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THE HIGH COURT
JUDICIAL REVIEW
COMMERCIAL

2007 No. 1340 J.R.

BETWEEN

O'SHEA FISHING COMPANY LIMITED

APPLICANT

AND
THE MINISTER FOR AGRICULTURE, FISHERIES AND FOOD

RESPONDENT

Judgment of Mr. Justice Clarke delivered the 7th of March, 2008

1. Introduction

1.1 This the second case to come before the Court arising out of problems involving Ireland's mackerel fishing quota which have resulted from the discovery, in Scotland, of undeclared landings of mackerel which were, at least in part, attributed to Irish boats.

1.2 On the 12th July, 2007 I gave judgment in *Atlantean Limited v. The Minister for Communications and Natural Resources and Others,* [2007] IEHC 233. The facts which lay behind an original decision ("the original decision") on the part of the respondent ("the Minister") to reduce the mackerel fishing quota available to the applicant in those proceedings, ("Atlantean"), are fully set out in that judgment and it is unnecessary to repeat them here. The applicant in these proceedings ("O'Shea Fishing") had parallel proceedings in being at the time when I gave judgment in *Atlantean*. Subsequently the Minister indicated that it was not intended to appeal my judgment in *Atlantean* and it was ultimately accepted that the largely identical position of O'Shea Fishing required to be treated in the same way as *Atlantean* .

1.3 For the reasons which I set out in my judgment in *Atlantean*, I was satisfied that the Minister had not followed fair procedures in reaching a conclusion that *Atlantean* had been guilty of undeclared landings and thus ought to bear an appropriate share of the reduction in Ireland's national mackerel fishing quota which resulted from those undeclared landings. I should also note that I made clear in *Atlantean* that there was nothing wrong, in principle, with the Minister seeking to impose the burden of the reduced Irish national mackerel fishing quota, which resulted from such undeclared landings in Scotland, on those ships which might have been shown to have been guilty of the relevant undeclared landings. My finding that the Minister's actions were unlawful was based, not, therefore, on any criticism of the principle applied by the Minister, but rather the absence of an appropriate process leading to the decision to determine the fact and amount of undeclared landings in the individual case. In the light of the fact that the Minister accepted that the decision made in respect of O'Shea Fishing was unlawful for a like reason (and by implication that any other similar decisions in respect of other boats, in respect of whom proceedings had not been maintained, were similarly tainted), it was clear that the Minister would have to take further steps to deal with the undoubted problem that existed. Ireland's national quota remained reduced as a result of decisions taken at EU level in the light of the undeclared landings in Scotland (as described in *Atlantean*) and it necessarily followed that some decision had to be taken as to where the burden of that national reduction was to lie.

1.4 These proceedings are concerned, therefore, not with the original decision of the Minister, but what followed on from the acceptance by the Minister that the original decision was to be set aside. In those circumstances, and in order to understand the basis of the legal challenge now maintained by O'Shea Fishing, it is necessary to set out the facts as they occurred subsequent to the decision in *Atlantean*.

1.5 However before going on to deal with those facts, it does seem to me to be appropriate to note that, at the hearing before me, it was common case that the figures relied upon by the Minister in coming to the original decision in respect of O'Shea Fishing (which was an identical decision to that reached in respect of *Atlantean* save that the amount of undeclared landings reported by the Scottish Authorities in respect of O'Shea Fishing differed from the amount reported in respect of *Atlantean*), was based on incorrect figures. Immediately before giving judgment I was told by counsel for the Minister that it was now believed that the figures were, in fact, correct. Courts are sometimes criticised for what is said by some to be an excessive zeal in ensuring fair process when, it is said, the result is obvious. Apart from the laudable object of ensuring that justice is seen to be done as well as being done, this case is a clear illustration of the practical consequences of proper process. What appeared to be clear facts are, as a result of proper process being engaged in, now seen to be at least open to doubt. As a result of the decision in *Atlantean*, it is clear that the Minister sought greater details from the Scottish Authorities as to the basis upon which it was suggested that the various Irish boats which had been identified as having been guilty of undeclared landings, had those undeclared landings attributed to them. Detailed documentation was made available by the Scottish Authorities to their Irish counterparts. In fairness to the Minister and her officials a detailed analysis of the documentation received from Scotland was carried out. That original analysis suggested that the undeclared landings previously attributed to O'Shea Fishing were overstated by a not insignificant margin (of the order of 8.5%). Whether that original analysis is ultimately found to be correct does not take away from the fact that the true figure will now, at least, be arrived at as a result of a rigorous process involving those affected.

1.6 It is appropriate that I draw attention to this matter because it illustrates that requiring that statutory decision makers go through proper process is no idle task designed solely for the purposes of meeting the optics of the situation. While it will not occur in every case, the facts of this case are a clear illustration of how, when a proper process is gone through, it is at least possible that a different result may well occur.

1.7 Leave to seek judicial review was given, so far as part of the claim now maintained is concerned, by Peart J., on the 15th of October, 2007. In respect of certain additional reliefs and grounds Kelly J. permitted an amendment of the statement required to ground the application. As so amended, the challenge is now to the validity of two decisions made by the Minister subsequent to the judgment in *Atlantian* (the reason for the requirement for the amendment to which I have referred is that one of the relevant decisions occurred after the original leave had been granted). In addition the statement of grounds seeks an order of *mandamus* which, if granted, would require the Minister to actually allocate a mackeral quota to O'Shea Fishing. However, that relief was not pressed at the hearing before me. It was accepted that the proper course of action to adopt was that I should consider whether the ministerial decisions sought to be impugned should be quashed. If they are quashed then it will, at least initially, be up to the Minister to decide on what course of action is appropriate subject only to the overriding entitlement of the court to review any such subsequent decision if appropriate.

1.8 While many grounds are referred to in the statement of ground, the substance of the claim put forward on behalf of O'Shea Fishing is that the relevant ministerial decisions had no sufficient or proper basis in law and were disproportionate. It is also said that

the decisions fail to properly deal with the consequences of the decision in *Atlantean*.

1.9 It is now appropriate to turn to the events which followed on from the decision in *Atlantean*.

2. The Facts
2.1 It would appear that, before the 10th September, 2007, the Minister had, as a result of the decision in *Atlantean* , set aside the original decision in respect of all relevant vessels. That fact was communicated to all relevant vessel owners by letter of the 10th September, 2007, which letter also noted that the Minister was seeking, but had not yet received, additional information from the United Kingdom authorities and from the Sea Fisheries Protection Authority ("SFPA") which is the relevant authority now charged, in this jurisdiction, with dealing with fishing regulation.

2.2 It was intimated that, following consideration of the materials sought from the United Kingdom authorities and any representations which the respective vessel owners might wish to make, a fresh decision would be made in respect of each vessel owner's mackerel allocation. The letter went on to set out the Minister's decision ("the September decision") in the following terms:-

> "Taking into account that Ireland's available quota for 2007 for the RSW Pelagic segment vessels has already been allocated in the form of catch limits to vessel owners and as the High Court judgment supports his overall policy towards the application of deductions, the Minister has decided, pending making the fresh decision outlined above, to continue with the current arrangements in place.
>
> Accordingly, the allocations given to your vessel in respect of the 2007 mackerel fishery will be maintained for this year. However, in the event that following consideration of new information received and representations made in this regard, the Minister decides that deductions should not have been applied to your vessel in respect of undeclared mackerel landings into Scotland in any of the years 2001 to 2005, he will readjust allocations in future years so that the mackerel already deducted is made available to your vessel going forward."

2.3 It seems that some delays were encountered in obtaining the relevant information from the United Kingdom authorities. It would appear that, amongst other things, those authorities required to take legal advice as to the appropriateness or otherwise of making the information sought available. Be that as it may, the information was not received by the Minister until the 17th of December, 2007. That information, together with an analysis prepared by the SFPA, was sent to O'Shea Fishing by letter dated the 21st of December, 2007.

2.4 It is important to reiterate that mackerel fishing quota is allocated on an annual basis but is, in practice, subject to two seasonal fisheries. The spring fishery was due to start at the beginning of January and the Minister was, as of late December, in a position where a decision was required as to how the quota was to be allocated for 2008. It was, not unreasonably, assumed that it would be impossible for all the vessel owners concerned to consider the documentations that would have to be supplied to them, make representations on that documentation, and have the Minister make a final decision, within the very short timescale between the 21st of December, 2007 when the documents were furnished and the 1st of January, 2008 when the 2008 mackerel season was due to open.

2.5 Against that background the Minister decided ("the December decision") to make provisional allocations of 65% of the total mackerel quota for 2008. That 65% of the quota was allocated on the same basis as had applied in 2007. That is to say deductions were made from the quotas applicable to boats, in respect of whom the now documented allegation of having made undeclared landings existed, in an appropriate amount to ensure that the reductions in Ireland's national quota were borne proportionately by those in respect of whom the allegations were made.

2.6 The balance of 35% of the national quota for 2008 was withheld to provide for any adjustment resulting from the review process as set out in the concluding paragraph of a letter of the 24th of December, 2007 (which communicated the decision to all vessel owners concerned) in the following terms:-

> "As far as the review process goes, in the event that, following consideration of any representations made by you in relation to the documentation received from the Scottish authorities, the Minister decides that any deductions should not have been applied to your vessel, or indeed other vessels in respect of undeclared mackerel landings into Scotland in any of the years 2001 to 2005, she will adjust allocation of the balance of quota for 2008 and future years to take account of such decisions."

2.7 The letter of the 24th December also sought submissions by the 24th January, 2008. Thereafter, on the 23rd of January, 2008, solicitors acting on behalf of O'Shea Fishing wrote a preliminary response to the information contained under cover of the Minister's letter of the 21st of December, 2007. A number of preliminary points were made in that letter concerning the way in which the allegations of undeclared landings are both documented and calculated. However it was also suggested that insufficient time had been allowed to respond fully. A three week extension was sought. Those points were responded to by a letter written on behalf of the Minister of the 5th of February, 2008. The issues raised could, in my view, reasonably be described as ongoing. The Minister agreed to the extension of time sought. It is clear, therefore, that the merits or otherwise of both a finding as to the amount of undeclared landings that should be attributed to O'Shea Fishing, and how any such findings should be reflected in a reduction in quota are matters which are still ongoing between the Minister and O'Shea Fishing. In those circumstances it would be most inappropriate for me to express any view on those matters.

2.8 The primary person with jurisdiction to reach conclusions in respect of such matters is the Minister. The Minister should be allowed to make whatever decision the Minister considers appropriate. If it is contended that the process leading to that final decision, or the decision itself, is unsustainable from a legal point of view then, of course, that decision will be amenable to judicial review by this Court. However, the court should not intervene until such time as the Minister has made her decision.

3. The Decisions Challenged
3.1. The two decisions which are in being are the decisions which are properly before the court at this stage. It seems clear from a review of the correspondence to which I have referred that in substance the two decisions were:-

(a) The September Decisions

> This decision was communicated by the letter of the 10th of September, 2007 and was, in substance, to the effect that because all of the national quota for 2007 had already been allocated, it was not possible or appropriate, in practice, to reverse that situation. Even though, therefore, the original decision, which had the effect of reducing

quota for vessels such as those operated by O'Shea Fishing, had been set aside, it was not, in practice, possible to allocate any additional quota to O'Shea Fishing for 2007

(b) The December Decision.

This decision was communicated by the letter of the 24th of December, 2007. The substance of this decision was that, in the light of the receipt from the Scottish authorities of documentation which, it was said, provided a *prima facie* basis for a conclusion that O'Shea Fishing had been guilty of a significant (albeit somewhat reduced from that originally asserted) amount of undeclared landings, it was appropriate to do two things:-

(i) To adopt a provisional allocation as to 65% of the quota for 2008 and,

(ii) So far as that provisional allocation was concerned, to operate on the basis of making deductions appropriate to the level of undeclared landings which appeared to be the case from the documentation supplied by the Scottish authorities. This latter decision was, of course, subject to the paragraph which I have already cited, which indicated that an appropriate adjustment would be made in the allocation of the remaining 35% of the national quota, in the event that the review then in being disclosed a change in the ultimate conclusion as to the amount of undeclared landings that had truly occurred.

3.2 It is in relation to those decisions that the challenge which I have to decide is mounted. It seems to me that the appropriate starting point has to be to characterise the nature of those decisions, not least because the Minister contends that those decisions are of a type such that they are not amenable to judicial review.

4. The Minister's Decisions

4.1 It seems to me to be appropriate to characterise the September decision as being one which does not, directly, involve a determination of rights and entitlements at all. It is clear from the letter by which the decision was communicated that the Minister had agreed to set aside the original decision in respect of each of the vessels from whom quota had been deducted. The setting aside of that decision was, of course, required as a result of the decision in *Atlantean*. Obviously it would have been open to the Minister to appeal the judgment in *Atlantean* but the Minister decided not to do so. As soon as a decision not to appeal *Atlantean* had been taken it followed that the Minister was required to set aside the original decision which, of course, had it stood, would have caused a reduction in the quota available to O'Shea Fishing not only for 2007 but also for subsequent years during which the Irish national quota was reduced. The reduction would have lasted as long as the agreed payback in respect of over fishing was being achieved.

4.2 It is clear that the September decision related only to the immediate practical implications of the Minister's decision to set aside her original decision so far as 2007 was concerned. It is difficult to see what other decision the Minister could have taken. As pointed out in *Atlantean*, the total quota available to Ireland is fixed at EU level. The Minister had allocated all of that quota on the basis of making deductions from the quota allocated to those boats who appeared to have been guilty of over fishing in accordance with the information provided by the authorities in Scotland. If the Minister were to have considered, in September of last year, some other regime for dealing with the national shortfall of quota for 2007, then such an alternative scheme would necessarily have involved the possibility that other boats would have the quota already allocated to them reduced. At an absolute minimum it would not have been legally possible (if at all) for the Minister to reduce quota already allocated to boats without giving those boats a reasonable opportunity to make representations or submissions concerning the proper course of action to be adopted. All this would have taken time. It would, in any event, be open to considerable doubt as to whether the Minister could lawfully have removed quota from boats to whom it had been allocated in the absence of any wrongful act on the part of the boat concerned. In those circumstances it seems to me that, in practical terms, there could have been no reality to the Minister readjusting quota for 2007 to take into account the decision in *Atlantean*. The spring fishery was already completed and the quota used up in that period was gone beyond recall. The autumn fishery was underway and the vessels to whom quota had been allocated were in the course of exploiting that quota. It was, in reality, too late to make any adjustment for 2007.

4.3 It does not seem to me to be appropriate to characterise the September decision as one involving the imposition of any penalty, even on an interim basis, on O'Shea Fishing. Rather it is a recognition of the fact that it was, in practical terms, impossible to undo, so far as to 2007 was concerned, the consequences of the Minister's earlier wrongful decision to make deductions in quota without going through due process. That earlier decision has, of course, been quashed. Whether O'Shea Fishing or, indeed, *Atlantean* or other vessels in the same situation, may have an entitlement to any other relief arising out of the Minister's wrongful decision, beyond having it quashed, is a matter which has been left over for further determination.

4.4 Properly characterised it seems to me that the inability of the Minister to make any quota available to O'Shea Fishing for the latter part of 2007 must be viewed as a natural knock-on effect of the original wrongful decision, rather than any new adverse decision contrary to O'Shea Fishing's interest. As soon as the original decision had been made, and all of the national quota for 2007 allocated, it was inevitable that any setting aside of the original decision in the latter part of 2007 would occur at a time when the egg could not be unscrambled. Any adverse consequences for the latter part of 2007 of that original decision are, in my view, properly viewed as consequences of the original decision rather than of the purely practical determination evidenced by the letter of the 10th September, 2007.

4.5 In those circumstances it seems to me that any such consequences need to be viewed as part of the original O'Shea Fishing case concerning additional relief above and beyond the quashing of the Minister's original decision which claims have been left over for further consideration. In those circumstances it seems to me that counsel for the Minister was correct when he said that the September decision is not one which is, in substance, amenable to judicial review.

4.6 However, it is appropriate to characterise the December decision in a different way. It is important to recall that, by the time the December decision was communicated to O'Shea Fishing (and, presumably to other vessels likewise affected) the Minister had available the detailed documentation which had been provided by the United Kingdom authorities. That information, insofar that it was relevant to O'Shea Fishing was proved in evidence by affidavit at the hearing before me. I am satisfied that that evidence provides a solid *prima facie* case for the contention that O'Shea Fishing was guilty of undeclared landings to the tune of 16,032 tonnes. On that basis it seems to me to be appropriate to characterise the Minister's decision as being one of an interim or interlocutory nature whereby a deduction in quota commensurate with undeclared landings in that amount was to occur with a proviso for an adjustment in the latter part of 2008 (out of the 35% of quota not allocated), and for all subsequent years, in the event of and to the extent that it might ultimately be determined that no or a lesser amount of undeclared landings came to be established.

4.7 So characterised I am satisfied that such a decision is amenable to judicial review. While it does not amount to a final determination as to wrongdoing on the part of O'Shea Fishing, it does amount to a decision with immediate practical effect concerning

the ability of O'Shea Fishing to carry on its business during the spring fishery of 2008. Given the scale of the alleged undeclared landings attributable to O'Shea Fishing, no quota was originally allocated for 2008. It did emerge in the course of the hearing that it was possible, in the light of the ongoing review and analysis of the data from Scotland in conjunction with Irish data and the emerging picture concerning each of the vessels who are subject to an allegation of undeclared landings, that some very small amount of quota might come to be allocated to O'Shea Fishings in the period immediately after the conduct of the hearing before me. Indeed it is possible that this may have occurred by the time of delivering this judgment. However on any view it is clear that a consequence of the December decision is to render it virtually impracticable for O'Shea Fishing to carry out any meaningful mackerel fishing during the spring fishery on the assumption that that fishery will, most likely, be close to completion by the time the Minister makes any final decision on the responsibility of O'Shea Fishing for any undeclared landings.

4.8 It follows, it seems to me, that the December decision has a real and immediate effect on O'Shea Fishing, even though it does not amount to a final determination of its entitlements. It is analogous to a decision made by a court at an interlocutory stage which governs the relations of the parties to the relevant litigation pending trial. Such a determination does not amount to a final decision as to the rights and obligations of the parties concerned. It, nonetheless, has the potential to have a significant effect on those parties pending trial. Such an interlocutory decision, if made by a person or body bound to act in a quasi judicial fashion, seems to me to be the type of decision which can, in the ordinary way, be subject to judicial review. However, it is clear that the basis upon which the decision-maker can properly approach such an interim or interlocutory decision is necessarily different from the basis upon which the same decision-maker would be required, in order to act in accordance with law, to approach a decision which made a final determination as to the rights and obligations involved. It follows that a consideration of both the manner in which the decision concerned was taken and, to the extent that it may be permissible in judicial review, the substance of the decision, requires to pay all proper regard to the fact that the decision concerned is properly characterised as an interim or interlocutory one rather than one which finally determines the rights and obligations of the parties concerned.

Against that background it is appropriate to turn to the December decision itself.

5. The December Decision

5.1 It is important to place the December decision in context. Firstly, the Minister was faced with a situation whereby the national quota for 2008 has been reduced by virtue of the consequences, at EU level, of undeclared landings in Scotland attributable to Irish vessels. While O'Shea Fishing, like *Atlantean*, has raised questions as to the validity, in accordance with the relevant EU Regulations, of the decision made at EU level, it is, as I pointed out in *Atlantean*, a matter for courts at EU level to determine any such validity. So far as the Minister, and this Court, is concerned, the national quota is a given. The Minister was, also, faced with the fact that it was, for practical reasons, as I have pointed out, impossible to reach a final determination concerning the rights and obligations of the parties concerned prior to the 1st January, 2008.

5.2 The Minister was faced, therefore, with two basic choices. Firstly, the Minister could delay the opening of the spring fishery until such time as a final determination had been made in each case, so that final allocations for 2008 could be made on the basis of such final determinations. Alternatively the Minister could decide, as she did, to allocate part only of the national quota for 2008, leaving over a balance to be allocated in the light of such final determinations.

5.3 It seems to me that it was more than within the legitimate discretion of the Minister to decide that the latter course was preferable to the former. There was every chance, and events have borne this out, that the process of reaching final determinations would take some little time. It is also the case that there is a certain interaction between the decisions which need to be made in each individual case with the overall position. The amount by which the Irish quota has been reduced is fixed. It is possible, for example, that the Minister may not be able to decide to place the blame for all of the undeclared landings on which the EU authorities based their decision to reduce the Irish quota, on any individual boat. What the Minister should do in those circumstances is a matter which remains for Ministerial determination should that situation arise. I merely mention that example for the purposes of demonstrating that an absolute and final decision on the allocation of all of the national quota is likely to have to wait until proper determinations have been made in all (or almost all) cases in which an allegation of undeclared landings has been made. It follows that a decision to postpone the commencement of the Spring fishery until such time as a final decision had been made was likely to involve a significant delay in the commencement of that fishery to the consequent significant disadvantage of individual vessels against whom no allegation was made and the industry as a whole with obvious consequences for the national interest. In those circumstances I am more than satisfied that there was an ample basis on which the Minister could reasonably determine that the proper exercise of her discretion required her to do the best she could in the difficult situation with which she was faced by making a partial allocation now rather than postpone the commencement of the fishery.

5.4 On that basis the second choice which faced the Minister is as to how such an allocation was to be made on an interim or interlocutory basis, pending a final determination of the matter and in circumstances where, as I have found, the Minister had available documentation which provided a solid *prima facie* case for the contended undeclared landings.

5.5 In that context, in debate with both counsel, I attempted to explore whether there might be any appropriate analogy with other circumstances which have been the subject of judicial consideration. The analogy with an employment situation, which was briefly touched on in *Atlantean*, was debated. It is, of course, the case that an employer is normally entitled to suspend on pay (and in some circumstances without pay) an employee pending the resolution of an investigation into misconduct. However it does not seem to me that the analogy with the circumstances with which the Minister was faced goes very far. An employer is not limited in the total amount of pay that can be handed out in any one week subject only to commercial reality. There is nothing to prevent, therefore, an employer from choosing to pay an individual employee pending the completion of an investigation. That decision does not affect the pay available to other employees. Such latitude was not available to the Minister. The total quota was fined.

5.6 As an alternative, an analogy with a regulator who is required to license commercial entities or professional persons was considered. There are cases where such regulators can and do suspend persons from the ability to carry on the regulated activity while a disciplinary process is pending. There is nothing, in principle, wrong with such a course of action. The regulator has to balance the public interest in ensuring that those carrying on the regulated activity are proper persons to be permitted to carry it on, with the undoubted rights of an individual not to be unnecessarily prevented from carrying on their or its trade or profession at least until a final adverse determination is properly arrived at. It cannot be doubted but that in some such circumstances it may be legitimate to conclude that, on balance, the suspension of the person concerned, pending a final determination, may, having regard to the state of the evidence and the overall interests involved, require suspension even though such suspension may have a significant affect on the person or entity concerned. However again the analogy does not run very far. A regulator in such a position is not confined as to the number of persons who may be licensed, so that again the fact that one individual or entity may be suspended from carrying on the regulated activity does not, in truth, have any legitimate effect on other entities which may be lawfully carrying on their business.

5.7 In all the circumstances I have reached the conclusion that a situation such as that which faced the Minister does not really have

any true analogy at all. The Minister was faced with a finite cake in circumstances where there was a *prima facie* case that certain entities were responsible for the cake being smaller than it otherwise should have been. In those circumstances I am satisfied that it was well within the margin of statutory discretion afforded to the Minister to decide that, on an interim basis, the burden of meeting the shortfall should be borne by those against whom that *prima facie* case has been made out, until such time as a final determination could be made as to the rights and obligations of all concerned. To do otherwise would be to impose, on an interim basis, the burden of the reduction in the Irish national quota on vessels in respect of whom no allegation had been made. While it is true to state that the spreading of that burden across a range of vessels would have been likely to have meant that no vessel would have suffered a very large reduction, it, nonetheless, seems to me that the Minister was more than entitled to have regard to the fact that imposing even a temporary material reduction on the quota available to boats in respect of whom no allegation had been made, would be unfair and not provide a proper basis for the exercise of Ministerial discretion.

5.8 In coming to that view, I am mindful of a number of additional points made on behalf of O'Shea Fishing. Firstly, it emerged in the course of the hearing before me that quite a significant proportion of the vessels in the Irish mackerel fleet are the subject of some allegation concerning the making of undeclared landings in Scotland at the relevant time. However it also emerged that the proportion of the undeclared landings alleged against both *Atlantean* and O'Shea Fishing represent a very significant proportion indeed of the total allegation. While the remainder of the fleet contains many vessels in respect of whom some minor allegation is made, it is clear that, in most cases, the allegation concerns very small amounts indeed. In those circumstances it does not seem to me that the fact that there may be allegations concerning very minor undeclared landings against a significant number of boats is a factor which alters my view as to whether the Minister was acting within the reasonable exercise of her discretion in coming to the decision which she did.

5.9 Secondly, it is necessary to comment on the contention made on behalf of O'Shea Fishing that the fact that it will have no, or virtually no, quota during the spring fishery could have consequences for its financial viability. It was said that that situation needed to be compared with the fact that, if the burden were more evenly spread pending final determination, the impairment of the financial situation of other vessels would be less significant. On that basis it was suggested that the Minister's decision was disproportionate.

5.10 However it seems to me that the Minister was entitled to have regard to the fact that vessels in respect of whom no allegation was made should not, even on an interim basis, have to suffer any greater deduction in quota than was absolutely necessary. It was, in my view, well within the margin of Ministerial discretion to determine that, the admittedly smaller, financial effect on those vessels in respect of whom no allegation has been made outweighed the admittedly greater financial affect on vessels in respect of whom a solid *prima facie* case had been established of a very significant undeclared landings indeed.

5.11 In those circumstances I am satisfied that the Minister's decision was well within the range permitted on the facts and under the statute and could not be said to have been irrational.

6. Conclusions

6.1 For the reasons which I have set out I am not satisfied that any case has been made out to the effect that the Minister exceeded her statutory discretion in making the December decision. There is, therefore, in my view, no legal basis for quashing that decision.

6.2 So far as the September decision is concerned I am not satisfied, for the reasons which I have sought to analyse, that, properly speaking, it can be characterised as a decision which affects rights and entitlements at all, even on an interim or interlocutory basis. It is, in truth, a knock on of the original decision of the Minister which was quashed by virtue of the decision in Atlantian. It follows that the consequences of the September decision have to be viewed as consequences of the original decision and will fall to be considered along with any other consequences of that decision in due course as part of the original proceedings.