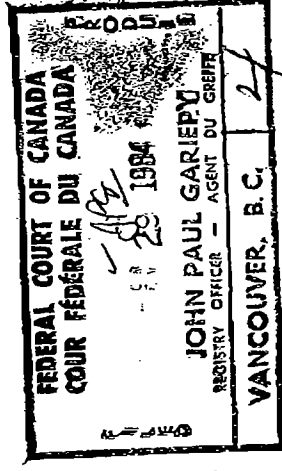


T- 113-84



Federal Court of Canada
 Trial Division



BETWEEN:

WILLIAM THOMSON

APPLICANT

and

THE MINISTER OF FISHERIES
 AND OCEANS and THE REGIONAL
 DIRECTOR OF FISHERIES AND
 OCEANS, PACIFIC REGION

RESPONDENTS

REASONS FOR ORDER

DUBE, J.

The applicant seeks a writ of mandamus compelling the respondents to issue a Class "B" salmon fishing licence for the vessel M.V. "ILL EAGLE TOO" and the applicant as its owner in compliance with Pacific Fishery Registration and Licensing Regulations (SOR/83-102) passed under the authority of the Fisheries Act of Canada¹.

In his affidavit in support of the motion, the applicant states that prior to 1969 there was no limitation on salmon fishing vessels and licences and, as a vessel owner, he was simply required to register his vessel which would thereby be fully licenced for salmon fishing. In 1969 the government limited salmon licences to those vessels with prior history of salmon fishing. Regulations created two classes of salmon fishing licences, a Class "A" licence renewable annually on an indefinite basis and a Class "B" licence renewable annually for a period of ten years.

1. R.S.C. 1970, c. F-14

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In 1978 regulations were promulgated extending the life of Class "B" licences (of which there were 103 left) under certain conditions. The relevant provision, subsection 42(1), reads as follows:

42(1) Notwithstanding section 41 and except for a Category B licence entitlement that extends for a period beyond December 13, 1983, a Category B licence may be issued in respect of a commercial fishing vessel with a Category B licence entitlement for every year up to 1984 if that vessel was

(a) owned by the same owner since April 1, 1969, and

(b) subject to subsection (4), operated only by that owner since December 31, 1978.

(my underlining)

By 1983 the original number of "B" licence holders had been reduced to 72. On December 14, 1983, the applicant received a letter from the Department of Fisheries and Oceans informing him that there would be no further renewals of Class "B" licences.

The thrust of the applicant's argument is that under subsection 42(1) of the Regulations he is entitled to a Category "B" licence for every year "up to 1984" and that there is a duty on the respondents to renew his licence for one more year.

Counsel for the applicant canvassed the jurisprudence to show that "up to" a certain date includes that certain date.

In The Lachine Jacques Cartier and Maisonneuve Railway Co. v. Bastien et al,² a 1914 Quebec Superior Court decision, Archibald, J. held that a board of arbitrators appointed under the Railway Act of Canada³ which adjourned its proceedings "up to February 28" has the whole day named included in which to act and make its award. The exact word used was the French

2. (1914) 6 Q.S.C.R. 133

3. c. 37 R.S.C. 1906

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word "jusque" which means "until" or "up to". (It is to be noted that the French version of subsection 42(1) of the Regulations herein discussed uses the word "jusque", or more precisely, "jusqu'à 1984".

In Re Smith and MacPherson⁴, a 1921 Ontario Supreme Court Appellate Division decision, the court held that an order issued by the Ontario Mining Commissioner extending the time for the performance of certain work "until the 1st day of July next" gave the holder the whole of July 1st to perform. MacLaren, J.A., quotes an old 1838 English case and a citation from Halsbury which bear reproduction (at p.480):

In Webb v Fairmaner (1838), 3 M. & W. 473, 150 E.R. 1231, where goods were to be paid for "in two months", it was held that the last day was included. These and other authorities, said the Chief Baron (L.R. 5 Ex. at p.300) "illustrate the principle that, in general, the day on which the engagement is entered into is excluded, and the last day of the term is included." Barons Martin and Cleasby concurred.

In 27 Hals. p. 446, para. 881, in discussing the question, it is said that "regard must be had to the context and to the purposes for which the computation has to be made." The writer concludes the paragraph by stating that, "as a general rule, however, the effect of defining a period in such a manner is to exclude the first day and to include the last day."

In Gowers v. Walker⁵, a 1929 Chancery Division decision, the court held that the expression in section 209 of the Companies Act⁶ "assessed up to the fifth day of April" meant "assessed for a period ending on the fifth day of April". This passage is worthy of reproduction, (at p. 267):

This contention seeks to impose on the expression "up to the fifth day of April" a construction equivalent to that which it might bear if the word "before" were substituted for the words "up to". I can see no grounds for supporting this view.

⁴.69 D.L.R. 477

⁵. [1930] 1 Ch. D. 262

⁶.1908 (8 Edw. 7, c. 69)

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Subsection 25(4) of the Canada Interpretation Act⁷

stipulates that the day mentioned is included. It reads:

25.(4) Where a time is expressed to begin or end at, on or with a specified day, or to continue to or until a specified day, the time includes that day.

Counsel is aware, of course, that his jurisprudence refers to a day and not to a year. Yet in the absence of jurisprudence to the contrary, I am prepared to accept that a strict construction of the language of subsection 42(1) leads to the conclusion that a Category "B" licence may be issued for every year including the year 1984. If the authority to issue such a licence was to terminate on December 31, 1983, the subsection would have said so. After all, legislation which encroaches upon the rights and privileges of the subject is to be strictly construed. If there is any ambiguity left in such a provision, it ought to be resolved in favour of the subject whose rights and privileges are limited by it⁸.

That is not to say, however, that a Category "B" licence must be renewed, for the word "may" implies a discretion on the part of the Minister. But such a ministerial discretion is not unfettered, as Crown counsel would have it. It has to be exercised in good faith, based on relevant considerations, and in accordance with the principles of natural justice.⁹ The Minister's discretion must not be arbitrary, or frivolous, or manifestly unfair to the applicant, otherwise mandamus will lie to compel him to act fairly.¹⁰

⁷ R.S.C. 1970, c. I-23

⁸ See Interpretation of Statutes, Maxwell, XII ed. at pp. 251, 252.

⁹ See Maple Lodge Farms Ltd. v. The Government of Canada, Trial Division [1980] 2 F.C. 458; Court of Appeal [1981] 1 F.C. 500; and Supreme Court of Canada 44 N.R. 354.

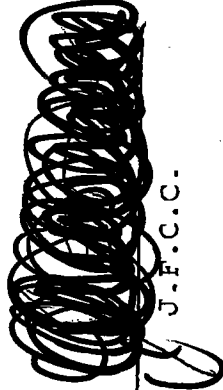
¹⁰ See Martinoff and Page v. Gossen and Commissioner of R.C.M.P. [1979] 1 F.C. 652; Roman M. Turenko v The Commissioner of R.C.M.P., October 27, 1983, T-1434-83.

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It is for the applicant to show that the ministerial decision was bad on any of those grounds. He has not done so. He has merely established that subsection 42(1) of the Regulations did not prevent the Minister from renewing his fishing licence.

The documentary evidence on file shows that the Minister and his department in recent years have attempted to limit the number of vessels authorized to fish commercially for salmon off the west coast of Canada because the salmon stocks have significantly declined resulting in reduced levels of harvest and spawning. The respondents have not dealt capriciously with the applicant but have acted uniformly with all those in his category. A letter from the Minister dated August 8, 1983 to the applicant in his capacity as President of the Original "B" Fisherman's Association indicates that he has carefully considered "all the factors affecting "B" licences and the commercial fishery as a whole" and has decided "to uphold the expiry deadline of December 31, 1983, as current regulations provide".

It is trite law that a mandamus will not lie unless the applicant shows that he has a right, that the respondent has a corresponding duty and that the latter has failed to exercise that duty. In the instant case the Minister has merely exercised his ministerial discretion in the administration of his department and there is no indication that he has acted unfairly. The motion, therefore, is denied with costs.


J.F.C.C.

ORDER

The motion is denied with costs.


J.F.C.C.

Vancouver, B.C.
February 29, 1984.

Names of Counsel and Solicitors of Record

STYLE OF CAUSE: William Thomson
Applicant
and
The Minister of Fisheries
and Oceans and The Regional
Director of Fisheries and
Oceans, Pacific Region
Respondents

COURT NO:

PLACE OF HEARING: Vancouver, B.C.

DATE OF HEARING: February 27, 1984.

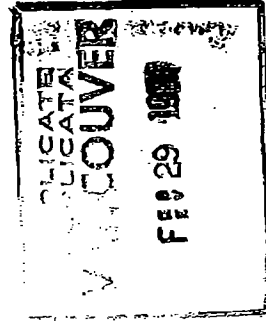
REASONS FOR ORDER OF DUBE, J. dated February 29, 1984.

APPEARANCES: Gordon L. Bisaro
for applicant

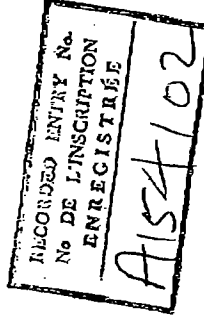
Paul Partridge
for respondents

SOLICITORS OF RECORD: Gordon L. Bisaro
Vancouver, B.C.

R. Tassé, Deputy A.G. for Canada
for applicant
for respondents



Judgment and Order Book
Entered as of

Date 29-2-84Vol. 134 Page 69-70MM 21-3-84

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