



WEST MIDLANDS TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 5 JUNE 2018

OPERATOR: XPO LOGISTICS GROUP LTD

LICENCE OD1145250

Decision

1. The standard international goods vehicle operator's licence held by XPO Logistics Ltd is revoked with immediate effect pursuant to Sections 26(1)(c)(iii) and 27(1)(a) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").
2. Director Balwant Singh is disqualified for three years, until 0001 hours on 6 June 2021, 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.

Background

Operator and transport manager details

1. XPO Logistics Group Ltd ("XPO") holds a standard international goods vehicle operator's licence (OD1145250) for five vehicles and eight trailers. There are no vehicles currently in possession. The licence was granted on 8 June 2016. The sole director of the company is Balwant Singh.
2. The nominated transport manager at the time of grant was Pardeep Virk: he resigned from the company on 25 August 2016, two months after the grant of the licence. On 7 October 2016 the operator nominated Amrit Singh Thandi as transport manager. Mr Thandi was already the transport manager on three licences – requests by the central licensing unit in Leeds (CLO) for details concerning how Mr Thandi intended to exercise continuous and effective management of four licences were ignored by the operator. Mr Thandi subsequently withdrew his nomination on 28 March 2017.
3. In April 2017 the operator nominated Stewart Roden as transport manager. Mr Roden wrote to CLO on 8 September 2017 to say he was resigning from the licence as "nothing has been done with the operator's licence or the above transport company".

This suggested that contact between the transport manager and operator was somewhat sparse, as the operator in fact had a vehicle specified on its licence between 23 April 2017 and 21 August 2017, coinciding approximately with the entirety of Mr Roden's period as transport manager. Further, nine days after Mr Roden's resignation, the operator specified four vehicles on the licence and a fifth two days after that. This did not square with Mr Roden's impression that nothing was happening.

4. On 28 September 2017 the operator nominated Monika Tano as transport manager. Ms Tano's certificate of professional competence showed that she possessed only the national transport manager qualification: the international one was required for the operator's standard international licence. The operator failed to respond to CLO's letters raising this issue.

DVSA information

5. In the meantime, on 6 January 2018 one of the operator's specified vehicles, PO11 AOC, was stopped at the roadside by DVSA and issued with a prohibition for having an AdBlue emulator fitted. The emulator had the effect of disabling the vehicle's AdBlue system which is necessary to ensure that the vehicle's NOx emissions remain within permissible limits.
6. DVSA vehicle examiner Ian Widdows subsequently visited the company's operating centre in Radius Industrial Estate Wednesbury on 22 March 2018. He discovered that the operator had never kept any of its vehicles there. Nor was the company using its declared maintainer, KBF Commercials Ltd. Mr Widdows also visited the company's (then) registered address in Solihull only to find that it was a mailbox operation. Letters left for the company were unanswered.

Public inquiry

7. I was very concerned by the situation in which an operator was clearly operating several vehicles without a professionally competent transport manager and from an unknown location. On 16 April 2018 I suspended its operator's licence under Article 13.3 of Regulation EC 1071/2009, pending a public inquiry. The call-up letter was sent on 26 April 2018, citing Sections 26(1)(c)(iii), (h) and 27(1)(a) of the 1995 Act. The inquiry was scheduled to take place in Birmingham on 5 June 2018.
8. The call-up letter was sent to the company's new registered address (since 16 March 2018) in Temple Row Birmingham. It was returned unopened. Nor could the company be contacted by emails or telephone.
9. No one from the company has appeared at the public inquiry today. I thus proceeded to make findings on the written evidence available.

Findings

10. The operator lacks financial standing (Section 27(1)(a) of the 1995 Act refers). No evidence of finances has been submitted. Its financial returns to Companies House are overdue.
11. The operator lacks professional competence (Section 27(1)(a) also refers). The transport manager nominated in September 2017 lacks the professional qualifications to act as such on a standard international licence. Previous transport managers have not exercised continuous and effective management of the licence: Mr Roden for instance was unaware that there was actually a vehicle on the licence; other transport managers have lasted next to no time.

12. The operator lacks a stable and effective establishment (Section 27(1)(a)). The attempts of both DVSA and of my office to contact it have drawn a blank: its whereabouts is unknown.
13. The operator has used an unauthorised operating centre (Section 26(1)(a) refers).
14. The operator's vehicle has incurred a prohibition (Section 26(1)(c) (iii) and has failed to fulfil its undertaking to ensure the lawful operation of vehicles (Section 26(1)(f) of the 1995 Act refers). It has been in breach of the Road Vehicles (Construction and Use) Regulations 1986/1078, which state that no person shall use a vehicle on the road if, in relation to the emission of NOx (amongst other substances), the vehicle does not comply with requirements relating to conformity of production.

Conclusion

Operator's licence

15. The company has been operating in almost complete disregard for the law. A standard international licence requires continuous and effective management by a suitably qualified transport manager. This has been conspicuously lacking. The operator's whereabouts are unknown: it cannot be contacted at either authorised operating centre or the company's registered address. A vehicle has been found to be using an AdBlue emulator, a serious offence.
16. As the operator lacks financial standing, professional competence and a stable and effective establishment, revocation of the licence is mandatory under Section 27(1)(a). Revocation will take effect immediately.

Director disqualification

17. I have considered whether Balwant Singh's conduct has been such as to warrant disqualification under Section 28 from holding a licence in the future. His failure to appear at the inquiry or even communicate with my office has prevented him from putting forward any mitigating arguments. Given that the company's operations have been so comprehensively outside the law, I have concluded that disqualification is appropriate. 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). Because the licence has been run without an effective transport manager for the whole of its two-year life, I consider that a disqualification at the upper end of this scale is appropriate. The disqualification will last until 6 June 2021.



Nicholas Denton
Traffic Commissioner
5 June 2018