

**IN THE DISTRICT COURT
AT CHRISTCHURCH**

**I TE KŌTI-Ā-ROHE
KI ŌTAUTAHI**

**CIV-2018-009-001960
[2019] NZDC 2380**

IN THE MATTER OF	s 106 of the Land Transport Act 1998
AND IN THE MATTER OF	An appeal against decisions of the New Zealand Transport Agency
BETWEEN	Li Hua LI Appellant
AND	New Zealand Transport Agency Respondent

Hearing: 24 January 2019

Appearances: C Mo for the Appellant
B Hawes for the Respondent

Judgment: 13 January 2019

JUDGMENT OF JUDGE A P CHRISTIANSEN

[1] The appellant (Mr Li) is a bus driver. On 2 July 2018 the respondent (NZTA) determined:

- (a) To disqualify and prohibit Mr Li from driving any vehicle being used in a transport service for a period of one year;
- (b) To revoke his Driver's Licence in respect of Classes 2 and 4¹ and the Passenger Endorsement;

¹ Medium rigid vehicle and heavy rigid vehicle licences respectively.

- (c) To disqualify Mr Li from qualifying or obtaining Driver Licences Classes 2, 3, 4, 5,² and a Passenger Endorsement for period of one year.

[2] Those determinations came into effect from 11 July 2018. As requested he has surrendered his Driver's Licence and identification card to the NZTA.

[3] He is now appealing that decision. Mr Li's appeal is brought pursuant to s106 of the Land Transport Act 1998 (the LTA).

[4] Mr Li has held a Licence with Passenger Endorsements since 2015. The Passenger Endorsement was granted notwithstanding the agency reporting to Mr Li that he had recent and numerous historic traffic offences which were of concern. He was warned that should there be further offending then a determination would be made regarding whether his Licence Endorsement should be reconsidered.

[5] Until his Licence was revoked Mr Li was employed driving tour coaches for a tourism transport business.

[6] On 23 April 2018 Mr Li, while a tour bus driver, undertook an unsafe passing manoeuvre on the Milford Road. The manoeuvre was video recorded by an ongoing driver who supplied the footage to the police, who in turn supplied it to NZTA. A police infringement notice was issued and the penalty of 35 demerit points was imposed. Further and because of demerit points he had accumulated through other traffic offences Mr Li's Drivers Licence was suspended for a period of three months from 1 August 2018. The evidence of the NZTA is that since the issue of Mr Li's Passenger Endorsement in August 2015, ten traffic offences have been committed by him mainly involving speeding offences while driving heavy motor vehicles.

[7] A further incident of concern detailed by the NZTA concerned an occasion in December 2016 at Kumara Junction where wheels of a bus the Appellant was driving came adrift. Following that event, the NZTA issued a Notice of Proposal, as required by the provisions of the Land Transport Act 1998, noting it was proposed to make

² Medium rigid vehicle, medium combination vehicle, heavy rigid vehicle, heavy combination vehicle licences respectively.

adverse decisions regarding Mr Li's Heavy Vehicle Licences and the Passenger Endorsement. Mr Li was invited to make submissions in that regard. This he did but the NZTA was not persuaded from disqualifying Mr Li from holding or obtaining Driver Licences Classes 2, 3, 4, 5, and a Passenger Endorsement for a period of one year.

The Appeal

[8] It asserts:

- (a) That Mr Li is a fit and proper person as specified under the LTA;
- (b) The NZTA did not take into account various factors when coming to its decision;
- (c) The NZTA has not considered his explanation for certain offences; and
- (d) The decision did not inform Mr Li how the penalty was derived, and did not assess the mitigating factors submitted on his behalf.

[9] Details of submissions in support of his application include:

- (a) That of his history of twenty offences, half occurred prior to 2015;
- (b) He accepts responsibility for the tour bus unsafe passing manoeuvre but believes disproportionate weight has been placed on this;
- (c) He accepts responsibility for his action, has paid the fine of \$150 and accepted the demerit points imposed. As well he was suspended from driving for three months;
- (d) He was not charged with an unsafe passing offence and therefore should not be treated as though he had been charged or convicted;
- (e) Before the said incident his Passenger Endorsement Licence had been reviewed annually and he had met the fit and proper test required;

- (f) While he has committed ten traffic offences since his Passenger Endorsement Licence was granted, the NZTA has failed to consider that seven of those ten offences were committed in 2016 and that since that year the number of offences has reduced considerably showing, he says, an improvement in his driving. Also, two of those offences in 2017 involved excess speed of 10 – 13 kms/hr;
- (g) He has no other traffic or criminal offences;
- (h) Will agreeing that while driving his Uber vehicle he did not have the required Certificate of Fitness, he says he was advised by Uber he was able to drive his car without the certificate, and it was Uber that agreed to pay the infringement fine that was imposed upon him;
- (i) Regarding the incident on 22 December 2016 when the wheels/tyres of his bus were defective he said the rear tyres in question were brand new, they having been fitted the day before. He advised the NZTA regarding the circumstances but believes no further investigation of this was undertaken;
- (j) He has no history of serious behavioural problems to indicate a propensity for violence and has no history of any major transport related offences;
- (k) He is married and his wife does not work because she looks after their six year old son and is also currently pregnant;
- (l) He has a mortgage of [sum deleted] and has no other means of paying his weekly bills other than to dip into his savings.

Opposition to the Application

[10] The LTA and the Land Transport (LT Driver Licensing) Rules 1999, provide the regulatory framework governing Passenger Endorsements. The LTA requires the holder of a “P” Endorsement to be a “fit and proper person”.

[11] Clause 21(6) of the Rule provides that a person must hold a P Endorsement if that person drives a motor vehicle while it is being used in a passenger service.

[12] Clause 35 sets out the criteria and procedure in relation to the fit and proper person test and provides that the agency takes into account the factors recorded in ss 30C, 30D and 30E of the Act, in making that determination. The criteria identified by those sections is extensive. Appeals against decisions of the NZTA to remove/suspend the P Endorsement Licence under s106 of the LTA have been summarised by the decision Keller DCJ in *Brown v NZTA*³.

[13] In summary that decision noted inter alia, that the Court had a wide discretion to accept evidence that a civil standard of proof was to be used; and the onus is on the appellant.

Conclusion

[14] The Court agrees there were clear and serious grounds for concern about the manner of Mr Li's driving on the occasion of the overtaking manoeuvre, when a number of passengers were being carried on the bus he drove. The manoeuvre in question posed a risk to those passengers and as well to himself and to other road users. Also, the event highlighted concern indicated that the time he was given his P Endorsement when his prior driving history had indicated concern.

[15] While he has a number of previous convictions, most, in recent years do not suggest issues of safety were involved. While the overtaking manoeuvre showed a poor exercise of judgement, and correctly raised concerns, no prosecution eventuated.

[16] In the particular circumstances affecting the appellant, the Court sees the reason to reduce the length of the periods of disqualification and revocation imposed by the decision of NZTA on 2 July 2018.

[17] The appellant's evidence is that he received no income, and his wife was pregnant.

³ *Brown v NZTA* District Court Dunedin, CIV-2010-012-000808, 14/04/11.

[18] He has acknowledged having made a bad judgement call on the Milford Road incident. He has served a 3 month full licence suspension imposed on 1 August 2018.

[19] Sections 30(c)(2) and 30D require a consideration of any persistent offending of any kind. Section 13E requires consideration of any offending in respect of major transport-related offences, particularly offences related to safety and to road user charges.

[20] Issues concern whether the appellant is a fit and proper person to hold the licences he has had.

[21] Balancing of consideration is required. The effect of a long period of disqualification upon a person's ability to earn income when it appears in the circumstances may suffer significantly, should not be ignored. The lengthy period of disqualification will, it seems, significantly affect the financial circumstances of the appellant's family.

Judgment

[22] The appeal is granted, but for the purpose only to reduce the appellant's period of disqualification/revocation from 12 months, to 9 months.

[23] Also, this Court directs that the appellant is to complete a defensive driving course before his licences are returned to him.

[24] Costs of this appeal are to lie where they fall.

Judge AP Christiansen
District Court Judge