



WEST MIDLANDS TRAFFIC AREA
DECISION OF THE TRAFFIC COMMISSIONER
PUBLIC INQUIRY HELD IN BIRMINGHAM ON 9 MAY 2018
OPERATOR: HAYES FREIGHT LTD
LICENCE OD1113183

Decision

1. The standard national goods vehicle operator's licence held by Hayes Freight Ltd is revoked with immediate effect, pursuant to Sections 26(1)(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 Dean Blake is disqualified for five years, until 0001 hours on 11 May 2023, 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. Adam Philip Hayes 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 the period of five years until 0001 hours on 11 May 2023, from acting as a transport manager on any operator's licence in any Member State of the European Union.

Background

Operator details

1. Hayes Freight Ltd ("Hayes") holds a standard international goods vehicle operator's licence (OD1113183) for 21 vehicles and 32 trailers. There are 12 vehicles in possession. The licence was granted in July 2013. The authorised operating centre is at 192A Walsall Road, Wednesbury WS10 9SS. The sole director of the company is Dean Blake; the nominated transport manager on the licence is Adam Philip Hayes.

Entry into liquidation

2. Hayes entered creditors' voluntary liquidation on 20 October 2016. The central licensing office in Leeds wrote to the liquidators in wrote to the liquidator on 29 March

2017, asking if they wished to apply to continue the licence under Regulation 31 of the Goods Vehicles (Licensing of Operators) Regulations 1995. The letter made clear that failure to respond could lead to revocation of the licence. No response was received. However, the licence clearly remained active as vehicles continued to be regularly added to and taken off it.

3. My office wrote to the liquidators on 30 November 2017 saying that unless they requested a public inquiry by 21 December 2017, the licence would be revoked. No response was received to this letter either, but for some reason the licence was not revoked.

DVSA investigations

4. On 22 November 2017, DVSA stopped a vehicle, FX55 BPU, being operated under Hayes' licence. The driver Nelson Smith said he worked for Rima Freight Ltd ("Rima"), a company whose sole director was Dean Blake, who was also the sole director of Hayes. Rima did not and does not hold an operator's licence. A subsequent investigation by the traffic examiner found that the operator was not collecting in the driver's tachograph charts within the 42 day deadline and that driver Smith had committed numerous centrefield and mode errors and several 4.5 hour offences.
5. On 9 January 2018, traffic examiner Tracy Love visited Hayes' operating centre. She spoke with Alan Hayes, father of the transport manager Adam Hayes. Alan Hayes stated that Hayes no longer existed as a company, having been bought by Rima who had kept the Hayes name on the vehicles for goodwill purposes [subsequent inquiries showed that the sole shareholder of Hayes was not Rima but Dean Blake personally].
6. Tracy Love spoke to Adam Hayes in February 2018. He explained that he had sold Hayes to Dean Blake in December 2015 and as part of the deal was required to stay on as transport manager for four to five years. He further stated that he was the director of two businesses: in practice his "eyes and ears" on the ground in the role of the nominated transport manager for Hayes was his father Alan Hayes. Adam Hayes had never heard of driver Nelson Smith. He confirmed he had no responsibility for checking tachographs or disciplining drivers: this was done by office manager Steve Winston and director Dean Blake. Adam Hayes was not aware that Hayes had entered liquidation. TE Love concluded that Adam Hayes was not exercising the required continuous and effective control of the licence.
7. TE Love also discovered that the operator's motor insurance was in the name of "Rima Freight Services Ltd trading as Hayes Freight".
8. DVSA vehicle examiner Austin Jones also visited Hayes in January 2018 and recorded a very high trailer prohibition rate (50%); an S-marked prohibition (denoting a serious maintenance failure) dated 18 October 2017 for an insecure load and serious brake defects; and a sporadic driver defect reporting system (there was no driver defect report on the day of the S-marked prohibition).

Suspension

9. The matter was referred to me on 5 March 2018 and I took the decision to suspend the licence immediately under Article 13.3 of Regulation EC 1071/2009, pending a public inquiry, as the operator had by then been in liquidation for more than a year and clearly could not show financial standing. This decision was communicated to Dean Blake and the liquidators on 13 March 2018.
10. Mr Blake responded by email on 14 March asking for the suspension to be lifted as it would cause severe hardship to the company (Rima) and stating that he could arrange a cross-company guarantee as evidence of financial standing. In a further email dated

16 March he stated that Rima owned Hayes and the two had always been treated as one and the same company. A check of Companies House records showed that this was simply not true: Dean Blake, not Rima, was the sole shareholder in Hayes.

Public inquiry

Call to public inquiry

11. The call-up letter was sent on 4 April 2018, citing Sections 26(1)(c)(iii), (ca), (f), (g) 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 Adam Hayes was also called in his capacity as transport manager to consider his repute. Driver Nelson Smith was called to a parallel driver conduct hearing.

Holding of public inquiry

12. The inquiry was held in Birmingham on 9 May 2018. On 8 May, the day before the inquiry, my clerk received an email from Dean Blake in which he stated that he would not be attending. The suspension had had a severe effect on his business and it was thus closing down that day. He further stated that Adam Hayes had had nothing to do with the business since December 2016 and had only stayed a short period of time to ensure a smooth transition to the new ownership. Owing to a period of ill-health, he (Dean Blake) had omitted to remove Adam Hayes as transport manager and he apologised for this oversight. He did not explain why he had also omitted to nominate a new transport manager.
13. On 7 May Adam Hayes emailed my clerk, saying that he would not be attending the inquiry. He had ceased to act as transport manager in December 2016. He accepted that he had not been taken off the licence and had still “technically” been the transport manager in early 2018 when interviewed by the DVSA examiners. This had been “awkward” as he was not aware that he had been retained as transport manager by the company. Adam Hayes did not explain why he had failed to notify me of his resignation as transport manager or why he had returned in January 2018 and given the DVSA examiners the impression that he was still acting as transport manager or why he had signed a letter to VE Jones, responding to the shortcomings report of January 2018, “Adam Hayes Transport Manager”.
14. The one person who did have the courtesy to attend was driver Nelson Smith. He stated that Hayes/Rima had never asked him for any overdue tachograph charts – the office was normally closed on Friday evenings when he returned from a week’s tramping and the method of chart delivery was simply to put the charts in a bin outside the office (in the open air). The company had never drawn his attention to centrefield or mode switch errors. He had never received the warning letter which the company had purported to send: it had been sent to his previous address. He had last seen Adam Smith around 18 months ago – he only dealt with Steve Winston. He had never heard of Dean Blake.
15. Nelson Smith also stated that he had been driving for Hayes/Rima on a daily basis up to and including 8 May (the day before the inquiry) when the business had closed. This statement was corroborated by another of the company’s drivers who was accompanying Mr Smith. The drivers stated that they were unaware that the operator’s licence had been suspended since 13 March 2018, almost two months previously.

Findings

16. In the light of the evidence available, I have reached the following findings:
 - i) Hayes Freight Ltd lacks appropriate financial standing. It entered liquidation in October 2016 with debts, according to the liquidators’ report, of around £350,000;

- ii) there has been no functioning professionally qualified transport manager in place since at least December 2016. Hayes Freight Ltd therefore lacks professional competence;
- iii) heavy goods vehicles have continued to operate under the licence during the period of suspension since 13 March 2018;
- iv) there has been a material change to the licence in that it has been lent to Rima, contrary to Section 38 of the 1995 Act (Section 26(1)(h) of the 1995 Act refers);
- v) the operator's vehicles and trailers have incurred prohibitions (Section 26(1)(c)(iii) refers. The operator has a 40% infringement rate for vehicles and 38% for trailers over the last five years. In total there have been 33 prohibitions of vehicles and trailers;
- vi) the operator's drivers have incurred two fixed penalties in the past year (Section 26(1)(ca) refers);
- vii) the operator has failed to fulfil its undertaking to ensure that rules on drivers' hours and tachographs are observed (Section 26(1)(f) refers). The operator's arrangements for collecting tachograph charts were clearly unsatisfactory, as driver Smith had more than 42 days worth of charts on his person and had committed numerous offences without the operator having noticed or, if it had noticed, without it having taken any effective action to reduce the number of infringements.

Conclusions

Transport Manager

17. I have conducted a balancing exercise to conclude whether it would be appropriate to conclude that Adam Hayes, in the light of the adverse findings above, has lost his good repute as transport manager. In doing so I have reminded myself of the Senior Traffic Commissioner's Statutory Document 3 and in particular paragraph 51 which lists the activities which a competent and reputable transport manager is expected to perform.
18. On the negative side of the balance are, in particular, that Mr Hayes failed to inform me of his ceasing to act as transport manager in December 2016. This meant that the operator was able to continue in business outwardly still with professional competence when in fact no qualified transport manager was in place. Mr Hayes must also have been aware by this stage that it was Rima, not Hayes, which was the *de facto* operator and that Hayes had entered liquidation. Further, despite having ceased to act as transport manager by December 2016, Adam Hayes told traffic examiner Love in February 2018 that he still worked and was paid as such. He also signed a letter to vehicle examiner Jones in January or February 2018 as "Adam Hayes, transport manager, Hayes Freight Ltd. Mr Hayes was trying to give DVSA officers the false impression that he was still the functioning transport manager when in reality this was not the case.
19. I have not been able to identify any positive features and Mr Hayes' failure to attend the inquiry prevented him from presenting any.
20. Mr Hayes' actions have allowed a licence to continue in force which should have been terminated in late 2016. His dealings with DVSA in early 2018 were devious in that he was holding himself out to be a functioning transport manager when he was not. These are very serious issues: I conclude that the removal of Mr Hayes' good repute is an

appropriate and proportionate outcome (Section 27(1)(b) and Schedule 3 paragraph 1 refer).

21. Having concluded that Mr Hayes' 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 the deception which he has practised and the serious consequences (operations by an unlicensed operator) to which his conduct has given rise, I am disqualifying him from acting as a transport manager for the period of five years.

Operator

22. The operator lacks financial standing and professional competence. Revocation of the licence is therefore mandatory under Section 27(1)(a) of the 1995 Act. The nominal transport manager is not of good repute and revocation is also mandatory under Section 26(1)(b).

Director- disqualification

23. Director Dean Blake has knowingly operated without a transport manager for at least 17 months. Further, he has continued to operate HGVs during the period of suspension since 13 March 2018. Despite the licence holder Hayes entering liquidation in October 2016, he has continued to operate HGVs through his other company Rima since that time, despite the fact that Rima does not hold an operator's licence. There is substantial evidence that the operator's compliance with rules relating to drivers' hours and tachographs was very poor.
24. There is nothing on the positive side of the balance, and Mr Blake's failure to attend the inquiry prevented him from presenting any mitigating factors. I therefore conclude that Mr Blake 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 longer period where there has been deception. I have also taken account of the fact that Mr Blake has operated vehicles illegally since October 2016 when Hayes entered liquidation and must have known this to be the case. The nature of his non-compliance has been serious, sustained and deliberate: I conclude that a disqualification period of five years is proportionate, appropriate, and in line with the STC's guidelines.

Enforcement of this decision

25. Given that Mr Blake's unlicensed operations have continued almost to this day, I do not have complete faith that he 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 Hayes/Rima or Mr Blake. Any such vehicle they henceforth find carrying goods on the public road will be liable to be impounded.



Nicholas Denton
Traffic Commissioner
10 May 2018