

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

Appellant: Andrew Brian Connolly

Address: Rocklawn, South Shore Road, Co. Dublin

Fishing Vessel: MFV Migrator; capacity 8 GT and 75 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 21 October 2021 in Harbour Master Office, Howth, Co. Dublin. Those present were the Applicant and Deirdre Kelleher, Deputy Registrar General of the Licensing Authority.

Decision of Appeals Officer: The Appeal is granted.

Facts

The facts of this case are not in dispute.

The Appellant removed capacity from the register (8 GT and 75 kW from MFV Migrator) on 16 February 2018. In accordance with Policy Directive 2 of 2003 (*use it or lose it rule*) this off-register capacity was required to be reintroduced to the register within 2 years as otherwise the capacity would lapse. The Appellant was informed by letter dated 19 February 2018 that the expiry date to reintroduce the capacity was 16 February 2020.

By email dated 16 February 2020 the Appellant applied to introduce the capacity onto the register. The following day he drove from his home in North Dublin to the Respondent's Offices in Clonakilty with a hard copy application to ensure that the application was issued in time.

The Respondent subsequently informed the Appellant that the capacity had expired because of the failure to re-introduce the capacity to the Register within the time period.

The Respondent asserts that because of the wording of Policy Directive 2 of 2003 - that the capacity shall be reintroduced within two years of coming off register - and that the application should be received before the expiry date.

Furthermore the Respondent contends that because having received the application because it may take a number of days to administer the reintroduction of the capacity

that capacity should be reintroduced by an Applicant even prior to then, in order to ensure that the capacity is back on the register within two years.

Decision

This decision requires a consideration of the wording of the Policy Directive 2/2003 and a consideration of a letter dated 19 February 2018 wherein the Respondent advised the Appellant of the expiry date of the off-register capacity.

Section E of Policy Directive 2/2003 states as follows:

Capacity taken off the Fishing Boat Register must be re-introduced onto the Sea Fishing Boat Register within 2 years of its removal from the fleet register, otherwise the entitlement will be lost to the owner..

Giving effect to this wording the Respondent wrote to the Appellant on 19 February 2018 and referred to the licence application of MFV Migrator. The Respondent advised that the off-register capacity would expire on 16 February 2020.

The Appellant applied to the Respondent by email on 16 February 2020 for the capacity to be reintroduced to the Register and the Respondent accepts that this was done. She does not contend that there was anything defective with the application itself, rather her objection is confined to the contention that the application should have been made prior to the 16 February 2020 because Policy Directive 2/2003 refers to “within two years” and that the capacity expires on 16 February 2020, which they contend means the expiration takes place at the start of that date.

I am not persuaded by the Respondent’s contention in this regard. The operation of the two year rule under the Policy Directive is administered by the Respondent. The Appellant has no ability to control when or at what efficiency the process to reintroduce the capacity is carried out. The Appellant can only respond to what the Respondent represents to him in terms of dead lines.

The Appellant’s application to take the capacity off register was received (stamped) by the Respondent on 17 February 2018. Arising from this an expiry date in respect of the off-register capacity was stated as being 16 February 2020.

Had the Respondent intended to give effect to the Policy Directive 2/2003 by stating an expiry date of prior to the 16 February 2020, it could have done so (although this might well be open to challenge if by doing so this resulted in a period of less than a full 2 year period) however, they did not. Instead the letter of 19 February 2018 clearly stated that the off register capacity would expire on 16 February 2020 and not before then.

It is accepted that the Appellant applied to reintroduce the capacity on the expiry date and as such it was done within the time period that was permitted – both by the Policy Directive but also by the representation (letter) dated 19 February 2018. I do not accept that “expiry on a specified date” means that the expiry would take place on the date before the specified date. A more reasonable construction is that it would expire at the end of the specified date. Whether that means by close of business or

by midnight on the expiry date, may arise in another case but in this case, in either respect the Appellant was in compliance.

I find that there is no basis to support the Respondent's contention that the time lapsed on a date prior to the stated expiry date, either on 15 February 2020 or a date prior to then. 16 February 2020 was the expiry date that the Appellant was advised of and that was the date that he complied with.

As there is no ambiguity in the letter of 19 February 2018 it is not necessary for me to consider the application of the contra-proferentum rule (in respect of ambiguity terms in contract) or the statutory construction rule (in respect of Policy Directive 2/2003) that a period of time in legislation shall include the first and the last day of the period, because I find that the ordinary meaning of the representation made by the Respondent to the Appellant was that the Appellant had until and including the expiry date of 16 February 2020 to apply for the capacity to be reintroduced to the Register and I am satisfied that he did so.

For the above reasons I find that this appeal succeeds.

Emile Daly
Appeals Officer
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Dublin 7

26 October 2021

