



WEST MIDLANDS TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 5 MARCH 2019

OPERATOR: VIAE VECTURA LTD

LICENCE OD1142894

Decision

1. The standard international goods vehicle operator's licence held by Viae Vectura Ltd is revoked with immediate effect pursuant to Section 26(1)(a), (c)(iii), (e), (f) and (h) and 27(1)(a) and (b) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").
2. Artur Belimenko is disqualified, with immediate effect and for an indefinite period of time, 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.
3. Artur Belimenko has lost his good repute as a transport manager, pursuant to Schedule 3 paragraph 1 of the 1995 Act. Under paragraph 16(2) of that Schedule, he is disqualified, with immediate effect and for an indefinite period of time, from acting as a transport manager on any operator's licence in any Member State of the European Union.

Background

Operator details

1. Viae Vectura Ltd holds a standard international goods vehicle operator's licence (OD1142894) for ten vehicles and ten trailers. The authorised operating centre is at Shortwood Farm, Bromyard, HR7 4RP. The licence was granted in February 2016. The

sole director of the company is Artur Belimenko, who is also the nominated transport manager on the licence.

DVSA Investigation

2. In January 2019 I received a report from DVSA traffic examiner James Phillips. Mr Phillips reported that:
 - i) the operator had never used its authorised operating centre at Shortwood Farm. Vehicles were largely operating from Scotland and occasionally being parked at Throckmorton Airfield in Worcestershire when not in use;
 - ii) a trailer had been operated without an MOT;
 - iii) drivers were committing very large numbers of serious drivers' hours offences, exceeding 4.5 hours driving, exceeding 90 hours driving in a fortnight, exceeding the maximum daily driving time, taking insufficient daily and weekly rest. 180 such offences had been identified;
 - iv) drivers had received only verbal warnings about these infringements, despite the fact that many of them were serious and repeated;
 - v) drivers travelled to the UK from Lithuania to work for six week periods before returning. The operator was frequently failing to download their cards before they did so;
 - vi) director and transport manager Artur Belimenko worked full time in a butcher's shop and appeared to have insufficient time to devote to his necessary transport manager duties;

Public inquiry

3. Concerned by this report, I decided to call the operator to a public inquiry. In doing so, I also noted that the operator had a very high prohibition rate (nine roadworthiness prohibitions from 24 encounters, including one S-marked prohibition). Further, I noted that the company had entered voluntary creditors' liquidation on 5 November 2018: I therefore suspended the licence on 15 January 2019 under Section 27(1)(a) on grounds of lack of financial standing, pending the inquiry.
4. The call-up letter was sent on 22 January 2019, citing Section 26(1)(a), (c)(iii), (ca), (e), (f) and (h) and 27(1)(a) and (b) of the Goods Vehicles (Licensing of Operators) Act 1995. The inquiry was due to take place in Birmingham on 5 March 2019.
5. Present on 5 March was DVSA traffic examiner James Phillips. Artur Belimenko did not attend. He had applied to surrender the licence on 24 October 2018, although given that TE Phillips's investigation was well under way at that point, I had decided not to accept his surrender.

Findings

6. After considering Mr Phillips's written and oral evidence I reached the following findings:
 - i) the operator has used an unauthorised operating centre (Section 26(1)(a) of the 1995 Act refers);
 - ii) the operator's vehicles have been the subject of prohibitions (Section 26(1)(c)(iii) refers);
 - iii) the operator has failed to fulfil its undertakings to ensure the lawful driving of vehicles and to ensure the observance of drivers' hours rules (section 26(1)(f) refers). A trailer has operated without an MOT; there seems to have been no effective control of

drivers' hours, with the result that drivers were repeatedly committing serious infringements, unchecked;

- iv) the operator lacks financial standing (Section 27(1)(a) refers). It has entered liquidation.

7. I also considered the question of Mr Belimenko's repute as transport manager. By failing to attend the inquiry he passed up the opportunity of presenting mitigating arguments. In my view, a transport manager who presides over a business model which imports Lithuanian drivers for six weeks at a time, fails to deal with the obvious risks associated with such a model – drivers committed numerous and serious breaches of drivers' hours rules - and in fact has a full time job in an unrelated business, cannot be said to be of good repute (Section 27(1)(b) refers).

Conclusions

Revocation of the licence

8. The operator lacks a reputable transport manager and lacks financial standing. Revocation of the licence is mandatory under Section 27(1)(a). As the operator has already stopped operating, revocation takes immediate effect.

Disqualification of Artur Belimenko as operator/director

9. I have also considered whether to disqualify Artur Belimenko from holding an operator's licence and from being a director of any company holding such a licence. Given his wholesale failure to manage the licence compliantly, I have concluded that disqualification is justified. The disqualification is for an indefinite period of time, although Mr Belimenko is free to appear before a traffic commissioner to argue for the time-limiting of the disqualification.

Disqualification of Artur Belimenko as transport manager

10. Having concluded that Mr Belimenko's good repute is lost I must also disqualify him under paragraph 16 of Schedule 3 to the 1995 Act from being a transport manager on any licence. Given his failure to comply on the wide range of issues listed above, the serious nature of much of this non-compliance and its extended duration, I am disqualifying him from acting as a transport manager for an indefinite period of time. He is free to request a hearing at which he could present arguments in favour of placing a time limit on this disqualification.



Nicholas Denton
Traffic Commissioner
13 March 2019