

DECISION AND REASONS FOR DECISION

FISHERMEN CLAIMS APPEAL BOARD

CASE NO. SW0042

Between

SIN WAH-HO (冼華好), SIN LING-SZE (冼玲思)

Appellant

And

THE INTER-DEPARTMENTAL WORKING GROUP

Respondent

Dates of Hearing: 15 April 2016

Date of Decision and Reasons for Decision: 17 August 2016

DECISION AND REASONS FOR DECISION

1. This is an appeal by the Appellants, Mr. Sin Wah-ho (“**Mr. Sin**”) and Ms. Sin Ling-sze of Case No. SW0042 against the decision of the Inter-departmental Working Group (“**IWG**”) dated 21 December 2012 to issue to them the 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 15 April 2016 whereby Ms. Sin Ling-sze had entered notice on 1 April 2016 that she would not appear for the hearing. Mr. Sin Wah-ho, who is her father, was present and also acted as her appointed representative. The IWG was represented by Dr. Albert Leung, Dr. So Chi Ming and Ms. Teresa Yuen.

3. 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 Appellants were such applicants.
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 Appellants' fishing vessel (license no. CM64664A) ("**the Vessel**") had 1 engine and measured 21.30 metres in length, with propulsion engine power coming up to 186.50 kilowatts,

whereas the fuel tank capacity was 8.82 cubic metres.

8. On 4 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 (90%) 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 Appellants were requested to provide more evidence/documents to substantiate their claims.
9. No such reply having been provided by the Appellants, the IWG informed the Appellants on 21 December 2012 that all relevant materials and evidence had been considered and that their assessment of the Appellants’ application was completed. In accepting that the Appellants were inshore trawler owners who had been affected by the Trawl Ban, the IWG made the following decision:

Type of Vessel:	Shrimp trawler
Length of Vessel (in metres):	21.30
Category of dependency on Hong Kong waters:	Highly dependent on Hong Kong waters for trawling operations.
Amount of EGA payable:	\$4,473,224

10. By the same letter, the IWG also informed the Appellants 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

11. Subsequently, the Appellants sought to appeal the IWG’s decision, and by letter dated 27 December 2012 (entitled, “Appeal Notice”), Mr. Sin Wah-ho stated that he believes that the amount of EGA granted to him was

insufficient to sustain his living costs for the rest of his life. Since the Vessel primarily fished in Hong Kong waters, the Trawl Ban seriously affected his income. Being now over 50 years old, he is simply unable to find suitable employment onshore and his situation is exacerbated by the problem of inflation.

12. In their appeal application dated 10 April 2014, the Appellants further stated that since the Trawl Ban was implemented, they were unable to conduct fishing operations in Hong Kong and as such needed to fish in the waters of Mainland China. With increased fuel usage, high fuel costs and decreased fish catch, expenses have increased substantially but income has decreased.
13. By letter dated 3 March 2016, the Appellants confirmed that they had no further documents to submit to the Board.

Matters considered by the Board

14. At the hearing, the Board heard at length from the Mr. Sin about his difficulties since the Trawl Ban. To start with, Mr. Sin was of low literacy which limited his ability to diversify his means of living and to seek help. Since the Trawl Ban, he could no longer fish near the shore and had to go much further out to sea where the winds were strong. Apart from increased diesel costs (whereby the prices had gone up from \$200-300 per barrel to over \$1,000), he now had to transport his catch by vehicle that had since required very costly repairs.
15. Moreover, according to Mr. Sin, he was convicted by the authorities for contravening the Trawl Ban. Mr. Sin appeared to be particularly distressed and aggrieved by the conviction record as he staunchly believed that he had been in Hong Kong waters and that he was just a fisherman trying to earn a living, not a criminal.

16. Although Mr. Sin did say that selling the Vessel could be an option if he could get some money from the sale, Mr. Sin also felt that because he was of low literacy, there were no employment options open to him other than to continue fishing, and said that he did want to continue to do so. After all, his family had been fishing for generations and he was frustrated that it all seemed to have to end with him. In the premises, he pleaded for the Board to help him carry on by giving him more money and hoped that the reserved 30% of the EGA could be distributed to him.

17. In the course of responding to the Board's queries for the purposes of determining what could be done to assist Mr. Sin and/or to answer his concerns, the IWG submitted the following:

(1) The 30% of the EGA that was currently reserved would eventually be distributed to all eligible inshore trawler owners. It was necessary to wait for all successful appeals to the Board to be concluded because successful appeals could mean further grants of EGA needed to be made and funds needed to be reserved for achieving that purpose;

(2) The EGA was set up to assist fishermen who were affected to transition to means of making a living other than by trawling. The owners in receipt of the EGA could choose to refurbish their existing vessels so as to be able to conduct fishing operations in Hong Kong which did not involve the use of trawling methods, or trade up for a larger vessel so as to enable them to venture further into offshore (non-Hong Kong) waters for trawling. To that end, a Certificate for Eligibility of Registration could be obtained by affected fishermen that would enable them to register their vessels for such alternative purposes;

(3) There were in fact many other forms of fishing that did not involve methods of trawling, i.e. using gill netting, long liner and purse seiner methods...etc. These methods of fishing are legal in Hong Kong waters.

(4) The IWG also clarified that in having assessed that the Vessel belonged to the higher tier, they had already apportioned to the Appellants the highest amount of EGA payable to inshore shrimp trawlers of comparable size as the Vessel.

The Board's Decision

18. Although the majority of the time at the hearing was spent on hearing what Mr. Sin had to say, the Board did consider the evidence and examined how the criteria adopted by the IWG had been applied towards their determination of the EGA payable to the Appellant. There also being apparently no dispute by the Appellants on this point and also no evidence submitted in rebuttal, we are satisfied that the Vessel is an eligible inshore trawler as assessed by the IWG.

19. Having considered all of the evidence, the Board also takes the view that the Appellants have not discharged their burden to show that the Decision is wrong and should be departed from. Indeed, the IWG has already awarded to the Appellants the highest amount of EGA for inshore shrimp trawlers of comparable size.

20. Having heard what Mr. Sin had to say, this Board concludes that the appeal was motivated, as in many other cases, by real difficulties faced by fishermen whose livelihood has been sorely affected by the Trawl Ban, and who therefore desire to be fully compensated for their losses. However, it needs to be borne in mind that the EGA is part of a scheme that is meant to assist, not compensate, and that with proper fact-finding by the affected parties and guidance by the related authorities, there are indeed options that are available to assist fishermen with transitioning into other modes of fishing or other related industries.

21. In particular, this Board notes that Mr. Sin appeared to be much relieved on

learning that in fact not all forms of fishing were banned in Hong Kong, and we appreciate the fact that Dr. So of the IWG has agreed to speak to and render specific assistance to Mr. Sin. We take the opportunity to note that in our experience, a substantial proportion of the appeals that have come before us result from a misapprehension about the policy of the EGA, and also a lack of know-how on the part of the appellants as to what options are available in the way forward. This situation is not helped by the fact that many fishermen have received little to no formal education, and are of low literacy. We would therefore be pleased to see if more effective assistance could be given to such vulnerable parties in the future.

Date of hearing : 15 April 2016
Heard at : Room 1818, 18th Floor, East Wing Central
Government Offices, 2 Tim Mei Avenue,
Tamar, Hong Kong.

(signed)

Mrs. CHEUNG Po-yee, Peggy
Chairman

(signed)

Mr. CHAN Wai-chung
Member

(signed)

Ms. Lam Po-ling, Pearl
Member

(signed)

Dr. TYEN Kan-hee, Anthony
Member

(signed)

Mr. SOO Kwok-leung
Member

The Appellants, Mr. Sin Wah-ho in person, Ms. Sin Ling-sze (in absentia).

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.