

DECISION AND REASONS FOR DECISION

FISHERMEN CLAIMS APPEAL BOARD

CASE NO. SW0028

Between

PO WAH KAN (布華根)

Appellant

And

THE INTER-DEPARTMENTAL WORKING GROUP

Respondent

Dates of Hearing: 27 May 2016

Date of Decision and Reasons for Decision: 15 December 2016

DECISION AND REASONS FOR DECISION

1. This is an appeal by the Appellant Mr. Po Wah-kan of Case No. SW0028 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 appeared in person. The IWG was represented by Dr. 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 (“**the 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. CM63996A) (“**the Vessel**”) was made of wood, had 2 engines and measured 22 metres in length, with propulsion engine power coming up to 267.07 kilowatts, whereas the fuel tank capacity was 4.62 cubic metres.
8. On 3 October 2012, the IWG wrote to inform the Appellant that they had

made the preliminary decision to process the application for EGA on the basis that the Vessel fell into the category of an inshore trawler operating in Hong Kong waters, and that they would inform him about their final decision.

9. Subsequently, the Appellant had provided the IWG with certain fish sales records issued by the Fish Marketing Organization at the Shaukeiwan Wholesale Fish Market which spanned the period between January 2007 to November 2012, and certain other documentary evidence on the sale of a variety of catch dated 22 June and 23 June (of an unknown year).
10. Subsequently, the IWG wrote 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):	22
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 26 December 2012, stated the following grounds of appeal:

(1) The IWG recognized that the Vessel “is normally working in Hong Kong region”. Since the Trawl Ban, the “working condition” and family income has been substantially affected.

(2) According to the assessment criteria, it seems that the IWG had simply studied the past records such as the license, cost of fuel and engine capacity, but did not appear to give any consideration as regards the age of the vessel owner and the factor of inflation. According to the Appellant, inflation is a major problem which will cause the EGA to lose real value, concluding therefore that the EGA amount awarded is not good enough to support the family’s expenditure in the future.

(3) Moreover, but for the Trawl Ban, he would have ordinarily been able to continue working in the fishing industry till retirement age. Instead, the Trawl Ban has totally undermined his career path and his financial resources.

13. In the Notice of Appeal dated 1 February 2014, the Appellant stated that he was extremely dissatisfied with the amount of the EGA award and of the system of assessment. This is because the award had failed to take into account the age of the vessel owner, and merely considered the horsepower of the vessel and its reliance on Hong Kong waters. Also, he mentioned that his family’s expenses had mainly be supported by inshore trawling, with the vessel being of advanced age and unsuitable for operating in far offshore waters. At the same time, operating far offshore increased fuel costs and was largely affected by weather, which in turn had a serious impact on his livelihood. Given also the rising costs of manpower from Mainland China, the EGA amount was insufficient to compensate him for his losses.

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 Agriculture, Fisheries and Conservation Department ("**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. In response to the Appellant's grievances, the IWG explained that:
- (1) 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;
 - (2) they had, according to the principles previously approved by the Finance Committee, 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.
 - (3) the above having been said, the age of the vessel's owner had not been considered by the Finance Committee as being a factor for the

assessment of EGA. In the IWG's view, this is reasonable because owners who were of more advanced age could equally argue that their age made it more difficult to transition to another occupation or to learn new skills. As such, the age of the vessel's owner is not the most important factor in the assessment.

The Board's Decision

16. 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.
17. To sum up, the Appellant's basis for the Appeal is that the EGA award is not sufficient to support his family. He cited his relatively young age as being a factor that should entitle him to a greater sum of EGA. We however, accept the IWG's submissions on what should be the relevant considerations in the award of EGA, and fail to see how that the Appellant's alleged personal circumstances should justify a greater award. If anything, the Board considers that the Appellant's relatively younger age is an indicator for his better chance of transitioning to another occupation or of learning another means of fishing.
18. To conclude therefore, the Appellant has failed to discharge his burden to show that the IWG's Decision is wrong. The Appeal is therefore dismissed.

Case No. SW0028

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) _____

Miss CHAN, Nancy
Member

(signed) _____

Mr. LAW Chi-yuen
Member

The Appellant, Mr. Po Wah-kan in person.

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