

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: July 14, 2016

Panel: Moira Calderwood, Chair; Melina Laverty and Richard Quan, Members

Re: Mr. Gezae Asgedom Wureta
Holder of Taxicab Driver's Licence No. D01-2025869, Driver's List No. 5603

Counsel for Municipal Licensing and Standards: Ms. Brennagh Smith

WRITTEN DECISION

1. The parties agreed at the beginning of the hearing that Report 6395 would be admitted as an agreed statement of fact. Report 6395 was marked as Exhibit One. The documentary information was supplemented by testimony from Mr. Wureta.

INTRODUCTION

2. Mr. Wureta holds a Toronto Taxicab Driver's Licence. He is also on the Drivers' List, that is, the list maintained by Municipal Licensing and Standards (MLS) of the City of Toronto to determine taxicab drivers' eligibility to acquire certain Toronto taxicab licences as they become available.
3. Mr. Wureta placed his name on the Drivers' List in November 2004. His number on the Drivers' List is 5603. He is 97th in line to obtain an owner's licence.
4. Mr. Wureta developed a brain tumour and in 2010 underwent brain surgery. His vision has been affected by these events. He has been unable to work as a taxicab driver for several years. One of the requirements under the *Toronto Municipal Code* (we will call this "the Code") for a driver to remain on the Drivers' List is that the driver must earn a living in the City of Toronto on a full-time basis as a taxi driver. Another provision under the Code is that, in certain circumstances, the Tribunal can deem that the employment service of the person on the Drivers' List has been uninterrupted. Mr. Wureta wishes the Tribunal to do so in this case.
5. On January 22, 2015, Mr. Wureta appeared before the Tribunal. The Tribunal deemed Mr. Wureta's employment service to have been uninterrupted from January 2010 to December 2013.

Issue

6. On July 14, 2016, Mr. Wureta asked the Tribunal to deem his employment service to have been uninterrupted for the calendar years 2014 and 2015.

July 14, 2016

Mr. Wureta's testimony

7. In his testimony in chief and under cross-examination, Mr. Wureta told the Tribunal:
 - His medical condition still prevents him from driving. He is not working at present.
 - His wife works. They have two children.
 - Even though his current medical condition renders him unable to drive, he wishes to remain on the Drivers' List for two reasons:
 - His vision may improve.
 - He agrees with counsel for MLS that, under the new regime which the City is developing for taxi owners, it may be possible to be a taxi owner even if you do not drive a taxi (which is not possible under the current regime).

SUBMISSIONS

8. Mr. Wureta wished the Tribunal to deem his service uninterrupted. MLS supported Mr. Wureta's bid to remain on the Drivers' List.

Relevant provisions of the Code

9. The Code, § 545-137, sets out a regulatory scheme for drivers who wish to maintain their position on the Drivers' List. (The Committee is aware that the Code is about to undergo major revisions, including to the sections governing the Drivers' List. At the time of the hearing on July 14, 2016, however, the sections quoted here were in force.)
10. The requirements of the Code relevant to this case are:

§ 545-137.3.A

- A. An applicant on the Drivers' List shall cease to continue to be eligible for a Toronto Taxicab Licence and shall be struck off the Driver's List if:
 - (3) ...the applicant ceases to earn a living in the City of Toronto on a full-time basis as a driver...
- E. Where an applicant satisfies the Toronto Licensing Tribunal that his or her failure to comply fully... is the result of illness or injury and is entirely beyond the control of the applicant and that the interruption in service is not in all the circumstances excessive, the Toronto Licensing Tribunal may deem the employment service of the applicant to be uninterrupted.

July 14, 2016

Analysis and decision

11. It is not disputed that Mr. Wureta has ceased to earn his living as a full-time Toronto taxi driver.
12. The Tribunal can exercise its discretion to deem that his service has continued, if it is satisfied on three points:
 - i. The failure to comply with the Code (i.e., to work full time as a Toronto taxi driver) is the result of illness or injury
 - ii. The failure to comply with the Code is entirely beyond the control of the applicant
 - iii. The interruption in services is not, in all the circumstances, excessive.
13. The Tribunal is satisfied that Mr. Wureta's failure to comply with the Code (i.e., to work full time as a Toronto taxi driver) is the result of illness or injury. Report 6395, combined with Mr. Wureta's testimony, provides sufficient medical evidence to allow us to conclude that the medical basis for Mr. Wureta's inability to drive continued during 2013 and 2014. We note in particular, letters from the North Oshawa Medical Centre stating that Mr. Wureta was on long term disability due to his chronic medical condition, from January 1, 2014 to December 31, 2014, and from January 1, 2015 to December 31, 2015. These documents, coupled with Mr. Wureta's testimony about the ongoing nature of his condition, satisfied us that the basis of his inability to work as a taxi driver is medical in nature.
14. The Tribunal is satisfied that Mr. Wureta's failure to comply with the Code is entirely beyond his control. Mr. Wureta is diligently pursuing medical help, but, to date, has not found a treatment modality to improve his condition to the point where he can drive.
15. The Tribunal is satisfied that the interruption in services is not excessive. Mr. Wureta has been on the Drivers' List for almost 16 years and has not been able to drive for approximately six of those years. Thus, the interruption has, in this case, been fairly lengthy.
16. That said, the Tribunal may consider "all the circumstances" and in this case, we are considering the circumstance that the City is in the process of revising its taxi ownership regime, and it would be a severe blow to strike someone off the Drivers' List after 16 years, just before new rules and regulations, which may enure to Mr. Wureta's advantage, come into effect.

DECISION

17. Mr. Wureta's employment service for 2014 and 2015 is deemed to be uninterrupted.

July 14, 2016

Originally Signed

Moira Calderwood, Chair
Panel Members, Melina Lavery and Richard Quan concurring

[Reference: Minute No. 113/16]

Date Signed: August 11, 2016