



SOUTH EASTERN AND METROPOLITAN TRAFFIC AREA

DECISION OF THE DEPUTY TRAFFIC COMMISSIONER

**PUBLIC INQUIRY HEARD AT IVY HOUSE, IVY TERRACE, EASTBOURNE ON 19
NOVEMBER 2018**

OK1121804 SIMPLY REMOVALS LIMITED

Decision

**Breach of Section 26(1) (b) (c) (ca) (e) and (f) of the Goods Vehicles
(Licensing of Operators) Act 1995 found**

**Suspension of licence from 00.01 hours on the 1 December 2018 until 00.01
hours on the 2 January 2019 ordered.**

**Undertakings sought for audit of transport operation not less than 5 months
and not more than 7 months from the date of the public inquiry.**

Repute of Transport manager Stephen Ashby retained but severely tarnished.

Background

1. The operator Simply Removals Limited is the holder of a standard international licence granted on the 9 September 2013 authorising five vehicles with five vehicles currently in possession. The sole director of the company is Damian Riccardo Muretti and the transport manager is Stephen Ashby. When the licence was granted it was made subject to a number of undertakings which were subsequently fulfilled.
2. On the 27 June 2017 a desk based assessment was undertaken by DVSA officers and was deemed to be unsatisfactory in relation to a number of maintenance related issues. Following the discovery of an overloaded vehicle being used on the 7 September 2017 a Traffic Examiner's Operator Report was carried out. The outcome was "mostly satisfactory" but there were a significant number of drivers' hours infringements

discovered following analysis. As a consequence of the original overload, an additional occasion when an overloaded vehicle was used on the 25 July 2017 and the drivers' hours' infringements prosecutions were brought against the operator and four drivers resulting in convictions and fines being imposed on the 30 January 2018. A further overloading offence occurred on the 29 November 2017 and a driver (Mr Marinescu) was prosecuted and convicted on the 28 June 2018.

3. A further Traffic Examiner was undertaken on the 18 June 2018 when the analysis of the data produced revealed a high number of breaches of the tachograph requirements including 196 occasions when "driving without a card" was found. Five drivers were identified as those responsible for the more serious offences and were called to a conduct hearing which was heard concurrently to the public inquiry. Details of the results of those conduct hearings are set out in a separate document.
4. A maintenance investigation was conducted on the 24 August 2018 which was marked an unsatisfactory. A report prepared by Vehicle Examiner Belton was included in the documents prepared for the public inquiry. After the call up letter to public inquiry was issued two further offences of overloaded vehicles were discovered on the 11 September and 4 October 2018.
5. The director Damian Muretti and transport manager Stephen Ashby provided explanations for some of the offences and set out in detail what actions were proposed to remedy the deficiencies. Full versions of the reports from the DVSA officers and responses from the operator were included in the bundle prepared for the inquiry and I do not consider it necessary to repeat that level of detail in this decision.

The Public Inquiry

6. Damian Muretti and Stephen Ashby attended the inquiry and were represented by Andrew Sanderson. Three of the five drivers who had been called to the concurrent conduct hearing attended and were unrepresented.
7. Traffic Examiner Ali gave evidence and outlined the contents of his statement. He said that there had been a degree of improvement between the first Traffic Examiner's report in 2017 and his visit in 2018 but the changes made had not gone far enough as was evidenced by the deficiencies that he discovered and the continuing instances of overloading. He felt that Mr Ashby had not been giving enough time to analyse the tachograph records himself which had been a contributory factor. He confirmed that he had been told that training was being

arranged and had taken place for the drivers.

8. Mr Muretti confirmed that his statement submitted prior to the inquiry accurately reflected his view of what had taken place. He felt that the company had responded to the difficulties over time but accepted that the response had only been recent in relation to some items. He felt that things had now improved drastically and outlined some of the changes including a tool to prevent overloading of vehicles and the involvement of an external consultant “Mr Tacho” in the analysis of tachograph records. The contracted maintenance provider had been changed and systems were now in place to ensure PMI periods were achieved. A second change to the maintenance provider was planned to make further improvements and various policies had been introduced. He had been surprised when he learned of the level of tachograph default by the drivers and was embarrassed by having to attend the inquiry.
9. Stephen Ashby said that he had been transport manager for the operator since 2016 and was also responsible for two other operators who had one vehicle each in operation. He had extensive experience in the transport industry. The number of hours he was able to dedicate to his work with the operator had increased and was now at a level of 20 hours minimum. He had realised during 2017 that the Tachomaster system in place was not giving him all the information he required and he had tried to make improvements. He realised now that he had not paid enough attention to the driver records aspects as he had been concentrating on the maintenance side of compliance, He believed that the underlying problem had been with the culture amongst the drivers who were primarily from Eastern Europe. It had taken time but he believed that the culture had been broken and was now improved. A chart setting out the much reduced rate of driver infringements in October was produced in support .As transport manager he was assisted and supported by Mr Moretti and his assistant, the in house mechanic and Frank O’Keefe from “Mr Tacho”.
10. Mr Sanderson confirmed my understanding of the potential impact on the operator of regulatory action, accepted that this case met the criteria for serious non-compliance set out in the Senior Traffic Commissioners statutory document 10 but asked me to allow the licence to continue bearing in mind the substantial improvements which had been made. He offered an undertaking for a full audit in the future to reassure me if required that progress was being maintained.

Findings and Decision

- 11.** In terms of my formal findings I find that there have been breaches of Section 26(1) (b) (c) (ca) (e) and (f) of the Goods Vehicles (Licensing of Operators) Act 1995. In deciding what action to take I need to balance the positive aspects of the case with the negative. The key negative issues here are the ongoing failings in the drivers' hours' compliance and the fact that insufficient improvements were made between 2017 and the intervention by Mr Ali in 2018. Similarly the ongoing failings in relation to significant and road safety critical overloading of vehicles, including two in the build up to the inquiry, are a major concern. On the positive side I accept that the changes that have now been made are designed to achieve improvements and there is some evidence to show that this is the case. I also accept that Mr Moretti and Mr Ashby are genuine in what they say they want to achieve although I am concerned that it took so long for the actions required to be taken and believe that until the inquiry was called there remained an element of apathy which prevailed.
- 12.** In deciding whether the operator should be allowed to continue in business I have asked myself the question posed in the case of Priority Freight Limited & Paul Williams i.e. how likely is it that this operator will operate in compliance with the operator's licensing regime? In other words can the operator be trusted going forward? In balancing all the aspects of the case I have concluded that I can allow the licence to continue but only after careful consideration. The depth of the failings and the time period over which they continued mean that the case is very close to the point where my conclusion would be that trust will be misplaced and revocation is justified.
- 13.** Having regard to all the above and the guidance of the Senior Traffic Commissioner in Statutory Document 10 I judge that this case meets the criteria applicable to the category "serious to severe" as a starting point - the effect of the breaches offended the principles of road safety and fair competition. The regulatory action ordered is therefore to suspend the licence from 00.01 hours on the 1 December 2018 until 00.01 hours on the 2 January 2019. I believe that this order is proportionate and adequately reflects the seriousness of the case as detailed above. It is also intended to serve as a tangible reminder to this operator and others that ongoing compliance is essential and the improvements made must not be allowed to lapse now that the threat of immediate revocation has been removed.

14. I also seek one undertaking which was offered at the inquiry. An audit of the transport operation to be undertaken no less than 5 months and no more than 7 months from the date of the public inquiry. A copy of the audit and response from the operator to any recommendations to be sent to the Office of the Traffic Commissioner within 14 days of receipt. Full details of the requirement of the audit to be provided in a separate document.

Repute of Transport Manager Stephen Ashby

15. It is disappointing and surprising that a transport manager with the level of experience of Mr Ashby allowed the regulatory regime to fail as much Mr Ashby did. Having heard his evidence and considered all the facts I have concluded that his repute is retained but is marked as severely tarnished. Both he and the operator should be acutely aware that if there is any further significant and/or prolonged non-compliance the licence is likely to be revoked and Mr Ashby's repute lost.

A handwritten signature in black ink, appearing to read 'John Baker', written in a cursive style.

John Baker
Deputy Traffic Commissioner

21 November 2018