

DECISION AND REASONS FOR DECISION

FISHERMEN CLAIMS APPEAL BOARD (TRAWL BAN)
CASE NO. SW0060

Between

WONG PING MAN (黃炳文)

Appellant

and

THE INTER-DEPARTMENTAL WORKING GROUP

Respondent

Date of Hearing: 24 April 2015

Date of Decision and Reasons for Decision: 12 February 2016

DECISION AND REASONS FOR DECISION

JUDGMENT (Chairman Mrs. CHEUNG Po-yee, Peggy, Member Mr. CHAN Weng-yew, Andrew, Member Mr. CHAN Wai-chung, Member Mr. KONG Tze-wing, James and Member Dr. SHIN Kam-shing, Paul):-

Introduction

1. Case number SW0060 is an appeal by Mr. WONG Ping Man (“**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 CM64746A) (“**the Vessel**”) was an eligible stern trawler of length 25.30m that was not mainly reliant on Hong Kong waters and awarding Mr. Wong an *ex gratia* payment of \$663,147 under the one-off assistance scheme in respect of the Vessel.

¹ Hearing Bundle p 92

The Trawl Ban and the EGA

2. 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 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 Eligibility Criteria

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. The eligibility criteria for application of EGA (“**the Eligibility Criteria**”) are set out in Part (A) of Enclosure 1 to the FC Paper :

“(A) EGA

The eligibility criteria are to be determined by an inter-departmental working group (IWG) established before the commencement of the registration for applying for EGA. Only applicants who can meet the criteria are eligible for the EGA. The criteria should include, inter alia, the following:

- (a) the applicant must be the owner of a trawler vessel which is used for fishing only and not engaged in other commercial activities as at 13 October 2010, and at the time of application is still the owner of that trawler;
- (b) the applicant must be the holder of a valid certificate of ownership

and operating licence of a Class III vessel issued by the Marine Department (MD) under the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548D) in respect of the trawler vessel on or before 13 October 2010; or has obtained an approval-in-principle letter for construction of a Class III vessel issued by the MD on or before 13 October 2010, and submit a document proving that the vessel under construction is a trawler vessel;

- (c) where the application is in respect of an inshore trawler, the trawler vessel in the application must wholly or partly fish within Hong Kong waters.

The Appeal Grounds

6. In this appeal, Mr. Wong contends at the material time, the Vessel was operating 95% of its time in Hong Kong waters² (although in his application for *ex gratia* payment back in December 2012, he had asserted that the Vessel spent 90% of its time operating in Hong Kong waters³). He further contends that his parents are old – his mother has a history of medical condition⁴; that he had not hired any Mainlander workers under the Mainland Fishermen Deckhands Scheme (內地過港漁工) and that the Vessel was operating for prolonged periods of time in Hong Kong waters⁵.

The Appeal Hearing

7. At the hearing, (“**the Appeal Hearing**”):
- (1) Mr. Wong conducted the appeal in person; and
 - (2) IWG conducted the appeal through their representatives, Ms. Louise Li (“**Ms. Li**”) and Dr. So Chi-ming (“**Dr. So**”).
8. Apart from relying on the documentary evidence already submitted to the Board prior to the hearing, Mr. Wong gave oral evidence to emphasize (i) his parents were aged; (ii) there were big differences in awards between different trawler-vessel owners under the scheme; (iii) he operated the

² Hearing Bundle p 3

³ Hearing Bundle p 8

⁴ Hearing Bundle p 272

⁵ Hearing Bundle p 4

Vessel in the Kwo Chau (果洲) vicinity and (iv) the Vessel was operating with very few workers and therefore he could not go far from Hong Kong shore.

Decision & Reasoning

9. Having considered all the evidence and submissions from the parties, this Board has decided to dismiss Mr. Wong's appeal.
10. Mr. Wong has not adduced sufficient evidence to discharge the burden of proof, which is on him, to show, on a balance of probabilities, that he was operating the Vessel about 90% or 95% of the time in Hong Kong waters. Although he has produced a large quantity of receipts⁶ for sale of fish for the period from February 2009 to November 2012, those receipts cannot show whether the fish in question were caught within Hong Kong waters or outside it. It is noteworthy that there were no sales receipts relating to the fishing moratorium each year. Thirty (30) receipts were submitted for 2009, but there were no receipts for the period from 11 May 2009 to 2 August 2009, which coincided with the moratorium period from 16 May to 1 August 2009.
11. During the course of the hearing, Mr. Wong admitted that during the fishing moratorium each year, i.e. around May to July, he did not operate the Vessel. In the view of the Board, this admission is very unhelpful to Mr. Wong's appeal because the moratorium should only prohibit fishing in Mainland waters, not Hong Kong waters. If the Vessel were operating 90 to 95% of its time in Hong Kong, Mr. Wong should have no reason to stop operating the trawler during May to July each year. There was a further admission from Mr. Wong that the reason he opted not to fish during the moratorium was he had taken out a subsidy loan aimed for fishermen affected by the moratorium scheme and should he be found fishing during the moratorium, he would have to repay the loan at once.
12. Having considered all the evidence, the Board has taken the view that Mr. Wong has not been able to discharge the burden of proof to establish his case that, on a balance of probabilities, that the Vessel had been spending about 90% or 95% of its time operating in Hong Kong waters.

⁶ Hearing Bundle pp 294 to 366

Conclusion

13. In the circumstances, this appeal is dismissed.

Date of hearing : 24 April 2015

Heard at : Conference Room 2, Ground Floor,
Central Government Offices, 2 Tim Mei Avenue,
Tamar, Hong Kong.

(signed)

Mrs. CHEUNG Po-yee, Peggy
Chairman

(signed)

Mr. CHAN Weng-yew, Andrew
Member

(signed)

Mr. CHAN Wai-chung
Member

(signed)

Mr. KONG Tze-wing, James, MH, JP
Member

(signed)

Dr. SHIN Kam-shing, Paul, MH
Member

The Appellant, Mr WONG Ping-man appearing in person
Ms LI Wai-hung, Louise, Senior Fisheries Officer (Sustainable Fisheries),
representative on behalf of the IWG
Dr SO Chi-ming, Fisheries Officer (Sustainable Fisheries) 1, representative on
behalf of the IWG
Mr Paul LEUNG, Legal Advisor to the Board