



WEST MIDLANDS TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 20 SEPTEMBER 2018

OPERATOR: KULVINDER SINGH HOTHİ

LICENCE PD1148488

Decision

1. The restricted passenger service vehicles (PSV) operator's licence held by Kulvinder Singh Hothi is revoked with effect from 0001 hours on 1 October 2018, pursuant to Sections 13(3) and 17(3)(a), (aa), (c) and (d) of the Public Passenger Vehicles Act 1981 ("the 1981 Act").
2. Kulvinder Singh Hothi lacks good repute. He is disqualified for three years, from 0001 on 1 October 2018 until 0001 on 1 October 2021, from holding or obtaining any type of operator's licence in any traffic area and from being the director of any company holding or obtaining such a licence. The disqualification is pursuant to section 28 of the Transport Act 1985.

Background

Operator details

1. Kulvinder Singh Hothi was granted a restricted PSV licence on 27 July 2017 after a public inquiry. I had called that inquiry because I had serious concerns that, if the application were granted, the operation of PSVs would immediately become Mr Hothi's main occupation. If this were his main occupation, he would not fulfil the criteria set out in Section 13(3) of the 1981 Act for holding a restricted licence. Mr Hothi assured me at the inquiry that he worked 25 hours per week as a car sales executive for Auto Haus Motor Company Ltd and that this was likely to be his main occupation for a considerable period to come. At my request, Mr Hothi accepted the following undertaking:
 - i) the operator shall, during the life of the licence, keep records of time spent and income earned from the minibus operation. Should income from, or time spent on, the minibus operation exceed the income from all other sources or time

spent on other occupations for two consecutive months, the operator will apply for a standard national licence.

2. In August 2018 I received a report from DVSA traffic examiner Tracy Love. In it she stated that:
 - i) Mr Hothi was working and driving long hours for his PSV licence and it seemed likely that this was his main occupation;
 - ii) there was little concrete evidence that he actually did any work for Auto Haus. Mr Hothi had been reluctant and unable to produce any time sheets;
 - iii) although safety inspection sheets for the one vehicle on the licence had been produced, these had turned out to be forgeries, Mr Hothi having recently obtained blank inspection sheets from the maintainer and filled them in himself;
 - iv) tachograph charts examined showed numerous, repeated and serious drivers' hours infringements. Mr Hothi was keeping no records of his supposed other work at Auto Haus: if his claimed 25 hours per week at Auto Haus were factored in, infringements of daily and weekly rest would be numerous and very serious;
 - v) the vehicle appeared to be kept at Mr Hothi's home rather than at the stated operating centre;

Public inquiry

3. In the light of the above I decided to call Mr Hothi to a public inquiry. The call-up letter was sent on 6 August 2018, citing Sections 13(3) and 17(3) of the 1981 Act.
4. The inquiry was held in Birmingham on 20 September 2018. Present were Mr Hothi, represented by Anthony Schiller of Dennings solicitors, DVSA traffic examiner Tracy Love and vehicle examiner Andrew Jones.
5. Mr Hothi accepted the accuracy of the DVSA reports. His general argument was that he had made some mistakes at the start of the licence but had improved since. Recent safety inspection sheets, tachograph charts and driver defect reports were adduced in support of this argument.
6. Mr Hothi stated to me that he worked variable hours for Auto Haus and was paid accordingly at the end of each month. When I pointed out that the payslips showed that he was paid exactly the same amount each month he stated that the pay was the same even though the hours varied. I noted that the payslips stated that payment was by BACS and asked Mr Hothi why, therefore, his bank statements showed no such payments into his account. He stated that, despite what it said on the payslips, he was paid in cash.
7. I noted that Mr Hothi did not appear to have kept records of income from his PSV business or time spent on his stated main occupation (Auto Haus) as he had undertaken to do. Mr Schiller took me to the PSV business accounts which showed that gross income for the financial year ended 5 April 2018 was **** with a net loss of **** I noted that these aggregate annual figures did not fulfil the undertaking to keep monthly records.
8. TE Love's report stated that Mr Hothi had been unable to provide any timesheets from his work at Auto Haus. He had promised to send some but she had never

received any. At the inquiry Mr Hothi submitted records from 1 November 2017 to 31 January 2018 showing hours worked for Auto Haus. Records for April to September 2018 were not available (Mr Hothi had been away in India in February and March 2018). I noticed that the Auto Haus records for November 2017 to January 2018 showed him typically working between 4 to 8 hours a day until around 4 – 5 pm. Some days recorded 12 hours work: the monthly total was always 108.33. I compared these records against some of the available tachograph charts from the same period. On 14 November 2017 Auto Haus records showed that he had worked from 1000 until 1700 that day. Mr Hothi's tachograph showed that he had driven between 1740 that day and 0500 the following morning. If the AutoHaus record was correct, Mr Hothi would have had only five hours daily rest.

9. On 11 December 2017 Auto Haus recorded Mr Hothi as working for 11 hours between 0530 and 1630. His tachograph records him driving the PSV between 1230 on 11 December and 0230 the following morning. Clearly the AutoHaus record cannot be correct as Mr Hothi was driving between 1230 and 1630 on 11 December, not working at Autohaus. If he genuinely started at Autohaus at 0530 that day and finished driving the PSV at 0230 the next day he would have had only 3 hours daily rest. None of the tachograph charts recorded any of the work Mr Hothi claimed to have done at AutoHaus.
10. I examined the more recent tachographs provided by Mr Hothi at the inquiry and noted that he was continuing to drive for long hours (albeit with far fewer 4.5 hours offences). For example, in June 2018 he drove the PSV for an average of 53 hours a week (from start of duty time to end of duty time). The charts showed no "other work" for Auto Haus.

Conclusions from the evidence

11. From an examination of Mr Hothi's Auto Haus timesheets and tachograph records there are only two possibilities: either i) Mr Hothi was working truly Stakhanovite hours far in excess of those permitted under the drivers' hours and working time rules; or ii) the hours listed for AutoHaus are a work of fiction. I find that the Auto Haus records cannot be relied upon for the following reasons:
 - i) the timesheets presented for November and December 2017 and January 2018 always add up exactly to 108.33 hours, which is an unlikely occurrence;
 - ii) some timesheets (read in conjunction with the tachographs) show Mr Hothi to be working impossibly long hours and, in at least one instance, to have been working for Auto Haus at the same time as he was driving his PSV on his o-licence business;
 - iii) the director of Auto Haus Motor Company Ltd is Mr Hothi's son Gurpreet Singh Hothi. The company's registered address is the same as Kulvinder Singh Hothi's residential address. Records produced by the company therefore do not have the same degree of independence which they would have if produced by an entirely unconnected employer;
 - iv) although the monthly payslips stated that Kulvinder Singh Hothi was paid by BACS, Mr Hothi's bank statements show that this was not in fact the case. There is no evidence that Mr Hothi ever received the payments shown on the payslips;
 - v) the P60 presented by Mr Hothi showed that he was supposedly paid by Auto Haus for a full 12 months in the financial year to 5 April 2018, even though Mr Hothi actually spent two months in India from January to March 2018.

Further Findings

12. No monthly records of income received from Mr Hothi's PSV business have been kept, contrary to the undertaking he gave me at the public inquiry in July 2017 (Section 17(3)(aa) of the 1981 Act refers).
13. Detailed monthly records of time spent working at Auto Haus only exist for the three month period 1 November 2017 to 31 January 2018. These cannot be relied upon for the reasons given above.
14. Mr Hothi's main occupation is operating PSVs. He clearly spends many more hours on the PSV side of the business than working for Auto Haus, even if the claimed 25 hours per week is correct (and I conclude above that it is not). He is therefore not entitled to hold a restricted PSV licence.
15. Mr Hothi has failed to fulfil his undertaking to ensure that rules concerning drivers' hours and tachographs are observed. He has committed numerous and repeated infringements of the 4.5 hours rule and of rules regarding daily and weekly rest. On one occasion, TE Love found that he had driven for 11 consecutive days.
16. Mr Hothi has failed to fulfil his undertaking to keep vehicles fit and serviceable and has failed to abide by his promise to have his vehicle inspected every six weeks (Section 17(3)(a) of the 1981 Act refers). He deliberately created false preventative maintenance inspection documents to try to deceive DVSA into thinking that inspections were taking place. At the inquiry he told me he would provide evidence (in the form of invoices) that the vehicle had at least been inspected even if the correct sheet had not been completed. However, from records received the day after the inquiry, I noted that invoices for the six-weekly checks related only to inspections in June, August and September 2018, ie after Tracy Love's visit to the operator in April 2018. There is still no evidence of the vehicle being given an inspection between July 2017, when the licence was granted, and 14 June 2018.
17. Mr Hothi has failed to fulfil his undertaking to ensure that drivers record defects in writing. I noted that the June, August and September PMI sheets all showed several driver detectable defects – typically broken lights – which did not appear in the defect sheets immediately preceding the maintenance check. For example, the 14 June maintenance sheet showed that neither offside nor nearside rear brake light was working: the preceding driver defect sheet recorded "nil defects".
18. Mr Hothi's vehicle received a delayed prohibition for a loose steering rack on the one occasion it was encountered (4 April 2018) (Section 27(1)(c) refers).
19. Mr Hothi is not of the good repute necessary to hold a PSV licence (Section 17(3)(d) refers). His creation of false maintenance records and initial (and extended) attempts to lie about this to a DVSA officer make him unfit to hold an operator's licence.

Conclusions

20. Mr Hothi's main occupation is the operation of PSVs and has been ever since the licence was granted: he is therefore ineligible to hold a restricted PSV operator's licence. Further, he lacks the good repute necessary to hold one. He has comprehensively ignored the rules relating to drivers' hours and working time, and he failed for the first 11 months of the life of the licence to put his vehicle in for the six-weekly inspection he promised it would be given.
21. In the light of the above, revocation of the licence is the only possible outcome. The only reason I granted the licence in the first place was Mr Hothi's solemn promise to keep time and income records of his different activities. He entirely failed to do this.

Operating his PSV was his main occupation from the moment he commenced operating the vehicle. He comprehensively failed to fulfil undertakings concerning drivers' hours and vehicle maintenance. The answer to the "Priority Freight" question of how likely it is that this operator will comply in the future is, in the light of his history of broken promises, very unlikely. The operator deserves to go out of business (the "Bryan Haulage" question).

Revocation of the licence

22. The licence is accordingly revoked under Sections 13(3), 17(3)(a), (aa), (c) and (d) of the 1981 Act. The revocation will take effect on 1 October 2018. I have not given the usual 28 day period of grace as i) Mr Hothi's driving entitlement has been suspended for four weeks with effect from 29 September and he will not anyway be able to drive the vehicle after that date; and ii) his drivers' hours and vehicle maintenance history constitutes an unacceptable threat to road safety if he were permitted to continue to operate for more than a brief period.

Disqualification of Kulvinder Singh Hothi

23. Mr Hothi made a number of promises to me when applying for his licence and at the public inquiry I held before granting it. He broke all of them. Further, he falsified maintenance records to try to cover up the fact that the vehicle had not been properly maintained. I therefore conclude that Mr Hothi deserves to be disqualified under Section 28 of the Transport Act 1985 from holding a licence in the future. In deciding upon the length of his disqualification, I have taken account of paragraph 93 of the STC's Statutory Guidance Document 10. This posits a starting point of between one and three years for a first public inquiry (which – in the life of the licence - this is) but a period of between five and ten years where an operator has allowed records to be falsified. I have determined upon a disqualification period of three years as the very least which can be justified against the STC's guidance. Mr Hothi may not apply for an operator's licence again until October 2021.

A handwritten signature in black ink that reads "Nicholas Denton". The signature is written in a cursive style with a horizontal line underneath the name.

Nicholas Denton
Traffic Commissioner
23 September 2018