

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

Appellant: Richard McNamara, Ballyhack, New Ross, Co. Wexford

Fishing Vessel: MFV “Briseanua” C126

Law: Operation of Policy Directive 2 of 2003

Decision of Appeals Officer: The Appeal is allowed.

Reason for the Decision

Policy Directive 2 of 2003, made pursuant to 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. In this case the application, to reintroduce the capacity, was made within two years but the application was treated by the Respondent as if it had been made outside two years.

Facts

None of the facts of this case are in dispute.

The Appellant is a full time fisherman with a large family. In 2011 the Appellant had an accident with a boat and thereafter was unable to continue using this vessel. He bought a smaller boat and transferred the capacity from the former larger vessel onto smaller MFV “Briseanua.” This resulted in him having surplus capacity. As he was anxious not to lose the surplus capacity and being aware of the “two year rule” he transferred the capacity onto and off his new vessel. He did this with the cooperation of the Respondent in 2013 and 2015.

He intended doing this again in 2017 and the Respondent wrote to him on 24 April 2017 informing him that the off-register capacity needed to be reintroduced onto the register by 11 May 2017. That day (24 April 2017) the Appellant applied for the MFV “Briseanua” to be re licenced and applied for the surplus capacity (of 0.31 GT and 8.63 kW) to be transferred onto and off register. In so doing so the transfer of this capacity occurred prior to the operative expiration date, of 11 May 2017.

A letter dated 28 April 2017 was then sent by the Respondent to the Appellant granting a licence of the MFV Briseanua and acknowledging that the surplus capacity was now off register. The letter went on to advise him that the capacity would have to be reintroduced to the register by 21 April 2019 or else it would expire. This date is the material date that the Appellant contends was incorrect.

Decision

Policy Directive 2/2003 is non-discretionary in its wording. There is no discretion to vary this, either for the Appellant or the Respondent.

Where through an error in the administration of the licensing scheme, a date for expiry of capacity is cited as being less than two years, the Respondent is acting beyond its statutory power to apply such an expiry date. In such an instance the role of the Appeals Officer in deciding the application afresh must consider the application within the same legislative framework as confines the Respondent at first instance.

In this appeal the date of 21 April 2019 was incorrectly identified by the Respondent as being the expiry date of the replacement capacity. The Appellant had applied on 24 April 2017 for the capacity to come off register. In response to this the MFV "Briseanua" was licenced on 28 April 2019 at which point the surplus capacity went on and off register. This created a new expiry date, namely the 28 April 2019.

The Appellant contacted the Respondent on 23 April 2019 by telephone and was told that the capacity had expired two days earlier, which was incorrect.

The Respondents then wrote to the Appellant on 28 April 2019, informing him that the capacity had expired on 21 April 2019, repeating the incorrect expiry date.

There would have been sufficient time between 23 April 2019, when the Appellant made contact with the Respondents and 28 April 2019, when the capacity should have expired for the Appellant to apply to reintroduce the surplus capacity on register. The reason he did not was because he was informed on 23 April 2019 that it had already expired.

I am satisfied that had the correct date been used in the original letter of 28 April 2017 that the Appellant would have applied within time to register the capacity.

Even if two years had run from the date that he *applied* for his capacity to come off register, 24 April 2017 – which would have allowed an expiry date of 24 April 2019, when the Appellant telephoned the Respondent on 23 April 2019, he should have been informed that he still had one day left.

For this reason I am satisfied that in order to apply Policy Directive 2/2003, which binds both licence holders and the Respondent equally, as I am mandated to do, I will allow this appeal.

Emile Daly
Appeals Officer
Law Library
Four Courts
Dublin 7

19 September 2019

Correction Order

29 November 2019