

**DECISION AND REASONS FOR DECISION**

FISHERMEN CLAIMS APPEAL BOARD (TRAWL BAN)  
CASE NO. SW0030

Between

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PO YAU TAI (布有娣)

*Appellant*

and

THE INTER-DEPARTMENTAL WORKING GROUP

*Respondent*

Date of Hearing: 13 April 2016

Date of Decision and Reasons for Decision: 21 June 2017

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**DECISION AND REASONS FOR DECISION**  
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**JUDGMENT** (Chairman Ms. HUI Mei-sheung, Tennessy, Member Mr. AU Pak-ching, Romeo, Member Ms. AU Sin-lun, Catherine, Member Ms. CHOW Kin-tak, Alice and Member Dr. TYEN Kan-hee, Anthony):-

**Introduction**

1. Case number SW0030 is an appeal by Mr. PO Yau-tai (布有娣) (“**Mr. Po**”) against the decision of the Inter-departmental Working Group (“**IWG**”) dated 21 December 2012 (“**the SW0030 Decision**”<sup>1</sup>) determining that Mr. Po’s fishing vessel (with Certificate of Ownership Number CM64595A) (“**the SW0030 Vessel**”) was an eligible shrimp trawler (蝦拖) that substantially depended on Hong Kong waters (相當依賴香港水域為其拖網捕魚作業的區域) and awarding him an *ex gratia* payment of \$4,394,990 under the one-off assistance scheme in respect of the SW0030 Vessel.

**The Trawl Ban and the EGA**

2. According to Paragraph 3 of Food and Health Bureau Paper dated 29

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<sup>1</sup> Hearing Bundle p 97

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 Guiding Principle**

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. 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.
6. 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 trawlers<sup>2</sup>.
7. 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\$150,000<sup>3</sup>.

### **The Appeal Grounds**

8. In this appeal, the Appellant contends<sup>4</sup> that:

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<sup>2</sup> Paras. 5 to 10 of FC Paper

<sup>3</sup> Paras. 9 and 10 of FC Paper

<sup>4</sup> Hearing Bundle pp 4, 5

- (1) He is not satisfied with the amount of EGA because he has been suffering from long-term illnesses and plans to retire early; he wishes the EGA to be sufficient as his retirement fund.

### **The Appeal Hearing**

9. At the hearing, (**“the Appeal Hearing”**):
  - (1) The Appellant conducted his appeal in person; furthermore, he also authorized Ms. FAN Yuet-wah (**“Ms. Fan”**) to represent him at the hearing; and
  - (2) IWG conducted the appeal through their representatives, Dr. SO Chi-ming, Dr. LEUNG Wai-yin, Albert and Dr. SIU Ho-lim, William.
10. At the hearing, the Appellant made the following points:
  - (1) He was getting old. He was born in 1954. He had no other skills.
  - (2) He has diabetes and medical condition with his liver.
  - (3) He used to trawl 20 days each month in the past. Now he only operates on 10 days each month.
11. At the hearing, Ms. Fan made the following points:
  - (1) The Appellant is old now. He also has high blood pressure.
  - (2) The Appellant needs to take travel-sickness pills when he operates his vessel. He needs to spend about \$100 each month on those pills.
  - (3) There are large, mainland steel trawlers operating nearby and competing with the Appellant.
  - (4) The Appellant’s income has much reduced in recent years.
  - (5) The Appellant has no real property. He wants to obtain public housing.
  - (6) The Appellant accepts the explanations made by the IWG

representatives in respect of how the EGA amount was calculated. He merely wants to make ends meet. He has no other demand.

### **Decision & Reasoning**

12. Having considered all the evidence and submissions from the parties, this Board has decided to dismiss the appeal.
13. The Appellant does not challenge the award. He accepts IWG's reasoning. He merely wishes the EGA to be large enough as his retirement fund and have a property to live in.
14. While the Appellant's circumstances and requests are understandable, it is not for this Board to see to it that all his wishes are met. The Board's terms of reference are (i) 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, (ii) 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, (iii) to examine any new or additional information/evidence provided by the appellants or by the relevant departments and to consider the relevance of and the weight to be given to such materials and (iv) 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, as appropriate.

### **Conclusion**

15. In the circumstances, the appeal is dismissed.

**CASE NO. SW0030**

Date of hearing : 13 April 2016  
Heard at : Room 1818, 18/F, East Wing, Central Government  
Offices, 2 Tim Mei Avenue, Tamar, Hong Kong

(signed) \_\_\_\_\_  
Ms. HUI Mei-sheung, Tennessy, MH, JP  
Chairman

(signed) \_\_\_\_\_  
Mr. AU Pak-ching, Romeo  
Member

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

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

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

The Appellant, PO Yau-tai appearing in person; Ms. FAN Yuet-wah as authorized representative of the Appellant

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

Dr SO Chi-ming, Fisheries Officer (Sustainable Fisheries), 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