



WEST MIDLANDS TRAFFIC AREA
DECISION OF THE TRAFFIC COMMISSIONER
PUBLIC INQUIRY HELD IN BIRMINGHAM ON 28 MARCH 2019
OPERATOR: SHORT LOGISTICS LTD
LICENCE OD1108510

Decision

1. The standard national goods vehicle operator's licence held by Short Logistics Ltd is revoked with effect from 0001 hours on 23 April 2019, pursuant to Sections 26(1)(a), (c)(iii), (ca), (f), (g) and (h) and 27(1)(a) and (b) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").
2. Company director Jaroslav Kratky is disqualified for seven years, from 23 April 2019 until 23 April 2026, 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. Jaroslav Kratky 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, for a period of seven years from 0001 hours on 23 April 2019 until 23 April 2026, from acting as a transport manager on any operator's licence in any Member State of the European Union.

Background

Operator details

1. Short Logistics Ltd holds a standard national goods vehicle operator's licence (OD1108510) for seven vehicles and seven trailers. There are seven vehicles in possession. The licence was granted in March 2012. The authorised operating centre is at Nightowl Truckstop, Rugby, CV23 0AE. The sole director of the company is Jaroslav Kratky, and Mr Kratky is also the nominated transport manager on the licence.

DVSA investigation

2. In February 2019 I received a report from DVSA vehicle examiner Gary Hickin. He reported that:

- i) the operator's prohibition rate was high, with 11 prohibitions from 31 roadside encounters. The record showed that three of the prohibitions were S-marked, denoting a serious failure in maintenance;
 - ii) vehicle CN61 DZE had been given a prohibition for incomplete spray suppression equipment on 12 June 2018. The vehicle was subsequently encountered on the road on 14 August 2018 when the prohibition was still in force, the operator having failed to clear it (this was one of the S-marked prohibitions);
 - iii) a further S-marked prohibition was incurred by vehicle KN10 OGB on 4 October 2018. A tyre had exposed cords but the driver admitted to not having carried out a walk-round check of the vehicle that day;
 - iv) a third S-marked prohibition was incurred on 1 February 2019 by vehicle YN59 ARF for displaying the number plates of another vehicle, CN61 DZE. YN59 ARF was SORNed at the time and should not have been used on a public road;
 - v) the driver defect reporting system was inadequate, with drivers (who were away for the week) trusted to carry out checks. For one vehicle, there was no evidence that any checks had been carried out over a two year period;
 - vi) the operator had not used the authorised operating centre since January 2016;
 - vii) the operator's reply to the shortcomings report had been weak, consisting largely of phrases which appeared to have been copied from a compliance manual. It did not adequately deal with the shortcomings identified by Mr Hickin's investigation.
3. Shortly afterwards, also in February 2019, I received a report from DVSA traffic examiner Graham Slaney. His report noted that:
- i) not only was the operator not using its authorised operating centre, neither was it using the one (Secland Group depot, Oban Road, Coventry) that Mr Kratky claimed;
 - ii) at a stop on 6 November 2018, the driver of vehicle BX09 DDL had been found to have driven without his tachograph card on nine occasions between 19 October and 2 November 2018;
 - iii) other roadside stops of the operator's vehicles had revealed numerous drivers' hours offences, including offences by director and transport manager Jaroslav Kratky;
 - iv) Interviewed under caution, Mr Kratky had accepted that he had no procedures in place for ensuring that tachographs were correctly calibrated before the expiry date, for detecting missing mileage, for ensuring that drivers took the minimum required daily and weekly rest periods, or for ensuring that drivers did not exceed 4.5 hours driving and the maximum daily driving periods. Asked if he thought he was exercising continuous and effective control of the transport activities of the company, he had replied "probably not". No tachograph analysis reports could be produced: Mr Kratky was relying on drivers to tell him of any infringements.

Public inquiry

Call to public inquiry

4. In the light of this very concerning information I decided to call the operator to a public inquiry. The call-up letter was sent on 19 February 2019, citing Sections 26(1)(a), (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 Mr Kratky was also called in his capacity as transport manager to consider his repute.
5. On 5 March 2019 the central licensing unit in Leeds received an application from the operator to change the authorised operating centre to one at Langley Business Park,

Tamworth, B78 2BP. This application was added to the list of issues to be considered at the public inquiry.

Holding of public inquiry

6. The inquiry was held in Birmingham on 28 March 2018. Present was DVSA traffic examiner Graham Slaney and company director and transport manager Joroslav Kratky, assisted by a Czech interpreter. The company was not legally represented.

Financial standing

7. The operator presented bank statements showing average available funds over the last three months of £8602, far below the £34,700 necessary to support seven vehicles. Mr Kratky said that there were a number of outstanding invoices which, when paid, would help close the gap.

Unauthorised operating centre

8. I asked Mr Kratky where his vehicles were currently kept when not in use. He said that it was at a site in Oban Road Coventry. I took him to that part of Mr Slaney's report which stated that he (Mr Slaney) had visited the premises at Oban Road, spoken to the site owner and found that Short Logistics had no arrangement to park vehicles there. One of the company's vehicles, PN09 J TU, had parked on an ad hoc basis there for two days in September 2018. Mr Kratky then accepted that his vehicles parked in various service stations around the country, as a function of where they happened to be when they stopped for the night or weekend.

Drivers' hours oversight

9. I noted that, from the drivers' hours records provided, drivers were committing huge numbers of infringements. Mr Kratky explained that his computer had broken and he had not been able to analyse the data until recently. He accepted that he had failed to download the vehicle units and check for driving without a card.
10. I noted that the driver infringement reports provided recorded extraordinarily high levels of infringements. For example, driver Dunovskis had committed no fewer than 103 drivers' hours offences between 1 April and 14 December 2018, and a further 18 infringements from 1 January to 7 February 2019. The two driver infringement reports (one for April- December 2018, one for Jan-Feb 2019) had apparently been signed off by the driver and Mr Kratky on, respectively, 14 December 2018 and 7 February 2019 (although the authenticity of driver Dunovskis's signature is questionable). I asked Mr Kratky whether these were genuine documents signed on the dates indicated: he said that they were. I took him to the date of printout at the bottom of these documents, which indicated that the infringement reports were printed out on 3 March 2019. I asked Mr Kratky how it was possible for documents only printed out on 3 March to have been signed in January and February. Mr Kratky replied that he did not know what to say.
11. Mr Kratky presented printouts to show that there was no missing mileage over the period 1 March to 27 March 2019, nor any driver infringements. I noted that the driver infringement report did not mention which drivers had been analysed for that period.

Incorrect number plate

12. I asked about the stop of vehicle YN59 ARF 1 February 2019: the vehicle had been displaying registration plates for CN61 DZE. YN59 ARF was SORNed and uninsured on that date. Mr Kratky said that the number plates of YN59 ARF had gone missing and that another driver had taken it upon himself to fit to the vehicle the spare set of plates belonging to CN61 DZE. He had been the driver on 1 February but had not noticed that the vehicle had the wrong plates. I took him to the statement of DVSA traffic examiner Arlane Mansell-Baker, who had conducted the stop. This recorded that she had asked Mr Kratky if he had realised that it was an offence to fit the wrong registration plates to a vehicle and he had replied "DVLA OK with it, I like it to look younger, it's good for business." Mr Kratky denied that he had said this to Ms Mansell-Baker.

Failure to clear prohibition

13. I asked why CN61 DZE had been operated for two months after a prohibition on 12 June 2018 for a defective tyre and spray suppression equipment missing, without that prohibition being cleared. This was only discovered when the vehicle was stopped again by DVSA on 14 August 2018. Mr Kratky said that he had not been aware of the prohibition because the driver had not informed him.

Driver defect reporting

14. Mr Kratky said that he had relied on drivers to complete their defect reports. I noted that VE Hickin had found there were no defects recorded for vehicle PN09 JTU for two years. The driver of KN10 OGB, stopped on 4 October 2018, had admitted to the stopping officer that he had not carried out a walkround check and had therefore missed the vehicle's defective tyre. More recently, I noted that the safety inspection sheet dated 1 March 2019 for CN61 DZE had recorded tyres with a low tread and no rear nearside tail lights. The driver defect report for both 28 February and 1 March had recorded no defects. The driver checking system did not seem to be working very well. Mr Kratky said that drivers had now received training. Asked who had conducted the training, he said that it was himself: he had told the drivers what to check and when and had made it a priority for them to record the start time and date on the check sheets.

Conclusion

15. Summing up, Mr Kratky said that the drivers' hours record for March had greatly improved. He would be checking the drivers' cards every two weeks: he had purchased new software to analyse both driver card and vehicle data. He would like the opportunity to correct matters. As part of this, he had applied for a new operating centre in Tamworth. He was willing for DVSA to check his vehicles and drivers as often as they wished. Suspension of the licence would mean loss of contracts and the drivers' jobs: the company would have to close down.

Adjournment and further information

16. At this point I adjourned the inquiry in order to prepare and issue a written decision.

Findings

17. In the light of the evidence, I make the following findings:
- i) the operator lacks appropriate financial standing for the seven vehicles on its licence. Average available funds are enough to support only one vehicle (Section 27(1)(a) of the 1995 Act refers);
 - ii) the operator lacks stable and effective establishment (Section 27(1)(a) also refers). Article 5(c) of Regulation EC 1071/2009 requires an operator (as part of the conditions necessary to fulfil the stable and effective establishment requirement) to "conduct effectively and continuously with the necessary administrative equipment its operations concerning [heavy goods] vehicles and with the appropriate technical equipment and facilities *at an operating centre situated in [the] Member State*" [my emphasis]." Short Logistics Ltd does not have an operating centre and has simply been parking its vehicles at service stations across the UK;
 - iii) the operator has parked its vehicles at places which are not its authorised operating centre (Section 26(1)(a) refers);
 - iv) the operator has failed to fulfil its undertaking to ensure that drivers' hours and tachograph rules are observed (Section 26(1)(f) refers). The company has entirely failed to monitor drivers' hours. Drivers, including the director and transport manager Mr Kratky, have committed numerous, repeated and very serious infringements. At least one driver has driven on repeated occasions without using his card and therefore making a false record. There has clearly been no attempt by the operator to even identify, let alone address, these infringements.

- v) the operator has failed to fulfil its undertaking to ensure the lawful operation of vehicles. A vehicle was found to be displaying a false registration number: the vehicle in question was not taxed and not insured. A vehicle has operated for two months while under prohibition;
- vi) the operator has failed to fulfil its undertaking to ensure that drivers report defects in writing. Drivers are out on the road all week (there being no operating base) and the operator has not monitored whether they conduct walk round checks and report defects in writing. The large number of prohibitions for driver detectable defects shows that drivers are not carrying out effective checks;
- vii) the operator's vehicle and trailers have been prohibited on seven occasions in the two years preceding the public inquiry, from fifteen roadside encounters. The prohibition rate is higher than the national average of 28% (Section 26(1)(c)(iii) refers);
- viii) the operator's drivers have received seven fixed penalties from ten encounters over the past two years (Section 26(1)(ca) refers).

Transport manager repute

18. I conducted a balancing exercise to conclude whether it would be appropriate to conclude that Mr Kratky, in the light of the adverse findings above, has lost his good repute. In doing so I have reminded myself of the Senior Traffic Commissioner's Statutory Document 3 and in particular paragraph 54 which lists the activities which a competent and reputable transport manager is expected to perform.
19. On the negative side of the balance are, in particular, that Mr Kratky has, until March 2019, entirely failed to fulfil the requirements for monitoring drivers' hours. The result has been a free-for-all, with drivers committing numerous and serious infringements completely unchallenged. He has entirely failed to ensure that drivers carry out effective checks of their vehicles. He has presided over an operation of seven vehicles which have no proper operating centre. His control of operations was not adequate to pick up that one of the vehicles was operating for two months while still under prohibition. He himself was the driver of a vehicle displaying false registration plates. His explanation at the roadside (I have no hesitation in preferring Ms Mansell-Baker's account to Mr Kratky's) differed entirely to the one he later gave VE Hickin and that he repeated at the public inquiry. The explanation that a driver fitted the wrong plates, the correct ones all having gone missing, and that Mr Kratky remained unaware of this, is simply not credible.
20. I further find that Mr Kratky lied to me at the public inquiry when he claimed that driver infringement reports had been signed for by drivers in January and February 2019 when this could not possibly have been the case, the documents bearing a print-out date of 3 March 2019. He also claimed at the inquiry that his vehicles had been kept in Oban Road Coventry, which was another untruth.
21. The only positive factors I can find are the company's excellent MOT pass rate (15 first time passes out of 15 presentations over the last two years) and the fact that vehicles appear to have been regularly maintained at the stated six week intervals. These factors are greatly outweighed by the negative ones set out above.
22. My conclusion is that Mr Kratky has failed to exercise the required continuous and effective management of the transport activities of the business. He has presided, knowingly, over serious illegalities such as the lack of an operating centre, numerous and serious drivers' hours offences, and a vehicle displaying false plates to disguise the fact that it was untaxed and uninsured. The loss of his repute is the only possible outcome.

Decisions

Operator licence

23. Having concluded that Mr Kratky has lost his reputation as transport manager, revocation of the licence is mandatory under Section 27(1)(b) of the 1995 Act. Revocation is also mandatory under Section 27(1)(a) for lack of financial standing, lack of a stable and effective establishment and lack of professional competence. I am also revoking the licence under Section 26(1), for the serious deficiencies in the way in which the licence has been managed outlined in the findings above. I am giving less than the usual 28 days before revocation takes effect, as this operator presents a danger to road safety and must be taken off the road sooner rather than later.

Disqualification - director

24. For the reasons outlined in paragraphs 17 to 22 above, and having performed the same balancing act described therein, I conclude that Mr Kratky 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 100 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 where an operator has allowed drivers to falsify records (which Mr Kratky has). I have also taken account of the fact that Mr Kratky has facilitated the operation of a vehicle without tax or insurance and under false number plates and has not been truthful about this either to DVSA or myself at the public inquiry. He has also falsified driver infringement records. The nature of his non-compliance has been serious, sustained and deliberate. The truly shocking level of driver's hours infringements found have placed the safety of other road users at considerable risk. I conclude that a disqualification period of seven years – in the middle of the suggested range for the starting point - is proportionate, appropriate, and in line with the STC's guidelines.

Disqualification – transport manager

25. Having concluded that Mr Kratky's good reputation 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, and his untruthfulness at the public inquiry, I am disqualifying him from acting as a transport manager for the period of seven years.

Enforcement of this decision

26. Given Mr Kratky's proven willingness to flout the laws relating to the driving and operation of heavy goods vehicles, I have limited faith that the company will comply with this decision. I am therefore requesting DVSA and the Police to employ their ANPR and on-road resources to identify and stop vehicles operated by Short Logistics Ltd. Any such vehicle they find carrying goods on the public road after the revocation date will be liable to be impounded.

Further information

27. Shortly after I had drafted this decision, my team leader in Birmingham informed me that DVSA had stopped the company's vehicle CN61 DZE at the roadside on 1 April 2019 and had found that the vehicle was fitted with a device which had the ability to interrupt the signal to the tachograph head and cause the latter to default to rest even if the vehicle was moving.
28. I asked that a copy of the DVSA report be sent to the company with a request for its comments. Comments received were to the effect that the vehicle's tachograph had been recalibrated only on 27 March 2019 with nothing untoward found. The traffic examiner noted that she would not expect a routine calibration to detect a manipulation device (which would clearly not be in operation during the calibration). As The DVSA's inquiries are continuing (they intend to use ANPR data to try to establish the vehicles movements around the UK and compare that with the tacho data, a process which may be hampered by the fact that the company has operated two different vehicles under CN61 DZE plates), I decided **not** to take account of this issue in my decision. If DVSA does eventually produce a report, I may recall Mr Kratky to an inquiry with a view to extending his disqualification.

Nicholas Denton

Nicholas Denton
Traffic Commissioner
10 April 2019