



Neutral citation number: [2024] UKFTT 001001 (GRC)

Case Reference: FT/D/2024/0503

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

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

Decision given on: 11 November 2024

Before

JUDGE DAMIEN MCMAHON

Between

ELHAM AKBARI

Appellant

-and-

REGISTRAR OF APPROVED DRIVING INSTRUCTORS

Respondent

Representation:

For the Appellant: The Appellant appeared on her own behalf.

For the Respondent: No appearance.

Decision:

The appeal is Allowed. The Decision of the Respondent made on 21 May 2024 is set aside.

REASONS

Mode of Hearing

1. This appeal was listed for remote oral hearing by CVP on 25 October 2024. The Appellant attended and gave oral evidence and made oral submissions. No representative appeared for the Respondent. The Tribunal decided to proceed and determine this appeal in the absence of a representative for the Respondent. In doing so, the Tribunal was satisfied that this complied with the overriding objective in Rule 2 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Tribunal) Rules 2009, as amended ('the Rules'), and with Rule 36, in that 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.

Decision under Appeal

2. The Appellant appealed against a decision of the Respondent dated 21 May 2024 to refuse the Appellant's application for a second trainee driving instructor licence made on 26 April 2024, pursuant to s.129(4) of the Road Traffic Act 1988 ('the Act') on the stated grounds that the Appellant had not complied with the conditions of the first trainee licence issued to her for the period 6 November 2023 to 5 April 2024, a period, the Respondent submitted, was more than adequate to enable her to gain practical experience to take a Part 3 test, namely, that her training records indicated that she had received training record from a trainer other than the trainer named in her application for a trainee licence. No case was made by the Respondent that the said non-compliance was due to the completed training record not being submitted within the first three months of the said six months duration of the trainee licence. The Respondent submitted that, in making, the decision under appeal, they took account of representations made by the Appellant on 8 and 10 May 2024 that she was unaware of the need to advise the Respondent that she had changed trainer and, she felt, she would need to complete a fresh training and, more crucially for the purposes of this appeal, that the six month period of the trainee licence was not sufficient time to be ready to undertake a Part 3 test due to her endless commitments in respect of the care needs of her autistic son. The Respondent also maintained, in making their decision, that it was not the intention of Parliament that 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 the Appellant 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 approximately 12 months.

Notice of Appeal

3. The Appellant submitted a Notice of Appeal dated 28 May 2024 against the Respondent's said decision on the following grounds:
 - that she could not get 'additional training' within the first three months of her trainee licence as she could not get a local trainer and could not complete the

required 20 hours earlier as a result. [However, the Respondent did not advance such assertion as a reason for their decision or, more particularly, that this was the stated reason for their assertion that the Appellant had not complied with the conditions of her first trainee licence];

- that she had caring responsibilities for her autistic child whose needs were unpredictable [a position that the Respondent did not, essentially, address in any substantive fashion in making their decision];
- that, consequently, she could only work, and practice when her son was at school, thereby limiting her having sufficient time to get ready for her Part 3 test [albeit the Respondent did not make their decision on the basis of, for example, a proven lack of training time];
- that within the six-month period of her first trainee licence she barely covered her franchise costs and, sometimes, had to pay these from her 'own pocket';
- that no Part 3 appointment tests appointment dates were available in any event;
- that her first trainee licence period had started in November 2023 but that she had no pupil then; that she changed trainer and needed to wait on the trainer providing a vehicle, followed by a quiet time over the Christmas holidays causing her to miss some training time; that she, herself, had undergone surgery, causing her to miss out on training for 2-3 weeks, followed by a coughing complaint that lasted 100 days during which she could not gain experience by providing tuition under her first trainee licence to pupils;
- that a second trainee licence would allow her to get more time to practice and be more confident in passing her Part 3 test.

Response of Respondent

4. The Respondent, in its written Response, essentially repeated the generic reasons for their decision refusing the Appellant's application for a second trainee licence. In addition, the Respondent submitted that the Appellant could obtain further training, if necessary, to prepare for her Part 3 test, having failed in her first attempt on 22 July 2024, by attending a training course or studying and practising under an ADI or providing unpaid driving tuition to pupils, all of which had been availed of over time by ADI candidates in preparation for taking a Part 3 test. The Respondent also stated that the Appellant had booked a second Part 3 test, on hold, awaiting a date. Significantly, the Said Response gave no further detail on the precise basis for its stated ground of refusal, namely, that the completed training record showed that the Appellant's trainer had been a trainer other than the trainer advised by her in her application for her first trainee licence and the implications or statutory consequences, if any, flowing from that assertion. More significantly, in addition, the Response simply did not address the implications, if any, of the fact found by the Tribunal that the Appellant was limited, significantly, in availing of training time due to her son's unpredictable care needs arising from his autism condition, coupled with the Appellant's own health problems. While there was no medical evidence adduced in respect of these matters, the Tribunal found the Appellant to be

credible, honest and trustworthy and had no hesitation in accepting her evidence, particularly on the balance of probabilities, in deciding to allow this appeal.

Appellant's Oral Evidence Reasoning

5. In her oral evidence, the Appellant stated that her new trainer, the Automobile Association, whom she depended on to provide her with a vehicle to prepare for a Part 3 test told her, and she accepted, that she could change to any trainer for the purposes of completing her training record as required by the conditions of her existing trainee licence. This was incorrect. The Appellant accepted that, relying on her trainer's advice, she did not advise the Respondent that she had changed trainer until 8 May 2024 - two days before the Respondent invited representations from her concerning its intention to refuse her application for a second trainee licence. She again stated that she could not complete her requisite 20 hours' 'additional training' earlier due to a lack of available trainers locally. However, this was not the basis of the Respondent's decision. She reiterated the limitation in training time imposed by her son's care needs – an issue not addressed in any substantive fashion by the Respondent. She also reiterated her difficulty in covering her costs during the six-month period of her first trainee licence. This, too, was not mentioned by the Respondent as a reason for its decision but, on the face of it, this would not be a reason, in itself, to grant a second trainee licence as the purpose of granting an ADI candidate a trainee licence is not to provide that candidate with a source of income through the trainee licence. However, extenuating circumstances existed in this case that were not addressed adequately, or at all, essentially, by the Respondent in making their decision. The Appellant also referred again to no Part 3 test dates being available. Had this been the case, this appeal would have been allowed even on that basis alone. However, of concern, the Appellant had cancelled a second booked Part 3 test appointment, to have taken place on 22 October 2024 - on the advice of her trainer, and she was now on hold again for another date. She confirmed that she had missed training time due to her own ill-health and her need to constantly care for her son's needs during school holidays. While 'lost training time' was not stated by the Respondent to be a reason for its decision, the Tribunal accepted that this was a feature that permitted this appeal to be allowed. She accepted that she did not need to hold a trainee licence to undertake a Part 3 test but her trainer, upon whom she depended to provide a vehicle, took the view that she must have a valid trainee licence. She accepted that she could obtain further training by other methods, but this meant she would not have access to a vehicle provided by her trainer. Finally, the Appellant confirmed that she got help from other family members to care for her son, in her home, while she had been ill herself.

Decision of Tribunal

6. This appeal concerned 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.

7. An appeal to this Tribunal against the Respondent's decision proceeds is 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.

8. 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.

9. Accordingly, the appeal is allowed.

10. The decision of the Respondent, made on 21 May 2024, is set aside. The Appellant is granted a second trainee licence with effect from the date of promulgation of this Decision.

Signed: ***Damien McMahon,***

Tribunal Judge

Date: 27 October 2024