

Determination of Sea Fishing Boat Licensing Appeal under section 16 of the Fisheries Amendment Act 2003.

Appellant: John O'Sullivan

Address: Inisnee, Roundstone, Co. Galway

Fishing Vessel: MFV Morning Star Capacity of 0.83 GT /2.98 KW

Issue/Law: Operation of Policy Directive 2 of 2003: Policy Directive 2 of 2003 adopted under the Fisheries Amendment Act 2003 provides that capacity taken off the Fishing Register must be reintroduced to the Register within two years of its removal from the fleet otherwise the entitlement will be lost to its owner.

An **Oral Hearing** was held on 22 October 2021 in Menlo Park Hotel, Galway City. Those present were the Applicant and Deirdre Kelleher, Deputy Registrar General of the Licensing Authority.

Decision of Appeals Officer: The Appeal is refused.

Facts

The facts of this case are not in dispute.

The Appellant removed capacity from the register (0.83 GT /2.98 KW - MFV Morning Star) on 1 May 2014 with a view to using this as capacity on a replacement vessel, MFV Saoirse Na Mara, in respect of which a licence application was made on 14 April 2014 and a conditional licence offer issued on 29 April 2014.

A licence for MFV Saoirse Na Mara never issued as the conditions of licence were not met, the vessel was sold and the off-register capacity was not re-introduced onto the register prior to the expiry date of 1 May 2016.

The Appellant explained that the reason that the capacity was not reintroduced within the two year period was that in 2014 the Applicant's personal life was significantly disrupted by him becoming separated from his wife and family which necessitated him moving out of the family home. He lived in alternative accommodation for approximately 6 months and is unsure what post was sent to him at his home address from the Licensing Authority. In order to buy his half of the family home, he took a job as a groundsman in a hotel and sold his boat. During this time he did not think that he would lose the licence capacity but just assumed that when he got back on his feet financially that he could buy another boat and use the capacity then. He was unaware that the off-register capacity was a wasting asset.

When the Appellant applied for the capacity to be reassigned in 2020 the Respondent informed him that the capacity had been lost on 1 May 2016.

There is no attempt by the Appellant to contend in this appeal that the Respondent contributed to the delay or that the Applicant had not been put on notice of the expiry dates. The explanation he provided was straightforward oversight on his part Applicant due to the upheaval in his personal life.

Decision

The powers of an Appeals Officer (AO) under Policy Directive 2 of 2003 are very confined.

Policy Directive 2 of 2003 does not allow an AO, a discretion to dis-apply deadlines even, such as in this case, where non-compliance was due to a significant and/or difficult upheaval in an Applicant's personal circumstances.

The wording of Policy Directive 2/2003 operates on a strict adherence to a *use the capacity or lose it* rule which is confined to a two year period. The only basis upon which the expiry date may not be applied is if the action of the Respondent, or other State emanation – and not the Applicant – resulted in time running against the Applicant over which he/she had no control, rendering compliance with the expiry date to be an impossibility. The basis of such decisions are that in circumstances where the Applicant could not have prevented the effluxion of time and the loss of the capacity – he/she would not have enjoyed a full two year period as Policy Directive 2/2003 permits.

However this does not pertain to the present facts.

In this case the Applicant sought to reintroduce the capacity four years after the capacity had expired. There is no assertion by him that the Respondent caused any delay and the Appellant accepts that it was his oversight - albeit understandable oversight - that resulted in the capacity being lost. However, as previous decisions have held, the Policy Directive does not allow discretion to be used in such circumstances.

In such circumstances I find that I do not have discretion other than to apply the terms of Policy Directive 2 of 2003.

Consequently I find that this appeal fails.

Emile Daly
Appeals Officer
Law Library
Four Courts
Dublin 7

26 October 2021