



WEST MIDLANDS TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 23 AUGUST 2018

OPERATOR: MICHAEL HILTON T/A HILTON REMOVALS

LICENCE OD1049333

Decision

1. The standard international goods vehicle operator's licence held by Michael Hilton trading as Hilton Removals is revoked with effect from 0001 hours on 10 October 2018, pursuant to Sections 26(1)(c)(iii) and (f) and 27(1)(a) and (b) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").
2. The good repute of transport manager Amy Hilton is lost, pursuant to Schedule 3 of the Goods Vehicles (Licensing of Operators) Act 1995. Under paragraph 16 of that Schedule, she is disqualified for an indefinite period of time from acting as a transport manager on any operator's licence in the European Union.
3. Michael Hilton is not of good repute. He is disqualified for a period of two years, from 0001 hours on 10 October 2018 until 0001 hours on 10 October 2020, 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, pursuant to section 28 (1), (4) and (5) of the 1995 Act.

Background

Operator details

1. Michael Hilton trading as Hilton Removals holds a standard international goods vehicle operator's licence (OD1049333) for two vehicles, with two vehicles currently specified. The licence was granted in August 2005. The nominated transport manager on the licence is Amy Hilton.

Background

2. In June 2018 I received a report from DVSA vehicle examiner Christopher Walker. Mr Walker's report stated that:
 - i) no driver defect reporting system existed;

- ii) there was no evidence of any safety inspections having been carried out on one of the two vehicles; inspection sheets for the other contained almost no detail and the examiner strongly suspected that they were fabrications prepared for his visit;
 - iii) the operator's vehicle had recently been given an S-marked prohibition (denoting a serious maintenance failure) for three loose wheel nuts out of six;
 - iv) a vehicle recently specified by the operator had been put into service without first being given an inspection;
 - v) there was little evidence that the transport manager Amy Hilton was exercising her functions;
 - vi) the MOT pass rate was poor (two failures and one pass after rectification from the last three presentations);
 - vii) maintenance was carried out in-house rather than by the stated maintenance contractor.
3. I also received a report from DVSA traffic examiner Sadie Clarke who reported that a vehicle driven by Simon Hilton had been stopped on 16 May 2018 on a return journey from France. The vehicle had been on a double-manned journey (Michael Hilton was the other driver) yet the two drivers had not been recording the journey as a double-manned trip. Neither driver knew the rules and requirements governing such journeys.

Public inquiry

Call-up

4. In the light of these reports I decided to call the operator and transport manager to a public inquiry.
5. The call-up letter was sent on 19 July 2018, citing Sections 26(1)(b), (c)(iii), (ca), (e), (f) and (h) and 27(1)(a) and (b) of the 1995 Act as well as Article 4.1(a) of Regulation EC 1071/2009. By letter of the same date, transport manager Amy Hilton was also called to the inquiry consider her repute.

Holding of public inquiry

6. The inquiry was held in Birmingham on 23 August 2018. Present were Michael Hilton and DVSA vehicle examiner Christopher Walker. Amy Hilton (now Amy Fennell) was not present. She did not reply to the call-up letter. Michael Hilton told my clerk when he arrived for the inquiry that she had child-care issues and was unable to attend. When the inquiry started, he told me rather that Amy Fennell was too nervous to attend.

Evidence of Michael Hilton

7. Mr Hilton accepted that no safety inspection records had existed and that he had created some for Mr Walker's visit. He believed however that the vehicles had always been roadworthy. His son-in-law Mark Fennell carried out the maintenance at a different unit on the same farm premises. He accepted that there was no evidence that the maintenance had been paid for. The vehicle with the loose wheel nuts was fitted with yellow indicators which had not pointed to any problem with the nuts that day.
8. Mr Hilton had no explanation for the fact that vehicle S494 CWL, which had been removed from the licence on 14 October 2017, had continued to be used throughout the period 14 October 2017 to 5 March 2018. Nor could he explain how vehicle MX53 ZNF had been used regularly from 4 September 2017 despite not being added to the

licence until 13 December 2017. It must have been an oversight by Amy Fennell the transport manager.

9. I looked at the maintenance documentation which Mr Hilton had brought with him and noted a 7.5 week gap between the two most recent safety inspections for vehicle MU51 FGN. The stated interval was six weeks. The inspection report for the same vehicle dated 1 May 2018 contained numerous driver detectable defects such as damaged tyres, dashboard warning lights and blocked washer jets: however, the immediately preceding driver defect reports, filled in by Simon Hilton, recorded nil defects.
10. I noted that the 1 May 2018 inspection was the first such inspection for the vehicle, even though it had been specified on the licence and had operated from 28 March 2018. The 1 May 2018 inspection sheet showed that it was in a poor, unroadworthy, condition.
11. I examined the tachograph charts provided and saw that drivers were not recording walk-round checks as "other work" before the start of their driving day. Almost every chart started in driving mode.

Findings

12. After considering all the evidence I have reached the following findings:
 - i) neither Michael Hilton the operator nor Amy Fennell (nee Hilton) are of good repute. Vehicles were not given the regular safety inspections the operator promised they would be. In an attempt to conceal this from the vehicle examiner, Michael Hilton and Amy Fennel conspired to create false maintenance records. Both the sustained neglect of such a basic safety-related responsibility by operator and transport manager and the dishonest attempt to cover this up mean that loss of repute is inevitable (Section 27(1) of the 1995 Act refers);
 - ii) the operator has operated vehicles not specified on its licence (Section 5(6) and 26(1)(h) of the 1995 Act refer);
 - iii) the operator has failed to fulfil its promise when applying for the licence that vehicles would be given safety inspections every six weeks (Section 26(1)(e) refers);
 - iv) the operator's vehicle has incurred an S-marked prohibition (Section 26(1)(c) (iii) refers);
 - v) the operator has incurred fixed penalties (Section 26(1)(ca) refers);
 - vi) the operator has failed to fulfil its undertakings to keep vehicles fit and serviceable, to ensure that drivers report defects in writing and to ensure the observance of drivers' hours and tachograph rules.

Conclusions

13. Given my findings that both operator and transport manager lack good repute, revocation of the licence is mandatory under Section 27(1)(a) and (b) of the 1995 Act.
14. I nevertheless asked myself the Priority Freight question of how likely it is that the operator will comply in the future. The fact that Michael Hilton and Amy Fennell chose to try to create false documents to make it look as though regular safety inspections had been carried out, together with the fact that even on the day of the public inquiry there are still significant shortcomings with the frequency of safety inspections, the quality of driver defect checks and the proper recording of drivers' hours, are enough

for me to conclude that it is extremely unlikely. The two serious issues of fraud and the prolonged operation without regular safety inspections mean that the answer to the Bryan Haulage question of whether the operator deserves to go out of business is that it does.

Operator

15. I am revoking the licence with effect from 10 October 2018, to give the operator time to wind down its business in an orderly manner.
16. Because of the serious nature of the findings above, I conclude that Michael Hilton deserves to be disqualified under Section 28 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 this is, but a period of between five and ten years for serious cases where an element of falsification is involved. I have given Mr Hilton credit for being honest at the inquiry about his dishonesty and have decided to disqualify him for two years. This is the minimum I can impose which is proportionate, appropriate, and in line with the STC's guidelines.

Transport manager

17. Having concluded that Amy Fennell's good reputation is lost I must also disqualify her under paragraph 16 of Schedule 3 to the 1995 Act from being a transport manager on any licence. From the few records I saw, she does not seem to have had much appreciation of the key nature of the role and its importance in ensuring compliance. Her failure to appear at the inquiry (and without troubling to offer an explanation by way of a letter or phone call) prevented her from presenting any mitigating factors. I am therefore disqualifying Amy Fennell from acting as a transport manager for an indefinite period of time, although she is free to request a hearing before a traffic commissioner at which to argue for the time-limiting or cancellation of the disqualification.

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

Nicholas Denton
Traffic Commissioner
7 September 2018