



**IN THE UPPER TRIBUNAL  
ADMINISTRATIVE APPEALS CHAMBER**

**T/2016/049**

**Appellant:** **Ronald Alexander HENRY**

**On Appeal From:** **Traffic Commissioner for the South Eastern and Metropolitan Traffic Area**

**Reference:** **OK1004902**  
**Public Inquiry Date:** **20<sup>th</sup> July 2016**  
**Venue:** **Eastbourne**  
**Decision Date:** **1<sup>st</sup> August 2016**  
**Appeal to Upper Tribunal:** **2<sup>nd</sup> September 2016**  
**Upper Tribunal Hearing:** **19<sup>th</sup> January 2017**

**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 J Robinson**

*100.8 (Traffic Commissioner Appeals: Transport Managers: Disqualification).*

**DECISION OF THE UPPER TRIBUNAL  
(ADMINISTRATIVE APPEALS CHAMBER)  
ON AN APPEAL AGAINST THE TRAFFIC COMMISSIONER FOR THE  
SOUTH EASTERN AND METROPOLITAN TRAFFIC AREA**

**Decision**

1. **This appeal does not succeed.** We confirm the decision of the Traffic Commissioner (“the Commissioner”) given on 1<sup>st</sup> August 2016 under reference **OK1004902** (see paragraph 6 below).

**Hearing**

2. We held an oral hearing of this appeal at Field House (London) on 19<sup>th</sup> January 2016. The appellant, Mr Ronald Alexander Henry, appeared in person and was not represented. There were no other parties to the appeal.

**Background**

3. The facts found by the Commissioner in respect of the appellant were not disputed and the appellant accepted that he had lost his good repute as a transport manager and that it was appropriate that there be regulatory sanctions.

4. The appellant was the transport manager for the standard national vehicle operator’s licence held by his brother (“A”), which was for one vehicle with the authorised operating centre in North West London (in the South Eastern and Metropolitan Traffic Area). A was stopped on 11<sup>th</sup> February 2016 while driving the vehicle and an investigation revealed numerous tachograph and drivers hours offences (at least 69 over a five month period). It also emerged that in fact the vehicle had been operated entirely from Northampton for a period of at least six months without ever applying for the necessary licence in the Eastern Traffic Area (paragraph 12 of the written decision of 1<sup>st</sup> August 2016). At the subsequent public inquiry in Eastbourne on 20<sup>th</sup> July 2016 the appellant told the Commissioner that he had looked at tachograph charts and maintenance documents every two months. He had not looked at the tachograph charts very closely. He had told his brother to take his breaks and explained how to use a mode switch but had not picked up that his brother was failing on both counts. He had not been paid for his work as transport manager. Although he had signed the transport manager questionnaire in November 2011 confirming that a contract was in place, he had only very recently had a written contract. He had thought that the situation with the operating centres was going to be temporary.

5. The Commissioner recorded that “He accepted that he had failed to exercise continuous and effective management of the transport activities of the business but promised that he would do better from now on” (paragraph 10 of the written decision of 1<sup>st</sup> August 2016).

6. In respect of A the Commissioner revoked the licence as from 0001 on 1<sup>st</sup> September 2016 and disqualified him from holding or obtaining any type of operator’s licence or being the director of a company doing such, from 0001 on 1<sup>st</sup>

September 2016 until 0001 on 1<sup>st</sup> March 2017. In respect of the appellant the Commissioner concluded (paragraph 15) that he was not of good repute and that:

“I am obliged to disqualify Ronald Henry from acting as transport manager under any operator licence. Because he has very little understanding of the responsibilities of a transport manager, and because his negligence allowed a situation to develop where [A] was regularly driving 8-10 hours without a qualifying break, I have decided to disqualify him indefinitely. If he ever wishes to become a transport manager again, he must first take and pass the transport manager CPC exam and appear before a traffic commissioner to re-establish his repute”.

### **Appeal**

7. On 2<sup>nd</sup> September 2016 the appellant appealed to the Upper Tribunal against the decision of the Commissioner. He did not apply for a stay of the effect of the Commissioner’s decision pending the determination of the appeal, and none was granted. His grounds of appeal were that both the decision to disqualify him and the period of disqualification were disproportionate. At the hearing before us on 19<sup>th</sup> January 2017 the appellant said that he was not saying that he should not have been disqualified at all, but that his only offence had been a failure to monitor properly what his brother was doing. He had first held a full CPC 10 years ago and had not been the subject of any previous regulatory action. Initially his brother had made him transport manager for this licence without even consulting him.

### **Conclusions**

8. We agree with the Commissioner that the appellant’s failures were serious, that he had lost his good repute and that a period of disqualification was inevitable. We sympathise with the appellant’s argument, especially when the indefinite disqualification is compared with the Commissioner’s decision in respect of A. However, if we were to substitute a fixed period of disqualification, the rehabilitative measures would cease to have effect at the end of the period. If the appellant takes and passes the transport manager CPC exam, he may then apply for the disqualification to be cancelled or varied. We do not anticipate that he will in fact remain disqualified in the long term.

**H. Levenson**  
**Judge of the Upper Tribunal**

**6<sup>th</sup> February 2017**