as to its value;

(3) Anticipating that some local deckhands would be temporarily unemployed before securing alternative employment, a one-off grant of HK\$34,000 is available to each local deckhand employed by the affected inshore trawler owners who have sold their Vessels or have taken part in the aforementioned voluntary buy-out scheme. Those in the Appellant's

family that worked on the Vessel would be eligible for this fund; and

(4) Last but not least, the IWG emphasized that they had, according to the principles previously approved by the Finance Committee of the Legislative Council, already considered all of the materials before them and had apportioned to the Appellant the highest amount of EGA payable to inshore shrimp trawlers of comparable attributes as the Vessel.

18. In response to the IWG's submissions, Mr. and Miss Leung stated that transitioning into alternative employment was unrealistic for their father, who was of low literacy and no longer young. Shrimp trawling was the only skill set that he had and his only means of earning a living. They also doubted whether other forms of fishing yielded any meaningful income, and dismissed the notion that the one-off grant to deckhands was of any help. By their estimate, \$9.6 million was needed to support their parents' and grandparents' future living expenses in the next 30 years, and emphasized that in their view, this was due compensation for their family's loss.

The Board's Decision

19. The Board has heard how the criteria adopted by the IWG had been applied towards their determination of the EGA payable to the Appellant, and take the view that the IWG's representatives have provided satisfactory explanations to the questions raised by the Board members, and have also adequately responded to the Appellant's submissions.

20. To sum up, the Appellant's basis for the Appeal is that the EGA was not sufficient to support the living expenses of his family and himself. He demanded compensation to the tune of \$9.6 million even though apart from the \$4.47 million EGA he had obtained, he had gotten \$1.2 million for the sale of the Vessel and there were other members of his family was eligible for the aforesaid one-off grant to local deckhands. According to the submissions

made on his behalf, transitioning to alternative means of employment that did not involve trawling in Hong Kong was too difficult and not an option. This was why the Vessel was sold.

21. According to the Board's understanding of the EGA Scheme, the Appellant had already been awarded the highest amount of EGA payable to inshore shrimp trawlers of comparable size as the Vessel. In particular, we are not satisfied that the Appellant has demonstrated valid grounds to justify a higher award of the EGA, and take the view that he has not put forward credible evidence for this purpose. In light of the expressed purpose of the EGA Scheme, we cannot see any reason why, in light of the Trawl Ban, that the Appellant should be compensated for his and his family's living expenses for the next 30 years. Indeed, we consider that if the Appellant is indeed currently suffering from poor health, chances are he would not have been able to continue to earn income for another 30 years, with or without the Trawl Ban. As it were, we also note that the Appellant's claims as regards his and his family's living expenses are unsupported by evidence.
22. To conclude therefore, the Appellant has failed to discharge his burden to show that the IWG's Decision dated 21 December 2012 is wrong. The Appeal is therefore dismissed.

Case No. CP0047

Date of hearing : 27 May 2016
Heard at : Room 1801, 18th Floor, East Wing, Central
Government Offices, 2 Tim Mei Avenue,
Tamar, Hong Kong.

(signed)

Mr. MAK Yip Shing, Andrew, BBS, JP

Chairman

(signed)

Mr. AU Pak Ching, Romeo, JP
Member

(signed)

Mr. LO Wai Kei, Wilkie
Member

(signed)

Ms CHAN, Nancy
Member

(signed)

Mr. LAW Chi Yuen
Member

The Appellant, Mr. Leung Shup-ng represented by Mr. Leung Kai-kin and Miss Leung Sin-yan.

Dr. Leung Wai-yin, Albert, Supervisory Fisheries Management Officer, AFCD, representative on behalf of the IWG.

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

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

Ms. Abigail Wong, Legal Advisor of the Board