

DECISION AND REASONS FOR DECISION

FISHERMEN CLAIMS APPEAL BOARD (TRAWL BAN)
CASE NOS. TP0001 & TP0002
(HEARD TOGETHER)

Between

LEUNG KAM FOOK (梁金福)

Appellant

and

THE INTER-DEPARTMENTAL WORKING GROUP

Respondent

And between

LEUNG FOR HING (梁伙興)

Appellant

and

THE INTER-DEPARTMENTAL WORKING GROUP

Respondent

Date of Hearing: 17 June 2016

Date of Decision and Reasons for Decision: 14 August 2017

DECISION AND REASONS FOR DECISION

JUDGMENT (Chairman Ms. HUI Mei-sheung, Tennessy, Member Ms. LAM Po-ling, Pearl, Member Ms. CHAN Nancy, Member Prof. CHU Ka-hou and Member Ms. AU Sin-lun, Catherine):-

Introduction

1. Case number TP0001 is an appeal by Mr. Leung Kam-fook (梁金福) (“**Mr. KF Leung**”) against the decision of the Inter-departmental Working Group (“**IWG**”) dated 21 December 2012 (“**the TP0001 Decision**¹”) determining

¹ Hearing Bundle p 126 of TP0001

that Mr. KF Leung's fishing vessel (with Certificate of Ownership Number CM63580A) ("**the TP0001 Vessel**") was an eligible pair trawler (雙拖) 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 \$4,826,978 under the one-off assistance scheme in respect of the TP0001 Vessel.

2. Case number TP0002, on the other hand, is an appeal by Mr. Leung For-hing (梁伙興) ("**Mr. FH Leung**") against the decision of the IWG dated 21 December 2012 ("**the TP0002 Decision**")² determining that Mr. FH Leung's fishing vessel (with Certificate of Ownership Number CM64434A) ("**the TP0002 Vessel**") was an eligible pair trawler (雙拖) 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 \$4,833,380 under the one-off assistance scheme in respect of the TP0002 Vessel.
3. The appeals of Mr. KF Leung and Mr. FH Leung were with the Appellants' express consent³ heard together on 17 June 2016 for the reason that the two vessels in questions had, according to the Appellants, at the material time before the Trawl Ban (as defined hereinbelow) been operating in tandem 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 an 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 119 of TP0002

³ Hearing Bundle p 227 of TP0001 and Hearing Bundle p 223 of TP0002

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 trawlers⁴.
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 \$150,000⁵.

The Appeal Grounds

10. In both their appeals, the Appellants contend that:
 - (1) their business should continue to grow; there should be annual growth of at least 19%⁶;
 - (2) the sea water quality in Hong Kong waters is improving and there should be considerably better catch as a result⁷;
 - (3) competition in the industry is easing⁸;
 - (4) the IWG had under-estimated the business turnover of the Appellants⁹.

⁴ Paras. 5 to 10 of FC Paper

⁵ Paras. 9 and 10 of FC Paper

⁶ Hearing Bundle p 8 of TP0001 and Hearing Bundle p 4 & p 9 of TP0002

⁷ Hearing Bundle p 4 of TP0002

⁸ Hearing Bundle p 4 of TP0002

⁹ Hearing Bundle p 4 & 8 of TP0001 and Hearing Bundle p 9 of TP0002

The Appeal Hearing

11. At the hearing, (**"the Appeal Hearing"**):
 - (1) Both Appellants were absent; and
 - (2) IWG conducted the appeal through their representatives, Dr. William SIU and Ms. Teresa YUEN.
12. Both Appellants had notified the Board in advance that they would neither attend the Appeal Hearing nor authorize any representative to attend on their behalf¹⁰.
13. At the hearing, IWG's representatives pointed out-
 - (1) although the Appellants had produced copies of sale receipts, for example, issued by the Tai Po Wholesale Fish Market, those receipts did not show where the fishes were caught, whether entirely within Hong Kong waters, partially within Hong Kong waters, or in mainland waters;
 - (2) the IWG's EGA decisions were not based on the business turnover of individual vessels;
 - (3) even if there were 19% increase in the Appellants' business turnover each year, there was no evidence to show such increase was due to better catch in Hong Kong waters or in mainland waters;
 - (4) the IWG had already taken into account the evidence of ice purchases when it made the EGA decisions for the two cases.

Decision & Reasoning

14. Having considered all the evidence and submissions from the parties, this Board has decided to dismiss both appeals.
15. The Appellants had chosen not to attend the Appeal Hearing. In the circumstances, they did not explain their mode of operations to the Board. More specifically, there was no evidence to explain how the annual increase of 19% in business turnover was related to fishery catch from

¹⁰ Hearing Bundle p 239 of TP0001 and p 235 of TP0002

Hong Kong waters.

16. 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.
17. Here, the Appellants' vessels were already treated by the IWG as substantially reliant on Hong Kong waters and the EGA awarded to the Appellants were already in the "upper tier" category.
18. The burden is on the Appellants to persuade this Board to accept their case and they have failed to do so here. There was simply no evidence to support a case of improving seawater quality in Hong Kong or easing competition in the industry here. Nor was there evidence to support the claimed 19% sustained annual business growth.
19. We are not persuaded that the IWG ought to have taken into account the individual vessel's business turnover. It would be impractical for the IWG to ascertain each individual's turnover with any degree of reliability. In any event, the EGA scheme was never intended to be carried out on that basis.
20. The Appellants have also failed to challenge IWG's reasoning as set out in the Statement Submitted by the Respondent in the hearing bundles, Parts B, C and D (乙部、丙部及丁部). Business growth potential, even if proved, should not be a relevant factor in deciding on the amount of EGA to be awarded.

Conclusion

21. In the circumstances, these appeals are dismissed.

Date of hearing : 17 June 2016

Heard at : Room 1801, 18/F, East Wing,
Central Government Offices,
2 Tim Mei Avenue, Tamar, Hong Kong

(signed)

Ms. HUI Mei-sheung, Tennessy, MH, JP
Chairman

(signed)

Ms. CHAN Nancy
Member

(signed)

Prof. CHU Ka-hou
Member

(signed)

Ms. LAM Po-ling, Pearl
Member

(signed)

Ms. AU Sin-lun, Catherine
Member

The Appellants, Mr. LEUNG Kam-fook and Mr. LEUNG For-hing (in absence)
Dr. SIU Ho-lim, William, Fisheries Officer (Sustainable Fisheries), AFCD,
representative on behalf of the IWG
Ms. YUEN Wing-sum Teresa, Fisheries Officer (Sustainable Fisheries), AFCD,
representative on behalf of the IWG
Mr. Paul LEUNG, Legal Advisor to the Board