

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *AAA Mechanic & Roadworthy Pty Ltd & Anor v Department of Transport and Main Roads* [2020] QCAT 84

PARTIES: **AAA MECHANIC & ROADWORTHY PTY LTD**
NEIL EDWIN SANCHE
(applicants)

v

DEPARTMENT OF TRANSPORT AND MAIN ROADS
(respondent)

APPLICATION NO/S: OCR052-20

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 20 March 2020

HEARING DATE: 18 March 2020

HEARD AT: Brisbane

DECISION OF: Member Olding

ORDERS: **The application to stay a decision filed on 12 February 2020 is refused.**

CATCHWORDS: ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL – application to stay decisions to cancel Approved Examiner and Approved Inspection Station approvals for issue of vehicle safety certificates – where failure to carry out proper inspection – where public interest in integrity of vehicle safety certificate system balanced against interests of applicants

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 22
Transport Operations (Road Use Management) Act 1995 (Qld), s 65, s 65A
Transport Planning and Coordination Act 1994 (Qld), s 32

Transport Operations (Road Use Management – Accreditation and Other Provisions) Regulation 2015 (Qld), s 9(1), s 76(1)(c), Schedule 1 Part 2 s 8(1), Schedule 2 Part 3 s 11(1)
Transport Operations (Road Use Management – Vehicle

Standards and Safety) Regulation 2010 (Qld)

*Uysal v Queensland Building and Construction
Commission [2016] QCAT 367*

**APPEARANCES &
REPRESENTATION:**

Applicant: N E Sanchez

Respondent: A Roseler, in-house legal officer, Department of
Transport and Main Roads

REASONS FOR DECISION

- [1] Mr Sanchez is a motor mechanic. Through his company – AAA Mechanical & Roadworthy Pty Ltd (‘the company’) – he has carried on a business which includes carrying out mechanical repairs as well as inspecting motor vehicles and issuing safety certificates, known as roadworthy certificates.
- [2] The Department alleges Mr Sanchez inappropriately issued certificates for two defective vehicles and that the company failed to keep some of the required testing equipment at its inspection station, and that there were other failures to comply with obligations under the relevant governing laws. Consequently, the Department cancelled the relevant approvals that allowed Mr Sanchez and his company to carry out inspections and issue roadworthy certificates.
- [3] Mr Sanchez has applied for stays of the cancellations pending review of those decisions. After an oral hearing, on 20 March 2020 I made an order refusing to grant the stays. My reasons follow.

Procedural history

- [4] The approvals that the Department cancelled are:
 - (a) Mr Sanchez’s approval as an Approved Examiner; and
 - (b) The company’s approval of an Approved Inspection Station (AIS).
- [5] Mr Sanchez and the company applied to the Department for an internal review of the cancellation decisions and at the same time applied to the Tribunal for a stay of those decisions and external review of the cancellation decisions. The application for review by the Tribunal was not effective at that time to engage the Tribunal’s review jurisdiction as the Tribunal may only review decisions following internal review, referred to as ‘reviewed decisions’, and not the original decisions of the Department.¹
- [6] However, between the making of the application for a stay, and the hearing of that application on 18 March 2020, the Department completed the internal review, confirming the cancellation decisions. With the consent of the Department, the Tribunal directed that the purported application to review the cancellation decisions be treated as an application to review the reviewed decisions.
- [7] In written submissions filed before the stay hearing, the Department submitted, correctly in my view, that in the circumstances then prevailing the application for a

¹ *Transport Operations (Road Use Management) Act 1995 (Qld)*, ss 65, 65A.

stay would be governed by s 32 of the *Transport Planning and Coordination Act* 1994 (Qld) (as applied by s 65(3) of *Transport Operations (Road Use Management) Act* 1995 (Qld), s 65), as that section would have been the only source of the Tribunal's jurisdiction to consider a stay application at that time.

- [8] However, now that the internal review has been completed the original decisions are replaced by the reviewed decisions. I therefore directed that the application for stays of the cancellation decisions be treated as an application for stays of the reviewed decisions. Now that the Tribunal's review jurisdiction has been engaged, the application for a stay in my view should be considered under s 22 of the *Queensland Civil and Administrative Tribunal Act* 2009 (Qld) ('QCAT Act').

Approvals and cancellations – summary of statutory framework

- [9] Vehicles are required to have a safety certificate when offered for sale or presented for registration. Vehicle inspections may be conducted by approved examiners at an 'Approved Inspection Station' (AIS) which may be fixed or mobile premises. The approved examiner completes and signs the certificate which is countersigned on behalf of the AIS.²
- [10] Section 18 of the *Transport Operations (Road Use Management) Act* 1995 (Qld) sets out grounds for 'amending, suspending or cancelling' approvals. The grounds relied on by the Department for cancelling the approvals in this case are:
- (a) the holder has contravened a condition of the approval (s 18(1)(b));
 - (b) public safety has been endangered, or is likely to be endangered because of the approval (s 18(1)(h)); and
 - (c) the chief executive considers it necessary in the public interest (s 18(1)(q)).
- [11] In relation to s 18(1)(b), compliance with the vehicle inspection Code of Practice is a condition of the approvals.³ The Code of Practice in turn requires compliance with Business Rules. It is not disputed that together the Act, Regulations, Code of Practice and Business Rules require that an inspection certificate must not be issued unless the examiner has carried out a thorough inspection of the vehicle and that equipment necessary for carrying out inspections must be held at the AIS and maintained to the manufacturer's specifications.
- [12] Where the chief executive considers there are grounds for amending, suspending or cancelling a licence, written notice of the proposed action must be given inviting the holder of the approval to show cause why the action should not be taken.
- [13] The Department gave the required notice inviting Mr Sanchez and the company to show cause why the approvals should not be cancelled. Upon considering the response to the notice, the Department determined that the approvals should be cancelled.

Stay applications – the legal principles

² *Transport Operations (Road Use Management – Vehicle Standards and Safety) Regulation* 2010 (Qld).

³ *Transport Operations (Road Use Management – Accreditation and Other Provisions) Regulation* 2015 (Qld), s 9(1) and s 76(1)(c); Schedule 1, Part 2, s 8(1); Schedule 2, Part 3, s 11(1).

- [14] The Tribunal may make an order staying the decisions only if it considers the order is desirable after having regard to the following:
- (a) the interests of any person whose interests may be affected by the making of the order or the order not being made;
 - (b) any submissions made to the tribunal by the decision-maker for the reviewable decision;
 - (c) the public interest.⁴
- [15] Consistent with the principles applied by the courts in respect of stay applications, the Tribunal also takes into account whether there is an arguable case for the cancellation decisions to be set aside and the balance of convenience.⁵ It is not the Tribunal's role at this time to determine the merits of the review. However, the allegations must be considered to determine whether the applicants have an arguable case for the decisions to be set aside.

The allegations

- [16] The first vehicle for which the Department alleges that a certificate was wrongly issued is a Toyota RAV-4. The Department's defect notice lists what it describes as 13 major defects, including in respect of major steering components, multiple oil/grease leaks, low levels of brake and power steering fluids, and non-compliant tyres. Mr Sanchez was unable to recall testing this vehicle and thus was unable to cast any light on the allegations.
- [17] The second vehicle is a Honda Jazz. A defect notice produced by the Department lists a number of alleged defects in the vehicle. The most significant is described as 'severe rust' to the front left and right chassis rails. Mr Sanchez admitted that he did not jack the vehicle up high enough to see the rust under the body of the vehicle.
- [18] There is also an allegation that the AIS did not have all of the equipment required to carry out inspections. A number of missing items of equipment were listed. For example, the list included a window tint meter and brake testing equipment. Mr Sanchez did not deny that he failed to have this equipment. However, in respect of one item – GPS brake meter – he noted that it was only required for testing a particular class of vehicle which he has now applied to have removed from his approval.
- [19] There is a requirement to have a copy of the relevant Code of Practice at the AIS. The Department alleges, and Mr Sanchez did not deny, that no copy was held.
- [20] There is also an allegation of charging more than the maximum prescribed fee for inspections which is not particularised, but which Mr Sanchez did not deny. Similarly, there is an allegation of a safety certificate not being completed correctly, which was not denied.

⁴ QCAT Act, s 22.

⁵ See, for example, *Uysal v Queensland Building and Construction Commission* [2016] QCAT 367, [5] - [8] for discussion of the principles applicable to stay applications in the context of a review of a decision to cancel a builder's licence.

The parties' submissions

- [21] Mr Sanchez made a number of submissions regarding the cancellation of the approvals which, although not articulated as such, are mainly, though not entirely, relevant to whether there is an arguable case for setting aside the cancellations.
- [22] A summary of the submissions follows:
- (a) Cancellation, being the maximum penalty, was too harsh.
 - (b) There was no recklessness or gross carelessness.
 - (c) The cancellation should not have been imposed immediately.
 - (d) Due process was not followed as Mr Sanchez says he was not given an opportunity to refute the allegations in a formal proceeding or to 'confront his accusers'.
 - (e) Mr Sanchez has been an examiner for some eight years without receiving any previous complaints.
 - (f) He is willing to rectify the situation if given an opportunity.
 - (g) There were relevant personal circumstances that should be taken into account upon which I elaborate below.
- [23] The Department submitted that the safety of the public is paramount and in view of the seriousness of the allegations cancellation of the approvals is the appropriate course.

Consideration

- [24] At the hearing, no distinction was drawn by Mr Sanchez or the Department between the considerations relevant to the two approvals. I adopt the same course.
- [25] It is important to note that, if one of the grounds set out above is established, the Department, and the Tribunal standing in the shoes of the Department on review, 'may' amend, suspend or cancel a licence.⁶ For the purposes of the stay application, the Tribunal must consider whether there is an arguable case that either a ground for cancellation does not exist or, if it does, the discretion under s 19 should not be exercised to cancel the approvals.
- [26] As it is a condition of the approvals that a safety certificate not be issued without a thorough inspection. As Mr Sanchez admits that he did not jack the Honda Jazz up sufficiently to inspect underneath for rust, and does not contest that he did not have a copy of the Code of Practice or some of the equipment required by his approval, it is difficult to see how there could be an arguable case that a ground for cancellation did not exist. No submission to that effect was made by Mr Sanchez.
- [27] The allegations relating to the issue of the safety certificate for the Honda Jazz in particular, which are uncontested at least so far as the factual foundation is concerned if not the conclusions to be drawn from those facts, are of a serious nature. However, it is not inconceivable that the Tribunal – taking into account that, apart from these allegations, and an earlier incident involving amending a safety certificate, no other complaints involving Mr Sanchez's certification have arisen in

⁶ *Transport Operations (Road Use Management) Act 1995 (Qld)*, s 19(2).

the period of approximately eight years since his accreditation as an Approved Examiner and the personal circumstances to which Mr Sanchez referred in his submissions – might reach a different view to the Department.

- [28] I therefore approach the matter on the basis that the applicants have an arguable case in the review.⁷ On that basis, the matter falls for consideration mainly by reference to the balance of convenience, which necessarily requires balancing the interests of Mr Sanchez and his company, and the public interest.
- [29] It is self-evident, as the Department submits, that it is vital for the safety of the public that persons purchasing motor vehicles are able to rely upon the integrity of safety certificates.
- [30] On the other hand, there will undoubtedly be a financial impact on Mr Sanchez if his company is unable to issue safety certificates pending the determination of the application for review. In that regard, Mr Sanchez confirmed in evidence that issuing such certificates is not the company's sole source of revenue; it also provides motor vehicle servicing and repair services.
- [31] Mr Sanchez did not provide any evidence regarding the amounts or proportions of total revenue derived from testing motor vehicles and issuing safety certificates. I am prepared to infer that it is not insignificant and that the financial impact of not being able to carry out this work pending the review would be commensurately significant.
- [32] However, cancellation of their approval is a risk that an Approved Examiner takes if the examiner issues a safety certificate without carrying out a proper inspection of a vehicle or otherwise fails to comply with the conditions of their approval. While Mr Sanchez seemed to not accept the seriousness of the defects and referred to making a judgment regarding the roadworthiness of vehicles, at least in relation to the Honda Jazz this is not a case of differing professional judgements regarding the severity of defects; Mr Sanchez did not carry out a proper inspection at all, admitting that he did not jack up the vehicle sufficiently to inspect for rust.
- [33] Having regard to this serious failure of duty, and the other indications that Mr Sanchez has not approached his specific obligations under the legislation governing Approved Examiners and AISs diligently, such as failing to keep a copy of the Code of Practice that should guide inspections or equipment required by the approval, I cannot be satisfied that the integrity of the safety certificate system would be maintained if the stays were to be granted.
- [34] In order to issue a stay, I must be satisfied that it is desirable to do so.⁸ In the circumstances of this matter, I accept the Department's submission that the interests of the public in the integrity of the safety certificate system outweigh the financial impact, serious as they may well be, on Mr Sanchez and his company.
- [35] It follows that I am not satisfied that it is desirable to order the stays. I must therefore refuse the application to stay the decisions.

⁷ The conclusion that the applicants have an arguable case should not be taken as acceptance of all of Mr Sanchez's submissions. For example, it is difficult to see how the Department could be said, as Mr Sanchez submitted, to have denied procedural fairness when it followed the 'show cause' procedure laid down by statute. In any case, if there was any denial of procedural fairness, that should be remedied when the Tribunal conducts its fresh hearing of the application for review.

⁸ QCAT Act, s 22.