

TASMANIAN RACING APPEAL BOARD

Appeal No10 of 2015/16

Panel:	Mrs Kate Brown (Chair) Mr Rod Lester Mr Graham Elliott	Appellant:	Mr David Hayes
Appearances:	The appellant in person Mr Tony Murray, Director of Racing, in person	Decision to which this appeal relates:	Conditions placed on harness Driver B licence
Heard at:	Launceston		
Date:	1 February 2016	Result:	Dismissed

REASONS FOR DECISION

1. The appellant has appealed against a decision of the Director of Racing to impose conditions on his licence that he must complete at least eight (8) satisfactory trial drives within six (6) months prior to driving in races.
2. By a letter dated 1 December 2015 the Licensing and Registration Officer, Mrs Leanne Purdon, wrote to the appellant advising as follows:

“I refer to your interview with the Director of Racing yesterday 30 November 2015 in relation to the restriction placed on your Driver B licence.

As advised, Mr Murray determined the following –

- *That you must complete at least eight (8) satisfactory trial drives within six (6) months prior to driving in races.*
- *The number of standing starts is to be discussed with the Chairman of Stewards.*

The previously issued trial driver’s sheet can be used to record the trials and should be returned to this office as soon as the required trials have been completed.

Should you have any queries, I can be contacted on the above number.”

3. The appellant’s grounds of appeal are:

“The amount of trials to approve competency (sic) is vindictive and unachievable in the timeframe set down by the Director of Racing to obtain renewal of a B Grade driving licence.”
4. Before this Board the appellant submitted that:
 - (a) He had been driving since 1986, and training horses for a similar period.
 - (b) Between 1986 and 2001 he drove in 41 races as a Junior concession driver (with one win, a third and three fourth placings) before having some time unlicensed and travelling overseas.

- (c) When he returned he drove in trials only until 2010. When he sought to renew his Driver B licence in 2010, he was required to complete five satisfactory trial drives before being licensed to drive in races. He did that.
 - (d) He did not seek to renew his licence in 2014 on the basis of medical advice.
 - (e) He considered the conditions imposed on the granting of his current application unnecessary and “harsh”.
 - (f) It would be difficult for him to complete the number of drives required in the six months allowed.
5. The appellant further told the Board that he currently had two horses in training. One of those was currently racing and the other trialed twice in the last month and was about to start racing. Accordingly he was unlikely to get the required trial drives on the horses in his care. He is currently interstate for work and maybe for the next two to three months.
 6. Significantly the appellant told the Board that he has in fact completed five drives since the conditional licence (the subject of the appeal) was granted. At the time of the hearing, in effect the appellant only needs to complete three drives in four months to comply with the conditions imposed by the Director of Racing. The appellant maintained that would be difficult for him.
 7. Having regard to these matters, the appellant submitted that the Board should exercise its own discretion to set aside the Director’s decision and, in its place, substitute five trial drives as the appropriate number of drives for him to complete, in part because that was what he was required to do in 2010.
 8. In response, the Director of Racing submitted that a key consideration in imposing conditions is the need to consider the safety of all participants, in trackwork, at trials and at races. He submitted that since the conditions imposed in granting the appellant’s Driver B licence in 2010, there have been two material changes. The first was that now 15, rather than 10, years have lapsed since the appellant last drove in race conditions (which he would be entitled to do once his Driver B licence was granted, save for metropolitan races). Further, when the appellant sought the licence in 2010, he had consistently been driving in trials, whereas prior to his application for the current licence the appellant has not been licensed as a driver for some 15 months.
 9. The Director of Racing also noted that safety standards in the racing industry are constantly evolving, and expectations of participants are higher across the industry than they were in 2010. He noted that in imposing the number of drives he had taken into account the recommendation of the Chairman of Stewards and also the matters raised by the appellant at his interview on 30 November 2015. The Director of Racing advised the Board that in the six months immediately following the granting of the conditional licence there were trial meetings scheduled at a number of tracks within about an hour’s drive of the appellant’s home:
 - (a) Devonport 10
 - (b) Burnie 3
 - (c) Carrick 13
 10. At each of those trials there were/are some 3-7 trials run.
 11. We accept that the Director of Racing is empowered pursuant to s.6(2)(f) of the *Racing Regulation Act 2004* to exercise his discretion to impose conditions on the appellant’s licence.

12. Against those considerations, and relevant for present purposes, are the following matters:
 - (a) the appellant has long experience as a trainer and driving his own trackwork
 - (b) the appellant has not driven in race conditions in 15 years, but would be entitled to do so immediately should he be granted an unconditional licence
 - (c) the appellant has not driven at trials in 15 months, and before that did so on a limited basis for a number of years.
13. It is finely balanced, but the Board has determined that the appeal be dismissed. The Board has taken into account:
 - (a) The conditions that were imposed by the Director of Racing in early December;
 - (b) The new evidence that the appellant has already completed five of the eight trial drives imposed;
 - (c) That the appellant now has four months to complete the remaining three drives; and
 - (d) The evidence from Mr Murray that in the six months from December there were/are going to be 26 trial meetings and at each of those there could be three to seven trials.
10. The concern of the Director that the appellant be observed and demonstrate that he retains appropriate driving skills is a valid one. This does not reflect on the appellant's experience as a trainer or with horses generally but is focussed on ensuring the safety of the appellant, other drivers, and horses. There may have been some other mechanism to respond to those concerns, and necessarily in imposing such a condition the number of drives required will be somewhat arbitrary. However, the figure reached by the Director balanced the recommendation of the Chairman of Stewards with the submissions made to him by the appellant as to the number of drives and the time frame imposed. If anything the fresh evidence at the hearing of the appeal made it clear that the appellant ought have the opportunity to complete the balance of the drives required in the time frame allowed given he had already completed more than half those drives in the intervening period.
12. In accordance with s.34(1A) of the *Racing Regulation Act 2004*, 50% of the appellant's prescribed deposit is to be forfeited to the Secretary of the Department. The appellant is also ordered to pay 50% of the cost incurred in the preparation of the transcript in accordance with s.34(4A).