

**IN THE DISTRICT COURT
AT AUCKLAND**

**CIV-2016-004-000914
[2016] NZDC 24444**

UNDER	SECTION 106 OF THE LAND TRANSPORT ACT 1998
IN THE MATTER OF	AN APPEAL AGAINST A DECISION OF THE NEW ZEALAND TRANSPORT AGENCY
BETWEEN	MOHAMMED SUBHAN Appellant
AND	NEW ZEALAND TRANSPORT AGENCY Defendant

Hearing: 2 December 2016

Appearances: Mr S Khan for the Applicant
Mr A Luck for the Respondent

Judgment: 2 December 2016

DECISION OF JUDGE G M HARRISON

- [1] Mr Subhan appeals against the decision of the Agency of 24 May 2016 to:
- (i) disqualify and prohibit him from driving any vehicle being used as a passenger service only for a period of two years;
 - (ii) revoke his driver licence in respect of the passenger endorsement only;
and
 - (iii) disqualify him from holding or obtaining a passenger endorsement for a period of two years.

Background

[2] Mr Subhan has been a professional driver for 27 years. Over that time he has accumulated 23 traffic offences, including 20 speed related offences, 13 of which have been committed since April 2010.

[3] On 2 December 2015 at 4.30 am, while travelling to Auckland Airport in his taxi, Mr Subhan was stopped by a traffic officer for travelling at 93 kilometres per hour in a 50 kilometre per hour posted speed limit. Because he exceeded the speed limit by 43 kilometres per hour the traffic officer suspended his driver's licence on the spot. Unwisely, Mr Subhan decided to drive to his home, having decided that other options open to him were not viable particularly at that hour of the morning. He was apprehended for driving while suspended and was later disqualified by the Court from driving for a period of six months from 23 March 2016.

[4] Mr Subhan has therefore effectively been unable to drive, firstly pursuant to the suspension and then the disqualification for a period of one year.

[5] On becoming aware of this, the Agency forwarded notice of proposal dated 18 April 2016 to Mr Subhan in which it notified him of its proposal to impose the revocations and prohibitions outlined in para [1] hereof.

[6] His solicitors responded by letter of 18 May 2016 making submissions opposing the proposal. Having considered those submissions, the Agency notified Mr Subhan by letter of 24 May 2016 that it reduced the period of disqualification from holding a passenger endorsement, or driving any vehicle used in a passenger service only for a period of two years, rather than the three years initially specified in the notice of proposal.

The appeal

[7] The appeal is brought pursuant to s 106 of the Land Transport Act 1998 (the Act), whereby the appeal is conducted by way of a rehearing. Factors to be taken into

account were outlined in the decision of *Brown v New Zealand Transport Agency* (DC Dunedin, CIV-2010-012-808, 15 April 2001, Judge Kellar).

[8] It is unnecessary to state the principles governing appeals specified in that decision other than to note the confirmation that the appeal is by way of rehearing and that ultimately it is for the appellant to satisfy the Court that it should differ from the decision under appeal.

[9] The fundamental criteria are contained in s 30C of the Act. That provides:

- (1) When assessing whether or not a person is a fit and proper person in relation to any transport service, the Agency must consider, in particular, any matter that the Agency considers should be taken into account—
 - (a) in the interests of public safety; or
 - (b) to ensure that the public is protected from serious or organised criminal activity.

[10] There is no suggestion in this case that the second criterion has any application.

[11] Subsection (2) of s 30C provides:

- (2) For the purpose of determining whether or not a person is a fit and proper person for any of the purposes of this Part, the Agency may consider, and may give any relative weight that the Agency thinks fit having regard to the degree and nature of the person's involvement in any transport service, to the following matters:
 - (a) the person's criminal history (if any):
 - (b) any offending by the person in respect of transport-related offences (including any infringement offences):
 - (c) any history of serious behavioural problems:
 - (d) any complaints made in relation to any transport service provided or operated by the person or in which the person is involved, particularly complaints made by users of the service:
 - (e) any history of persistent failure to pay fines incurred by the person in respect of transport-related offences:
 - (f) any other matter that the Agency considers it is appropriate in the public interest to take into account.

[12] I note that in this case Mr Subhan has no criminal history, nor any history of serious behavioural problems. There have been no complaints made against him and

there is no history of persistent failure to pay fines. The only criterion therefore which requires consideration is his offending in respect of transport-related offences.

[13] As far as that is concerned, the offences are effectively for speeding, and there are no more serious offences such as failing to observe traffic signals, failing to give way at intersections, careless or dangerous use of a vehicle which, in my view, are more relevant to the public safety than mere speeding charges. While I acknowledge that speeding of itself could have an impact on public safety, that impact is less obvious than the other more serious offences I have referred to.

[14] There is conflicting authority on the point but it has been recognised that some allowance may be made for speeding as an occupational hazard with taxi drivers. *Prasad v Director of Land Transport Safety* [2003] DCR 461.

[15] Factors which weighed with me in this matter include:

- (i) Mr Subhan has never had an accident.
- (ii) There are gaps of some years in the history of his relatively minor offending.
- (iii) He has undertaken a defensive driving course.
- (iv) There is a supportive reference for him from the Chairman of the Auckland Co-Operative Taxi Society.

[16] I am mindful that Mr Subhan has been unable to drive any vehicle for a period of 12 months. That is a significant penalty arising from a speeding offence. Mr Luck submitted that the further one year suspension period imposed by the Agency was justified for reasons of public safety, and the necessity for Mr Subhan to demonstrate that he has changed his ways. The Agency also says that his decision to drive while suspended indicates a disregard for the law. Mr Subhan acknowledges that it was unwise of him to do so but force of circumstance left him with no option. He has certainly been punished for that.

Conclusion

[17] Assessing the circumstances broadly, I am satisfied that Mr Subhan has been suitably punished for his disregard of the law, his decision to drive while suspended being at the heart of the Agency's decision to disqualify him. I can see no justification for the imposition by the Agency of a further year's disqualification, when the Court has already dealt with that matter. In particular I do not accept that a further one year disqualification will have any more positive effect on the public safety, than the penalty that Mr Subhan has already served.

[18] There is no other factor pursuant to s 30C that indicates that Mr Subhan should not resume holding a passenger endorsement, and I allow his appeal accordingly and modify the Agency's decision by reducing the two year disqualification period to the date of this hearing, being 2 December 2016.

[19] The disqualification prohibition and revocation of Mr Subhan's passenger endorsement as specified in the Agency's notice of 24 May 2016 are modified accordingly.

[20] Although Mr Subhan has been successful in his appeal to the point that the disqualification period has been reduced, I do not find that the Agency's decision should not have been made in the first place. It is a public authority with a duty to ensure the safety of the public in the passenger service industry. In those circumstances I am of the view that each party should bear its own costs, although without having heard submissions on that issue leave is reserved for memoranda to be filed should either party deem it appropriate to do so.

G M Harrison
District Court Judge