

DECISION AND REASONS FOR DECISION

FISHERMEN CLAIMS APPEAL BOARD (TRAWL BAN)
CASE NOS. SW0108 & SW0202
(HEARD TOGETHER)

Between

CHENG PAK SHING (鄭北勝)

Appellant

and

THE INTER-DEPARTMENTAL WORKING GROUP

Respondent

And between

CHENG CHI KEUNG (鄭志強)

Appellant

and

THE INTER-DEPARTMENTAL WORKING GROUP

Respondent

Date of Hearing: 5 January 2017

Date of Decision and Reasons for Decision: 15 June 2017

DECISION AND REASONS FOR DECISION

JUDGMENT (Chairman Mrs. CHEUNG Po-yee, Peggy, Member Mr. CHAN Weng-yew, Andrew, Member Prof. CHU Ka-hou, Member Mr. KONG Tze-wing, James and Member Ms. LEUNG Wun-man, Emba):-

Introduction

1. Case number SW0108 is an appeal by Mr. CHENG Pak-shing (鄭北勝) (“**Mr. PS Cheng**”) against the decision of the Inter-departmental Working Group (“**IWG**”) dated 30 November 2012 (“**the SW0108 Decision**”¹)

¹ Hearing Bundle p 90 of SW0108

determining that his fishing vessel (with Certificate of Ownership Number CM64590A) (“**the SW0108 Vessel**”) was an eligible trawler that generally did not operate in Hong Kong waters (一艘一般不在香港水域作業的合資格拖網漁船) and awarding him an *ex gratia* payment of \$150,000 under the one-off assistance scheme in respect of the SW0108 Vessel.

2. Case number SW0202, on the other hand, is an appeal by Mr. CHENG Chi-keung (鄭志強) (“**Mr. CK Cheng**”) against the decision of IWG dated 30 November 2012 (“**the SW0202 Decision**”) determining that his fishing vessel (with Certificate of Ownership Number CM64581A) (“**the SW0202 Vessel**”) was also an eligible trawler that generally did not operate in Hong Kong waters (一艘一般不在香港水域作業的合資格拖網漁船) and awarding him an *ex gratia* payment of \$150,000 under the one-off assistance scheme in respect of the SW0202 Vessel.
3. The appeals of Mr. PS Cheng and Mr. CK Cheng were with the Appellants’ express consent heard together on 5 January 2017 for the reason that the 2 vessels in questions had, according to the Appellants, at the material time before the Trawl Ban (as defined hereinbelow) been operating together as “pair trawlers” (雙拖).

The Trawl Ban and the EGA

4. 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.
5. 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**”).

² Hearing Bundle p 92 of SW0202

The Policy and Guiding Principle

6. 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**”).
7. 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.
8. 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 trawlers³.
9. 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\$150,000⁴.

The Appeal Grounds

10. In both their appeals, the Appellants contend⁵ that:
 - (1) their dependency on Hong Kong waters for their trawling operations amounted to 40%;
 - (2) their vessels were made of wood and had been in service for 20 years or more;
 - (3) they had gradually moved towards operating in Hong Kong waters;
 - (4) they were becoming old and no longer qualified to operate in outer waters (無條件作遠海作業);
 - (5) the Government’s compensation for the Trawl Ban was too little.

³ Paras. 5 to 10 of FC Paper

⁴ Paras. 9 and 10 of FC Paper

⁵ Hearing Bundle pp 3-4 of SW0108 and pp 3-4 of SW0202

11. They further contend⁶ that:
- (1) during 2009 to 2011, they did operate in Hong Kong waters because of the sea conditions and fish sightings (漁汛);
 - (2) as they become older, operating in outer waters cannot be sustained and sooner or later, they need to move back inshore; with the Trawl Ban, they can no longer operate here but the compensation from the Government ought to be reasonable.

The Appeal Hearing

12. At the hearing, (**“the Appeal Hearing”**):
- (1) Mr. CK Cheng appeared in person and as Mr. PS Cheng’s representative, Mr. PS Cheng being absent; and
 - (2) IWG conducted the appeal through their representatives, Dr. William SIU and Dr. Albert LEUNG.
13. Mr. CK Cheng’s oral evidence can be summarized as follows:
- (1) their vessels were sold in 2012 and he retired more than 3 years ago; as quite common in the industry, their children are unwilling to take up their fishing business;
 - (2) they used to operate in Hong Kong waters 30-40% of their time; shortly before and after typhoons, there would be better catch inshore, particularly 10 to 20 years ago;
 - (3) prior to 2011, they would set off from Shaukeiwan typhoon shelter at night and try trawling nearby at first; if there was no fish to trawl, then they would go further out into the sea; on their return, they would also try and see if there was anything to catch near Hong Kong;
 - (4) in recent years, Shanwei (汕尾) was their main location for their operations; they also operated near Dangan (擔杆) and Wanshan (萬山);

⁶ Hearing Bundle p 10 of SW0108 and p 10 of SW0202

- (5) all his sale receipts and documents have been lost for years; he would usually keep records for 1 year.

Decision & Reasoning

14. Having considered all the evidence and submissions from the parties, this Board has decided to dismiss both appeals.
15. First of all, it is for the Appellants to adduce evidence in support of their case that their dependency on Hong Kong waters was as much as 40%. However, they adduced no such evidence. In fact, Mr. CK Cheng on his own behalf and on behalf of Mr. PS Cheng admitted at the hearing that they mostly operated outside Hong Kong waters, in places such as Shanwei, Dangan and Wanshan. His description of how they would try trawling to see if there would be fish near Hong Kong on their way out to places afar such as Shanwei and also on their way back to Hong Kong does not help the Appellants establish that 40% of their catch was from Hong Kong.
16. Secondly, the Board is satisfied that IWG's classification⁷ of the Appellants' vessels as "larger trawlers" was correct. IWG's conclusion was based on uncontroversial, objective facts such as the length of the vessels (36.0m and 36.1m respectively), engine power (850.44kW and 910.12kW respectively) and fuel tank capacity (62.18 cubic metres and 74.05 cubic metres respectively).
17. Thirdly, we are satisfied on the evidence that IWG's decision to classify the 2 vessels as eligible trawlers that generally did not operate in Hong Kong waters (一般不在香港水域作業的合資格拖網漁船) was a correct one. The Appellants have not been able to successfully challenge the reasoning of IWG as set out in the Statement submitted by the Respondent in the hearing bundles.
18. As to the Appellants' contention that \$150,000 was unfairly small an amount to compensate for the loss of a chance to return to Hong Kong waters to trawl, one only needs to refer to Annex 4 of the Hearing Bundle (which is in a separate booklet), p. A45, paras. 9 and 10. It is clear from this document, which was the discussion paper for the Finance Committee in June 2011, that the \$150,000 allowance was specifically to compensate for the loss of opportunity to return to trawl in Hong Kong waters insofar

⁷ Hearing Bundle p 15 of SW0108 and SW0202

as “larger trawlers” were concerned, including the situation where the age of the vessel has reached a stage when the vessel would no longer be suitable for sailing afar. In other words, it was part of the policy to make \$150,000 as the figure for such an allowance.

19. The Board is mindful of the Terms of Reference upon which it has been established. In essence, they are as follows:

(1) 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;

(2) 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;

(3) To examine any new or additional information / evidence provided by the appellants (or their representatives) who have lodged an appeal against the IWG’s decisions or by the relevant departments, and to consider the relevance of and the weight to be given to such information/ evidence;

(4) 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 to the appellants, as appropriate.

20. In light of the Terms of Reference and the policy as set out in the Finance Committee discussion paper, we are of the view that the decision of awarding \$150,000 allowance to each of the Appellants was correct. Other vessel owners could well have been awarded payments in excess of \$150,000, but each case must be examined based on its own facts and situation. Having carefully considered all the evidence and submissions in the present 2 appeals, we are satisfied that none of the grounds of appeal has any merits.

Conclusion

21. In the circumstances, these appeals are dismissed.

Case Nos. SW0108 & SW0202

Date of hearing : 5 January 2017
Heard at : 9/F, Rumsey Street Multi-storey Carpark Building,
2 Rumsey Street, Sheung Wan, Hong Kong

Signed

Mrs. CHEUNG Po-yee, Peggy, JP
Chairman

Signed

Mr. CHAN Weng-yew, Andrew
Member

Signed

Prof. CHU Ka-hou
Member

Signed

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

Signed

Ms. LEUNG Wun-man, Emba
Member

The Appellants, CHENG Chi-keung appearing in person and as the representative of CHENG Pak-shing, who was absent
Dr. LEUNG Wai-yin, Albert, Supervisory Fisheries Management Officer, 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