



Neutral citation number: [2024] UKFTT 00940 (GRC)

Case Reference: FT/D/2024/0504

**FIRST-TIER TRIBUNAL
GENERAL REGULATORY CHAMBER
(TRANSPORT)**

**Heard by Cloud Video Platform
On: 16 October 2024**

Decision given on: 24 October 2024

Before

JUDGE DAMIEN MCMAHON

Between

SAIRA NISAR

Appellant

-and-

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

Representation:

For the Appellant: Ms. Faseohah Zaheer, Friend of Appellant (permitted by Tribunal to act as the Appellant's representative despite the formal process to appoint an authorised representative not being adhered to by the Appellant).

For the Respondent: The Respondent was not represented.

Decision: The appeal is dismissed. The Decision of the Respondent made on 15 May 2024 is confirmed.

REASONS

1. This appeal was listed for remote oral hearing by CVP on 16 October 2024 at 11.00am. The Appellant attended and gave oral evidence and made oral submissions, as did her representative. The Respondent was not represented. The clerk advised that the Respondent had advised at 11.05am that no representative was available. This was confirmed in writing in an email from the Respondent. The Tribunal was satisfied that the Respondent had been notified of the hearing and that it was in the interests of justice to proceed with the hearing, pursuant to Rule 36 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, as amended ('the Rules').
2. The Appellant appealed against a decision of the Respondent dated 15 May 2024, to refuse the Appellant's application for a second trainee driving instructor licence made on 12 April 2024. The decision of the Respondent was made taking account of representations made by the Appellant on 17 April 2024, namely, that she had not been offered a date for a Part 3 test until 26 April 2024, having booked same on 8 December 2023. Her existing trainee licence was due to expire on 22 April 2024. However, the said Part 3 test date was cancelled by the Respondent due to no examiner being available and a fresh date arranged for 12 July 2024. This appointment, however, was cancelled by the Appellant due to her having become unwell almost two weeks previously with a viral illness, in respect of which she furnished medical evidence. The Appellant further submitted that she had undertaken an additional 20 hours of instructor training with her trainer and sent the Respondent the necessary training record by way of a Form ADI 21AT Declaration, but not until 20/03/2024, some two months after the date it was due. The said decision of the Respondent was stated to be due, not to the non-availability of a Part 3 test appointment, but due to the Appellant not having complied with the conditions of her trainee licence by not submitting her completed training record Declaration within the first three months of the commencement date of her trainee licence on 23 October 2023.
3. The Respondent also maintained, in making their decision, that it was not the intention of Parliament that Approved Driving Instructor ('ADI') candidates be issued trainee licences for however long it might take them to pass their Part 3 test and that the trainee licence system could not be allowed to become an alternative to registration as a fully-qualified ADI; that refusal of the Appellant's application did not prevent her undertaking a Part 3 test (subject to there being a maximum permitted number of attempts); that it was not necessary to hold a trainee licence to undertake a Part 3 test and that the Appellant's existing first trainee licence remained valid until determination of this appeal (as her application for a second trainee licence had been made before the expiry of her first trainee licence), providing her with a total trainee licence period of almost 11 months and that, in granting the Appellant her first trainee licence, for six months, the Appellant had been granted a very reasonable period (extended by operation of law to a period of almost 11 months) to reach the instructional ability qualifying standard and, in particular, to obtain any necessary practical experience in driving instruction to pass her instructional ability test (that is, her Part 3 test).

4. In its written submissions, the Respondent advised, in addition, that the Appellant's name had never been on the Register of Approved Driving Instructors ('ADIs'); that the Appellant had applied for a second trainee licence on 12 April 2024; that the initial 6 months duration of the Appellants trainee licence (extended in this case, by operation of law, to almost 11 months by reason of her making application for a second trainee licence before her first trainee licence had expired) was a very reasonable period in which to reach the qualifying standard required to pass a Part 3 test and become an ADI and, in particular, to obtain any necessary practical experience in driving tuition. Finally, the Respondent submitted that the Appellant could undertake a training course or study and practise with an ADI or provide unpaid tuition in preparation for undertaking a Part 3 test – a course for which precedent existed.
5. The Appellant submitted an appeal on 27 May 2024 (repeated on 28 May 2024) against the Respondent's said decision on the following grounds:
 - that the decision had caused her distress for her future and her career;
 - that she had suffered a family bereavement;
 - that no opportunity to take a Part 3 test had been given to her during the 6 month currency of her first trainee licence, despite undertaking extra training to prepare to undertake her Part 3 test [an assertion that was not relevant to the determination of this appeal];
 - that she had submitted her training record, adhering to the 20 hours requirement [but it was not submitted within the required time period being the reason why the Appellant's application for a second trainee licence was refused];
 - that she was a full-time driving instructor;
 - that she was happy to undertake an additional 20 hours training pursuant to holding a second trainee licence [an assertion that was not relevant to the determination of this appeal];
 - that she needed to teach driving tuition and gain more experience to undertake a Part 3 test [but holding a second trainee licence was not relevant to this assertion];
 - that she needed a second trainee licence to keep up to date with new training and teaching [an assertion that was not accepted as relevant or valid by the Tribunal];
 - that her livelihood and career were at issue.
6. The Appellant submitted a medical record dated 2 July 2024 showing that she had sought medical advice in respect of a respiratory viral complaint.

7. In her oral evidence, the Appellant confirmed she wished to proceed despite being unwell due to the said respiratory viral complaint, from which she continued to suffer from time to time since mid-June, but had not returned to her GP, but avoided tuition training if her episodic condition arose, being the reason why she had cancelled her Part 3 test on 12 July 2024. She confirmed she now had a Part 3 test appointment for 12 December 2024. She accepted that she had submitted her training record outside the required three-month period from the commencement of her first trainee licence but said this was the fault of her trainer. [This was the reason the Appellant's application for a second trainee licence had been refused]. However, the Appellant, erroneously, stated her belief that she needed a trainee licence to undertake a Part 3 test.
8. The Appellant's representative accepted that holding a trainee licence was not required to undertake a Part 3 test; that the Appellant had been working in a call centre but had to leave due to anxiety; that the Appellant had a number of expenses she needed to meet, including costs of training; vehicle insurance (where her insurers required sight of an actual existing trainee licence) and so on; that the Appellant wanted a second trainee licence to have peace of mind without financial stress; that her pupils would be placed in a difficult position if she did not get a second trainee licence and that she could recall the Appellant being stressed at completing forms, including waiting on her trainer.
9. This appeal concerns a decision of the Respondent to refuse the Appellant's application for a second ADI trainee licence. The powers of the Tribunal in determining this appeal are set out in s.131 of the Road Traffic Act 1988 ('the Act'). In determining the appeal, the Tribunal may make such order as it thinks fit, standing in the shoes of the Respondent, considering the decision afresh on the evidence available to it, giving appropriate weight to the Respondent's reasons. The burden of proof in satisfying the Tribunal that the Respondent's decision was wrong rests with the Appellant.
10. An appeal to this Tribunal against the Respondent's decision proceeds as an appeal by way of re-hearing, that is, the Tribunal makes a fresh decision on the evidence before it. The Tribunal must give such weight as it considers appropriate to the Respondent's reasons for its decision as the Respondent is the regulatory authority tasked by Parliament with making such decisions. The Tribunal does not conduct a procedural review of the Respondent's decision-making process.
11. In reaching my decision I have taken into account all of the evidence and submissions that I received, written and oral, and considered all of the circumstances relevant to this appeal.
12. If the reason for the Respondent's decision arose from the Appellant not having passed a Part 3 test, due to lack of availability of test appointments, it may have been possible, even likely, that this appeal may well have been allowed. However, the Respondent's decision was for an entirely different reason, namely, a failure by the Appellant to comply with the conditions of her first trainee licence, that is, to submit her training record to the Respondent within three months of the commencement of her first trainee licence.

13. Accordingly, the appeal is dismissed.

Signed: ***Damien McMahon,***

Tribunal Judge

Date: 16 October 2024