

## **CASE SUMMARY**

### **Complaint against the Marine Department (MD) for prohibiting the handling of containers at the eastern end of a Public Cargo Working Area (PCWA)**

The complainants i.e. cargo operators of a PCWA alleged that the MD had not advised them of any prohibition on the handling of containers at the eastern end of the PCWA when it commenced its operation. It was noted that Berth No(s) 1 and 2 were located in close proximity to a nearby residential estate. Since the operation, the MD had received numerous complaints from the residents of the nearby estate about the noise nuisance emanating from the handling of containers in these two berths. On 8 August 1997, the MD imposed an extra restriction to the cargo operators prohibiting them from carrying out container handling activities within 60 metres (m) from the eastern boundary of the PCWA. The MD further explained that this restriction was one of the land grant conditions for the PCWA. However, the complainants were amazed as they had not been informed of this restriction when they moved to the present PCWA site.

2. The PCWA has about 600m sea frontage with 15 berths. Before the area was allocated to the MD for use as a PCWA, a noise impact assessment consultancy study was completed by the Territory Development Department to assess the potential noise impacts of cargo handling activities on the nearby residents and to identify mitigating measures. The noise mitigating measures recommended in the study were subsequently included in the Engineering Conditions (EC) for Permanent Land Allocation of the PCWA to the MD. EC No. 33(a) required the implementation of the specified noise mitigation measures to avoid the generation of nuisance to

the nearby residents by stipulating clearly that *no container handling activities shall be allowed at the eastern end of the site.*

3. This Office notes that the MD, vested with the responsibility of enforcing the EC on the PCWA having regard to the need to reduce the effect of noise to the nearby residential blocks, chose not to inform the cargo operators of these conditions before the commissioning of the PCWA to ensure its strict compliance. Instead the Department took a rather low-keyed and evasive approach by simply requesting the operators to keep the noise generated from loading or unloading of containers to the minimum. Nor did the MD appear to have duly exercised its regulatory role when allocating berths to the cargo operators. Right from the start, the MD took no active enforcement action to stop container handling activities at Berth No(s) 1 and 2. Such an anomaly might have been construed by the operators that there was no restriction on container handling activities in the PCWA.

4. In the circumstances, when the MD wished to rectify such an anomaly, the complainants' feeling of "being unfairly treated" is understandable. They apparently mistook the Department's tolerance of such irregularities as the MD's normal practice. Eventually, a year after the commissioning of the PCWA, the Department started to enforce strictly the EC by prohibiting container handling at Berth No(s) 1 and 2.

5. This Office considers that the MD, in not announcing the prohibition right at the commissioning of the PCWA, and its failure to take active enforcement action, has given the cargo operators an incorrect message that container handling activities were permissible. Nevertheless, it is hoped that this report will help the complainant to understand the matter better.

6. Having considered all factors, The Ombudsman is of the view that this complaint is **partially substantiated**.

7. This Office notes that the MD, in order to improve berth utilization, decided to implement a management reform for all PCWAs whereby all berths would be allocated by tender. For this PCWA, Berths 2 to 15 had been assigned to existing operators. It is noted that the Department is still inviting tender for Berth 1.

8. The D of M is thus recommended to look in ways to ensure the compliance of the EC by :-

- (a) reviewing the tenancy agreement for Berth No(s) 1 and 2 with a view to building in such a clause;
- (b) stepping up enforcement actions against those operators who fail to comply with the EC; and
- (c) working out, in consultation with the EPD if necessary, some effective means to minimize noise generated from cargo handling activities in the concerned PCWA.

9. The D of M has no comment on the Draft Investigation Report.

10. The Ombudsman is pleased to know that the D of M has already implemented our recommendations.

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