

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

**IN THE DISTRICT COURT
AT AUCKLAND**

**I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKĀURAU**

**CIV-2019-004-001778
[2020] NZDC 3843**

BETWEEN

GULSHAN GULATI
Appellant

AND

NEW ZEALAND TRANSPORT AGENCY
Respondent

Hearing: 5 March 2020

Appearances: Mr Gulati in Person
K Mills for Respondent

Judgment: 6 March 2020

DECISION OF JUDGE G M HARRISON

[1] Mr Gulati appeals pursuant to s 106 Land Transport Act 1998 (the Act) against a decision of the Transport Agency of 9 September 2019 declining to renew his application for a passenger endorsement on his driver's licence upon the grounds that the Agency was not satisfied that Mr Gulati was a fit and proper person to hold such an endorsement.

[2] Mr Gulati is a driver for the Uber organisation and requires a P endorsement to his driver's licence to continue in that role.

Criteria for fit and proper person

[3] Section 35 of the Act requires the Agency to assess whether an applicant for a P endorsement is a fit and proper person pursuant to ss 30C and 30D of the Act.

[4] The relevant parts of s 30C are as follows:

- (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
 - ...
- (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:
 - ...

[5] Subsection 3 provides that in determining whether or not a person is a fit and proper person the Agency may consider any conviction for an offence whether committed in New Zealand or not and by sub-paragraph (4) it may take into account any other matters and evidence as it considers relevant.

[6] Section 30D provide additional criteria for assessing whether or not a person is a fit and proper person in relation to any small passenger service, such as is the case here. Relevant factors that may be taken into account are:

- (c) any offending in respect of major transport-related offences, particularly offences relating to safety or to road user charges.
- (d) any persistent offending of any kind.

[7] By notice dated 7 August 2019 [name deleted], Manager Licensing Assessments at the Agency notified Mr Gulati of his intention to decline his application for a passenger endorsement. His principal concern was that Mr Gulati had ignored a formal warning from the Police in 2018 for careless driving of a motor vehicle. He had previously been warned again for careless driving in 2014, and in 2011 he was convicted of operating a vehicle carelessly.

[8] In 2018 the Agency granted Mr Gulati's application for a P endorsement but on a without prejudice basis, that should he incur any additional convictions or infringement then further action might be taken against him.

[9] Mr Gulati did not heed these warnings. In addition to the careless use offending Mr Gulati has incurred 13 excessive speed offences dealt with by the infringement notice procedure, and other charges of failing to stop at a stop sign (2) and travelling too close.

[10] Of particular concern to the Agency is that despite two formal warnings from the Police for careless driving, his conviction for that offence in 2011 and his warning from the Transport Agency in 2018 he nevertheless continued to offend.

[11] It is quite clear from numerous previous Court authority that:

Persistent infringements against road rules and regulations following repeated warnings about the consequences of such conduct, may demonstrate that a licensee has a propensity for non-compliance with, or disregard of, traffic law and regulations generally which include those related to road safety – *Hornblow v New Zealand Transport Agency*.¹

[12] It is quite clear therefore that Mr Gulati does not meet the requirements of ss 30C and 30D and in the interests of public safety I am of the view that the decision of the Agency to decline the application for a P endorsement was properly made.

Personal circumstances

[13] Mr Gulati submits that if he is unable to operate as a Uber driver that will impact adversely on him as all of his family reside in India and will not be in a position to assist him. He otherwise is employed as a real estate agent on commission but says that income from that employment is insufficient.

[14] If that is the case one can only wonder that why Mr Gulati continued to accumulate traffic offences despite the warnings he had received.

¹ *Hornblow v New Zealand Transport Agency* [2018] NZDC 10875.

[15] Prior authority also confirms that the personal economic interests of the appellant must take second place to the public interest and public safety - *Munday v Director of Land Transport Safety*² and *Pratap v New Zealand Transport Agency*.³

Conclusion

[16] Mr Gulati will have to establish to the satisfaction of the Agency that he will in future abide by the traffic rules and regulations. He is at liberty to apply again for the issue of a P endorsement, but sufficient time must elapse without incident to satisfy the Agency that the endorsement can properly be granted.

[17] For the reasons given however the appeal is dismissed.

[18] The question of costs is reserved should the Agency wish to pursue an application in that regard.

G M Harrison
District Court Judge

² *Munday v Director of Land Transport Safety* DC Auckland NP5748/97, 9 June 1998.

³ *Pratap v New Zealand Transport Agency* [2016] NZDC 13622.