



WEST MIDLANDS TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 24 APRIL 2018

OPERATOR: K & B TRANSPORT LTD

LICENCE OD1067700

Decision

1. The standard national goods vehicle operator's licence held by K & B Transport Ltd is revoked with effect from 0001 hours on 30 April 2018, pursuant to Sections 26(1)(a), (c)(iii) and (f) and 27(1)(a) and (b) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").
2. Company director Kulwinder Singh Toor is disqualified for four years, until 30 April 2022, 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. Amit Rai 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 two years until 30 April 2020, from acting as a transport manager on any operator's licence in any Member State of the European Union.

Background

Operator details

1. K & B Transport Ltd ("K & B") holds a standard national goods vehicle operator's licence (OD1067700) for two vehicles and three trailers. There is one vehicle in possession. The licence was granted in June 2007. The authorised operating centre is in Cranford Street, Smethwick, B66 2TA. The sole director of the company is Kulwinder Singh Toor. The nominated transport manager on the licence is Amit Rai.

DVSA investigation

2. In March 2018 I received reports on the operator from DVSA traffic examiner Tracy Love and vehicle examiner Paul Matthews. Their reports stated that:

- i) the company was parking its vehicle at an unauthorised operating centre and had continued to do so even after being explicitly warned not to by DVSA officials;
- ii) no data was being downloaded from either driver tachograph cards or the vehicle unit;
- iii) there was substantial evidence of driving without using a tachograph card, the principal offender being the director Kulwinder Singh Toor;
- iv) the transport manager had very little contact with the business and was not fulfilling his responsibilities;
- v) driver defect books were not being properly completed;
- vi) there was a very high MOT failure rate (67% over the last five years);
- vii) director Kulwinder Singh Toor had tried to mislead DVSA during the investigation and had been evasive in making a vehicle available for inspection

Public inquiry

Call to public inquiry

3. In the light of this information I decided to call the operator to a public inquiry. The call-up letter, sent on 26 March 2018, cited Sections 26(1)(a), (c)(iii), (ca) and (f) 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 Amit Rai was also called in his capacity as transport manager to consider his repute. Drivers Kulwinder Singh Toor and Parvinder Singh Nijjar were invited to attend parallel driver conduct hearings.

Holding of public inquiry

4. The inquiry was held in Birmingham on 24 April 2018. The company was represented by Chris Powell of Smith Bowyer Clarke Solicitors.
5. On behalf of K & B, Mr Powell made the following admissions:
- i) the company lacked the required financial standing;
 - ii) Kulwinder Singh Toor had driven the company's specified vehicle without a tachograph card on a number of occasions;
 - iii) the vehicle had not been kept at the authorised operating centre;
 - iv) tachograph data had not been analysed;
 - v) convictions incurred by the drivers had not been notified to the traffic commissioner;
 - vi) on one occasion driver Nijjar had driven with Mr Toor's card in slot 1;
 - vii) transport manager Amit Rai had not exercised the required continuous and effective management;
 - viii) the operator had not kept the specified vehicle in a fit and serviceable condition;
 - ix) an effective driver defect reporting system had not been operated.

6. Mr Powell stated that Mr Toor recognised that there had been serious compliance problems and that he had been less than forthcoming during the DVSA investigation. Mr Toor accepted that the licence could not continue, not least because K & B lacked financial standing and a functioning transport manager. Mr Toor was now remorseful and all that he asked was that he should be allowed to re-enter the industry at some time in the future. He understood that he would have to demonstrate a different attitude to compliance for that to happen.
7. Transport manager Amit Rai stated that Kulwinder Singh Toor was an old friend of his father's. Since his father had died in August 2017 he had lost sight of his transport manager duties and Mr Toor had always steered any conversation away from transport business to family matters. Mr Rai accepted that he had failed to exercise the required continuous and effective management of the licence.

Findings

8. The licence has been operated in a seriously non-compliant way. The operator has failed to park its vehicle at the authorised operating centre; its vehicles have incurred prohibitions and have not been kept roadworthy; the operator has failed to fulfil its undertakings to observe the rules on drivers' hours and tachographs.
9. The operator lacks the required financial standing and the transport manager has failed to carry out any of his duties and responsibilities. This situation appears to have dated from well before August 2017: the operator has had a digital vehicle specified on the licence since 1 February 2016 but at no stage were any downloads carried out. Because of this failure, which has allowed serious and sustained non-compliance to go unaddressed, the transport manager lacks good repute. Revocation of the licence is mandatory under Section 27(1)(a) and (b) of the 1995 Act.

Disqualifications

Transport manager

10. Having concluded that Amit Rai'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. I did not find Mr Rai to be a dishonest man and I had some sympathy with his personal family circumstances. Nevertheless, his neglect of his duties as transport manager on this licence meant that Mr Toor was free to operate in a potentially highly dangerous way, flouting tachograph rules and failing to keep vehicles roadworthy. His methods of operation also constituted unfair competition against those operators who comply with the rules. I am therefore disqualifying Amit Rai from acting as a transport manager for the period of two years.

Director

11. For the reasons outlined in paragraphs 8 and 9 above, I conclude that Kulwinder Singh Toor 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 where an operator has allowed drivers to falsify records (which Mr Toor has done personally by driving without a card). I have also taken account of the fact that Mr Toor at last decided to come clean at the inquiry and admit all the failings in the way in which he has operated. I have therefore decided on a disqualification period of four years, which takes into account both the STC guidelines and Mr Toor's co-operation at the inquiry.

Nicholas Denton

Nicholas Denton
Traffic Commissioner
25 April 2018