



Decision No: QLDC Hearing 079/2019

IN THE MATTER

of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER

of an application by **VARUN**
VARUN pursuant to ss.219 and
222 of the Act for a Manager's
Certificate

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

Chairman: Mr E W Unwin
Members: Mr L A Cocks
Mr J M Mann

HEARING at Queenstown on 28th November 2019

APPEARANCES:

Mr Varun Varun - Applicant
Sergeant C Brooks - NZ Police – in opposition
Miss R M Scoons – Licensing Inspector – to assist

**ORAL DECISION OF THE QUEENSTOWN LAKES DISTRICT LICENSING
COMMITTEE**

[1] Before the committee is an application by Varun Varun for a manager's certificate. The application was filed with the District Licencing Agency on 14th June 2019. Mr Varun is from India and is 23 years of age. He has previously held a managers certificate in respect of an off-licence premises at a supermarket while he has been living in New Zealand. He is currently employed in Queenstown at the "Caribe Latin Kitchen" where he has been since June of this year.

[2] Mr Varun produced a number of personal references, and his application is fully encouraged by the cafe manager, Ms Carolina Guarjardo. She saw fit to come before us to give support to Mr Varun in the hope that he will continue to be employed in a reasonably responsible position in these small premises, which are regarded as low risk.

[3] The application drew opposition because on 2 January this year, Mr Varun was stopped at a police check point. A blood sample was eventually taken. This was duly analysed and produced a result of 135mg of alcohol per 100ml of blood. Mr Varun duly came before the District Court where he was fined and disqualified. As stated above, not unnaturally, this incident resulted in opposition from the Police.

[4] Under the criteria set out in section 222 of the Act, the conviction is the only bar to Mr Varun being granted a managers certificate. The Police referred us to the long standing, precedent setting decision of GL Osbourne NZLLA 2388/95. This decision has been in existence for some 24 years. It calls for a 'stand down' period of 2 years for a single driving offence involving abuse of alcohol with no pattern of offending. This principle is said to encourage a higher level of responsibility for managers to be blemish free, and to set an example to others because of the responsibility they hold to help to ensure that the objects of the Act are achieved.

[5] In the decision of *Police v Manson*, [2015] NZARLA 590, the Alcohol Regulatory and Licensing Authority stated at paragraph [25]:

“While we agree with the DLC that the Osborne decision is a guideline rather than a rule, it is one that in our view should not be departed from lightly and only where justified by the circumstances. However, the Authority has in the past reduced the stand down period required to take into account exceptional circumstances. It would be an extremely rare case where convictions such as these have been incurred and no stand down period at all was required.”

[6] We accept and follow the reasoning behind this decision. Despite Mr Varun's request for leniency, it is, in our view, necessary in this case to impose a period of waiting time from when the incident occurred. Accordingly, any granting of this application will become a process rather than an event.

[7] We are satisfied that because this was a checkpoint operation, and because of his previous holding of a managers certificate, and because of the decisions and changes of lifestyle that Mr Varun has made and adopted since the incident, and because of the support that he has, this is an appropriate case to adjourn the application for 12 months.

[8] This period of time will effectively give the applicant a further probationary period. At the expiry of 12 months, we will call for reports from the Police and the Inspector. If these are satisfactory then the application will be granted on the papers. If not, the application will be set down for a further public hearing.

[9] The issue of temporary management under S. 229 of the Act comes into focus. It is apparent that it is possible for a person to be appointed as a temporary manager where a manager is ill or is absent for any reason or is dismissed or resigns. A person may be appointed in his place but only for 48 hours. After that time, written notice must be given, both to the Police and the Inspector.

[10] Subject to the provisions of this section, it is our view that if Mr Varun continues with his present employment, he may not be appointed as a temporary manager, unless under the provision of section 229 without notice (ie for less than 48 hours, and provided a qualified manager is absent for any reason). After a period of 6 months from the date of hearing of this application, Mr Varun may be appointed as

a temporary manager provided the appropriate notice is given, both to the Police and the Inspector. The application is accordingly adjourned on these conditions.

E W Unwin

Chairman.