

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

T/2015/046

Appellant: Raymond BORKOWSKI

On Appeal From: Traffic Commissioner for the West of England

Reference: PH1015203

Public Inquiry Date: 15th June 2015

Venue: Bristol

Decision Date: 25th June 2015

**DECISION OF THE UPPER TRIBUNAL
ON AN APPEAL AGAINST THE TRAFFIC COMMISSIONER**

**Upper Tribunal Judge H. Levenson
Upper Tribunal Member L. Milliken
Upper Tribunal Member D Rawsthorn**

100.9 (Traffic Commissioner Appeals: Public Inquiries: inadequate notice of documents).

**DECISION OF THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)
ON AN APPEAL AGAINST THE TRAFFIC COMMISSIONER FOR THE
WEST OF ENGLAND**

Decision

1. **This appeal succeeds.** In accordance with the provisions of paragraph 17(2) of Schedule 4 to the Transport Act 1985 as amended we set aside the decisions and orders of the Traffic Commissioner (the Commissioner) given on 25th June 2015 following a public inquiry in Bristol on 15th June 2015 (reference PH1015203).

2. We remit the matter to such other traffic commissioner as may be required by the senior traffic commissioner to deal it. Mr Borkowski should regard himself as being on notice to send to the Commissioner as soon as is practicable any further relevant written evidence. The fact that the appeal has succeeded at this stage is not to be taken as any indication as to what the Commissioner might decide in due course. All relevant issues remain at large.

Hearing

3. We held an oral hearing of the appeal at Field House (London) on 28th January 2016. The appellant, Mr Borkowski attended and was represented by Simon Newman of NA Commercial Solicitors. There were no other parties to the appeal.

Background

3. Our decision is based on procedural matters and it is not necessary to go into a great deal of detail. There was a considerable operating and adjudication history but at the relevant time the appellant held a standard national PSV operator's licence initially granted from 20th January 2003 but varied from April 2014 to cover 8 vehicles, with various undertakings being given by the appellant. The appellant was also the nominated transport manager. The issue of 4 prohibition notices for unroadworthiness led to a maintenance investigation in which maintenance was found to be unsatisfactory because of a whole range of shortcomings. The Commissioner directed a public inquiry and this took place on 15th June 2015 in Bristol.

4. In a decision dated 25th June 2015 the Commissioner found that the appellant no longer satisfied the requirements to be of good repute and professionally competent. His operator's licence was revoked with effect from 2359 on 10th August 2015, and he was disqualified indefinitely from 25th June 2015 from holding or an obtaining an operator's licence or being involved in the transport operation of an entity that holds or obtains such a licence in Great Britain or acting as a transport manager for "this Licence" or any other licence in another member state.

5. On 24th July 2015 Mr Borkowski appealed to the Upper Tribunal against the decision of the Commissioner. On 7th August 2015 the Commissioner granted a stay of the implementation of the decision and orders pending the outcome of the appeal to the Upper Tribunal.

The Submissions

6. Mr Newman formulated a number of grounds of appeal on behalf of Mr Borkowski but it is only necessary to refer to the following of his numbered grounds:

6. The traffic commissioner's brief, extending to some 122 pages, was only sent out to the Appellant on the 9th June 2015 and in the normal course of the post would not have reached him until 10th June at the earliest, which left only three working days before the public inquiry. It is acknowledged that the Vehicle Examiner's report was sent with the call in letter but nonetheless fairness required that the Appellant had all material documents in advance of the public inquiry and receipt of such a large set of documents so late was unfair.

7. On the morning of the public inquiry the Appellant received an addendum report by the vehicle examiner dated 12th June and upon attendance at the public inquiry he was provided with yet another report which was handed to him by the vehicle examiner.

7. We note that at that stage Mr Borkowski was not legally or otherwise represented. At the hearing before us Mr Newman also pointed out that at the public inquiry the Commissioner was critical of Mr Borkowski for not bringing along a driver witness to corroborate a matter put forward in evidence (page 18 of the transcript) but that a senior traffic examiner who did not attend to give evidence, was allowed to submit a section 9 statement (page 7), the content of which was disputed by Mr Borkowski (page 14). There was some inequality of treatment here.

Conclusion

8. We accept Mr Newman's arguments on the above matters and have not found it necessary to form a view on his other grounds of appeal. Mr Borkowski was not given fair notice of all the matters against him that were going to be considered by the Commissioner and in practice he was not given adequate time to seek legal or other advice or to arrange for a witness or witnesses to attend. In effect this was a breach of the rules of natural justice and fair procedure which can only be remedied by the decision and order we have made in paragraphs 1 and 2 above.

H. Levenson
Judge of the Upper Tribunal
5th January 2016