

## **REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL**

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**Date of**

**Hearing:** Faiz Bhuiyan

**Panel:** Cezary Paluch, Chair; Daphne Simon and Melina Laverty, Members

**Re:** Faiz Bhuiyan  
Holder of Taxicab Driver's Licence No. D01-3106484

**Counsel for Municipal Licensing and Standards:** Mr. Matthew Cornett

### **BRIEF BACKGROUND**

1. On October 26, 2004, Mr. Faiz Bhuiyan ("Mr. Bhuiyan") placed his name on the Driver's List to be eligible for a City of Toronto taxicab licence.
2. On October 4, 2016, Municipal Licensing and Standards (MLS) sent a letter to Mr. Bhuiyan advising that his position on the Driver's List has been selected as part of a random audit and he was required to provide certain documentation.
3. On April 4, 2016, MLS advised Mr. Bhuiyan that their investigation revealed that there had been an interruption of services for 2014 and 2015. As a result, there appeared to be reasonable grounds for his position on the Driver's List to be struck and also to be the subject of a hearing before the Toronto Licensing Tribunal (the "Tribunal").

### **ISSUE**

4. Mr. Bhuiyan has been requested to appear before the Tribunal to determine whether his name should be stricken from the Driver's List for interruption of service from January 1, 2014 to December 31, 2014; and from January 1, 2015 to December 31, 2015 or whether Mr. Bhuiyan's absence may be considered to be entirely beyond his control, not in any way excessive, and his driving service record should be deemed uninterrupted. In other words, whether he should be permitted to stay on the Driver's List.

### **INTRODUCTION**

5. Mr. Bhuiyan was assisted during the hearing by a Bengali interpreter, Ms. Ipsita Baugh, who was duly sworn. The Tribunal informed Mr. Bhuiyan of his right to legal counsel and that he may be at a disadvantage, if he is not represented at the hearing. Mr. Bhuiyan stated that he understood his rights and wished to continue with the hearing unrepresented.

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6. At the outset of the hearing, Mr. Cornett advised the Tribunal that the parties had agreed to enter Report No. 6594 dated May 11, 2016 including an update of August 23, 2016, cumulatively being pages 1-23, as an agreed statement of fact (the "Report"). Mr. Bhuiyan agreed to have the Report be entered as an agreed statement of facts for the purposes of the hearing. Thus, the Report was marked as Exhibit No. 1.

### **CITY'S EVIDENCE**

7. The City did not call any witnesses and relied on the Report (Exhibit #1) as an agreed statement of fact.
8. Mr. Cornett identified the following portions of the Report:
  - Page 3 – letter from MLS to Mr. Bhuiyan dated October 4, 2013 advising Mr. Bhuiyan that his position on the Driver's List had been selected as part of a random audit and requesting his income tax statements for 2012;
  - Page 5-8 – tax information for 2012 provided by Mr. Bhuiyan to MLS showing that he earned income for that year;
  - Page 9 - letter from MLS to Mr. Bhuiyan dated January 20, 2016 requesting that he file with MLS a Declaration of Earnings and Employer's Statement for 2015;
  - Page 10 – Letter from Dr. S. Shepherd dated May 14, 2016 stating that Mr. Bhuiyan is unable to drive a taxi from January 1, 2015 to December 31, 2015 due to medical reasons.
  - Page 11-13 – Statutory Declaration that indicated that Mr. Bhuiyan was unable to work in 2015.

### **EVIDENCE OF FAIZ BHUIYAN**

9. Mr. Bhuiyan was sworn or affirmed. In his testimony in chief and under cross-examination, Mr. Bhuiyan told the Tribunal:
  - In 2000, after he received his licence his spinal cord was badly injured as a result of carrying heavy luggage;
  - his doctor advised to have surgery but he continued to work with treatment but the back pain unfortunately continued;
  - at the end of 2004 he had the back surgery at an orthopedic hospital, which was successful and 90% of his pain was gone and he was able to work;
  - on May 18, 2014, he injured his back again and was unable to work from July 4, 2014;

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- he had serious medical issues and that was the genuine reason that he could not work during that time;
- he submitted the documents that MLS had requested and always cooperated with the City regarding this matter;
- his documents are all in order including the doctor's notes and tax information; and
- he started working again this year in January 2016.

10. Mr. Bhuiyan did not call any other witnesses to testify on his behalf.

## **SUBMISSIONS**

### **City's Submissions:**

11. Mr. Cornett stated that the City does not take a position and accepts the evidence at face value. He did not oppose the applicant's request. Mr. Cornett explained that the interruption in service corresponds exactly to the doctor's note, and in his view, Mr. Bhuiyan worked when he was able and did not work when he was unable to work because of his medical conditions.

Mr. Bhuiyan's submissions

12. Mr. Bhuiyan wished the Tribunal to deem his service uninterrupted and for him to remain on the Driver's List.

## **DECISION**

### ***[Relevant provisions of the Code***

13. The *Toronto Municipal Code*, § 546-40, sets out a regulatory scheme for drivers who wish to maintain their position on the Drivers' List.

14. The requirements of the Code relevant to this case are:

VEHICLE-FOR-HIRE: The driver of a taxicab or limousine, who is required to be licensed under this chapter.

§ 545-40 Removal from and repositioning on Driver's List.

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 vehicle-for-hire driver in Toronto...

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- E. Where an applicant satisfies the Toronto Licensing Tribunal that his or her failure to earn a living in Toronto on a full-time basis as a vehicle-for-hire driver operating a taxicab is the result of illness or injury and that 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.
- H. The Toronto Licensing Tribunal may, if it deems the employment service of an applicant to be uninterrupted for a period of time under Subsections E...deem, that his or her licence as a vehicle-for-hire driver has not lapsed during the period to permit him or her to remain on the Driver's List.
15. It is not disputed that Mr. Bhuiyan did not work from July 4, 2014 until the end of 2015.
  16. The Tribunal can exercise its discretion to deem that his service has continued, if it was satisfied on three criteria:
    - 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; and
    - iii. The interruption in services is not, in all the circumstances, excessive.
  17. The onus was on Mr. Bhuiyan to satisfy the Tribunal on reasonable grounds that the above three requirements were met.
  18. The Tribunal was satisfied that Mr. Bhuiyan's failure to comply with the Code (i.e., to work full time as a Toronto taxi driver) was the result of illness or injury. Report 6594, combined with Mr. Bhuiyan's testimony, provided sufficient medical evidence to allow us to conclude that the medical basis for Mr. Bhuiyan's inability to drive continued during 2014 and 2015.
  19. We note in particular, letters from the Dr. S. Shepherd dated March 14, 2016 and July 27, 2016 confirming that Mr. Bhuiyan had back surgery in 2004 and suffered a back injury on May 18, 2014, and as a result of the injury was unable to work from July 4, 2014 to December 31, 2014, and also from January 1, 2015 to December 31, 2015.
  20. Dr. Shepherd in her July 27, 2016, letter stated: "Faiz had previous back problems which necessitated surgery in 2004. The back pain continued during that time with numbness, and he was unable to bend down. He was mentally stressed as well."
  21. The Tribunal was also satisfied that Mr. Bhuiyan's failure to comply with the Municipal Code was entirely beyond his control.

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22. The Tribunal was satisfied that the interruption in services was not excessive and corresponded exactly to the time that Mr. Bhuiyan was experiencing his back problems.
23. Accordingly, the Tribunal orders that Mr. Bhuiyan's employment service for January 1, 2014, to December 31, 2014, and from January 1, 2015, to December 31, be deemed to be uninterrupted and not lapse during that period and Mr. Bhuiyan was permitted to remain on the Driver's List.

Originally Signed

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Cezary Paluch, Chair  
Panel Members, Daphne Simon and Melina Laverty concurring

*[Reference: Minute No. 154/16]*

**Date Signed:** October 20, 2016