

**DECISION AND REASONS FOR DECISION**

FISHERMEN CLAIMS APPEAL BOARD (TRAWL BAN)  
CASE NO. SW0113

Between

PO YING-KI (布英旗)

*Appellant*

and

THE INTER-DEPARTMENTAL WORKING GROUP

*Respondent*

Date of Hearing: 8 July 2016

Date of Decision and Reasons for Decision: 23 September 2016

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**DECISION AND REASONS FOR DECISION**

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**JUDGMENT** (Chairman Mrs. CHEUNG Po-yee, Peggy, Member Prof. CHU Ka-hou, Member Ms. LAM Po-ling Pearl, Member Dr. TYEN Kan-hee, Anthony and Member Mr. KONG Tze-wing, James):-

**Introduction**

1. Case number SW0113 is an appeal by Mr. PO Ying Ki (布英旗) (“**Mr. Po**”) against the decision of the Inter-departmental Working Group (“**IWG**”) dated 16 November 2012 (“**the Decision**”<sup>1</sup>) determining that Mr. Po’s fishing vessel (with Certificate of Ownership Number CM64288A) (“**the 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 Vessel.
2. According to Mr. Po, at the material time before the Trawl Ban (as defined

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<sup>1</sup> Hearing Bundle p 86

hereinbelow), the Vessel had been operating as a “pair trawler” (雙拖) and his partnering pair trawler (with Certificate of Ownership Number CM63750A) was owned by one Mr. SIN Chi Wah (冼志華)<sup>2</sup> (“**Mr. Sin**”).

3. Mr. Sin has also lodged an appeal against IWG’s decision. By a letter dated 3 June 2016, the Secretariat of the FCAB inquired with Mr. Po and Mr. Sin regarding whether or not they wished their appeals to be heard together. Mr. Po replied on 8 June 2016 indicating that he did not wish to have the 2 appeals heard together. In the premises, their appeals were heard separately, one after the other. Mr. Po’s appeal was heard after that of Mr. Sin.
4. Initially, Mr. Po had indicated in writing, in a reply slip dated 28 June 2016, that he would appear in person at his appeal hearing together with his friend and authorised representative, NG Chi-yip (吳志業). However, by the time of his appeal hearing, Mr. Po had informed the Secretariat of the FCAB by phone and subsequently by fax dated 7 July 2016 that he no longer wished to be present at the hearing.
5. Mr. Po’s appeal hearing was scheduled to commence at 3:30pm on 8 July 2016. By 4:10pm, neither he nor his authorised representative had appeared at Room 1801, 18/F, East Wing Central Government Offices, i.e. the venue of his appeal hearing. In the circumstances, the appeal hearing was conducted in the absence of Mr. Po and his representative.

### **The Trawl Ban and the EGA**

6. 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 statutory notice for the Trawl Ban was published in the Government Gazette in March 2011 and came into effect on 31 December 2012.
7. The Finance Committee (“**FC**”) of the Legislative Council 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**”).

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<sup>2</sup> Hearing Bundle p 43 para.16

## **The Policy and Guiding Principle**

8. 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**”).
9. 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.
10. 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>3</sup>.
11. 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>4</sup>.

## **The Appeal Grounds**

12. In the present appeal, Mr. Po contends<sup>5</sup> that:
  - (1) prior to the Trawl Ban, his dependency on Hong Kong waters was 40% - i.e. 40% of his fish catches were from Hong Kong;
  - (2) the Vessel was already 21 years’ old, made of wood, and had begun trawling closer to shore or would trawl closer to Hong Kong waters;
  - (3) the EGA amount of \$150,000 for him is too little, when compared with some others who received several million dollars of EGA.
13. In his letter<sup>6</sup> dated 14 February 2013, Mr. Po further contends:
  - (1) during the period from 2009 to 2011 and up till February 2013, the Vessel did operate in Hong Kong waters;
  - (2) the government ought to compensate trawler owners for the loss of a chance to trawl in Hong Kong waters in the future and such compensation ought to be reasonable in amount.

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<sup>3</sup> Paras. 5 to 10 of FC Paper

<sup>4</sup> Paras. 9 and 10 of FC Paper

<sup>5</sup> Hearing Bundle p 3-4

<sup>6</sup> Hearing Bundle p 8

## **The Appeal Hearing**

14. At the hearing, (“**the Appeal Hearing**”):
- (1) Mr. Po was absent. As mentioned at the outset of this Decision, his authorized representative, Mr. Ng Chi Yip (吳志業), was also absent. They opted not to attend the hearing. As such, the FCAB did not have the benefit of hearing any oral evidence or submissions from the appellant’s side; and
  - (2) IWG conducted the appeal through their representatives, Dr. Albert Leung, Dr. William Siu and Ms. Teresa Yuen.

## **Decision & Reasoning**

15. Having considered all the evidence and submissions from the parties, this Board has regrettably decided to dismiss Mr. Po’s appeal.
16. The Board accepts the reasoning set out in IWG’s written submissions in the Hearing Bundle and their representative’s oral submissions.
17. Importantly, the Board finds that Mr. Po has failed to discharge his burden of proving that his operations depended on Hong Kong waters to the extent of 40% as contended in the appeal. In the January 2012 questionnaire, Mr. Po stated that his dependency on Hong Kong waters was 0% in the year ending 13 October 2010<sup>7</sup>. The figure of 0% appeared to have been written subsequent to and in replacement of a figure of 20%. We take the view that it was open to Mr. Po to explain why the figure was changed from 20% to 0% in the questionnaire and, indeed, to explain his *modus operandi* in order for this Board to understand his situation.
18. Yet, just days before the hearing, Mr. Po informed us his decision not to make use of the hearing to present his case by appearing at the hearing.
19. The burden is on Mr. Po to convince this Board that IWG’s award was incorrect or insufficient. He asserted a dependency of 40% in his appeal papers but has failed to adduce any evidence whatsoever in support of that assertion. He has failed to discharge his burden of proof.

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<sup>7</sup> Hearing Bundle p 43 paras. 17 and 18

20. As to Mr. Po's contention that \$150,000 was too 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 Appendix 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 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.
21. 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.
22. We are satisfied on the evidence that IWG's decision to classify the Vessel as a larger but 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) was a correct one. In light of the Terms of Reference and the policy as set out in the Finance Committee discussion paper abovementioned, we are of the view that the decision of awarding \$150,000 allowance to this appellant was correct.

## **Conclusion**

23. In the circumstances, this appeal is dismissed.

Date of hearing : 8 July 2016  
Heard at : Room 1801, 18<sup>th</sup> Floor, East Wing  
Central Government Offices, 2 Tim Mei Avenue,  
Tamar, Hong Kong.

(signed)  
Mrs. CHEUNG Po-yee, Peggy, JP  
Chairman

(signed)  
Prof. CHU Ka-hou  
Member

(signed)  
Ms. LAM Po-ling, Pearl  
Member

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

(signed)  
Mr. KONG Tze-wing, James, MH, JP  
Member

The Appellant, Mr. PO Ying-ki (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) 3, AFCD,  
representative on behalf of the IWG  
Ms. YUEN Wing-sum, Teresa, Fisheries Officer (Sustainable Fisheries) 4, AFCD,  
representative on behalf of the IWG  
Mr. Paul LEUNG, Legal Advisor to the Board