

Neutral Citation Number: [2018] UKUT 0202 (AAC)

Appeal No. T/2018/12

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER
TRAFFIC COMMISSIONER APPEALS**

**IN AN APPEAL FROM THE DECISION OF
Simon Evans, Traffic Commissioner for
THE NORTH WEST dated 16 January 2018**

Before:

**Her Hon. Judge J Beech, Judge of the Upper Tribunal
Stuart James, Specialist Member of the Upper Tribunal
George Inch, Specialist Member of the Upper Tribunal**

Appellant:

MAURICE DALE

Date of decision: 20 June 2018

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that the appeal be DISMISSED

SUBJECT MATTER:- Good repute of transport manager. Whether finding of loss of good repute and indefinite disqualification was proportionate.

CASES REFERRED TO:- Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport (2010) EWCA Civ. 695.

REASONS FOR DECISION

1. This is an appeal from the decision of the Traffic Commissioner for the North West ("the TC") made on 16 January 2018 when he found that Mr Dale had lost his good repute and that he should be disqualified for an indefinite period under Schedule 3 of the Public Passenger Vehicles Act 1981.

The Background

2. The background to the appeal can be found within the papers and the TC's oral decision. Michael Whitfield, a sole trader, was granted a standard international operator's licence authorising one vehicle (a sixteen seat minibus) on 4 April 2017. His operating centre was in Cawdor Street, Bolton and his transport manager was Mr Dale. A maintenance contract was held with Jacksons Motor Repairs and the specified preventative maintenance inspection ("PMIs") interval was six weeks. Mr Whitfield's work mainly involved private hire and airport work.
3. On 10 August 2017, Vehicle Examiner ("VE") Elliott conducted an unannounced maintenance investigation as a result of Mr Whitfield failing to attend a new operator seminar on two invited occasions. Upon attendance at Mr Whitfield's operating centre, VE Elliott discovered that Mr Whitfield did not use the operating centre to park the authorised vehicle. He located the vehicle parked on the driveway of Mr Whitfield's home address.
4. The outcome of the investigation was unsatisfactory for the following reasons:
 - (i) Jacksons Motor Repairs had no experience in maintaining PSV vehicles;
 - (ii) There were no PMI records available;
 - (iii) There was no evidence that a roller brake testing regime was in place;
 - (iv) There was no wheel nut re-torque procedure in place;
 - (v) The stated PMI intervals were being stretched with no VOR system described to account for the gaps;
 - (vi) Whilst a driver defect reporting system was in use, all of the records recorded "nil" defects.

VE Elliott found that Mr Whitfield (who fully co-operated) did not fully understand his responsibilities as the holder of an operator's licence with statements of intent and undertakings set out within the licence. Whilst Mr Whitfield met Mr Dale on a weekly basis for about an hour, this meeting was for the purpose of Mr Dale providing Mr Whitfield with details of the PSV work that he had for him for the following week. Mr Dale charged Mr Whitfield a 10% commission for allocating work to him. Mr Dale had not contributed or invested any hours as a transport manager (his TM1 form indicated that he had contracted to provide three hours a week) and had not offered any guidance to Mr Whitfield in the management of his licence. This was evident by the absence of any required systems or documentation and the obvious lack of knowledge on Mr Whitfield's part in respect of operator licencing.

5. By calling in letters dated 23 November 2017, Mr Whitfield and Mr Dale were informed of the TC's decision to hold a public inquiry to investigate the apparent shortcomings in the operation of Mr Whitfield's licence. The hearing was listed for 16 January 2018. On 24 November 2017, Mr Dale telephoned the Office of the Traffic Commissioner ("OTC") stating that he had not seen Mr Whitfield for "*a couple of months*" and that he did not think that Mr Whitfield

was operating. Mr Dale further stated that he was not aware that he was Mr Whitfield's transport manager because he was not aware that Mr Whitfield's application for a licence had been granted. Mr Dale was advised to attend the public inquiry in any event.

6. On 4 January 2018, the OTC received an application made by Mr Whitfield to surrender his licence. A covering letter explained that he had not worked for three months because of an injury and as a result his financial standing had been affected. Further, he could no longer use his operating centre and he had decided to sell his vehicle. The application was refused.
7. At the public inquiry before the TC, Mr Whitfield attended; Mr Dale did not. Mr Whitfield repeated the contents of his letter and stated that he had not seen Mr Dale for about three months having told him that he would not continue working for Mr Dale anymore. He thought Mr Dale had fallen out with him. Mr Whitfield explained that Mr Dale was a taxi operator and he had suggested to Mr Whitfield that he should work "alongside" Mr Dale. At that stage, Mr Whitfield was a self-employed builder. It seemed like a good idea so he invested in a minibus but it transpired that he did not like the kind of work Mr Dale was providing, for example, airport pickups at three and four o'clock in the morning for £30 or £40. The work was not economically viable.
8. Mr Dale became his transport manager when Mr Whitfield realised that he would need a transport manager although he had since started to study for a CPC qualification himself. He accepted that he did not in fact have a contract with Mr Dale to provide transport management input into his licence and Mr Dale had not acted as such. The nominated operating centre was in fact Mr Dale's business premises but Mr Whitfield's vehicle had only been parked there once as it was four miles away from Mr Whitfield's home. He accepted that he had not downloaded either the tachograph digital driver card or the vehicle unit. He had not received the two invitations to attend the New Operator Seminar because they had been sent to his specified operating centre and he had never received them. Mr Whitfield had not operated the vehicle since 25 August 2017; he accepted that he had not complied with the terms of his licence and that if he were to start again, he would conduct himself in a very different manner.
9. The TC gave an oral decision. He set out the "*litany of shortcomings*" and described the licence as being a "*shambles right from the outset*". Mr Dale was simply an agent who introduced work to Mr Whitfield who had not carried out his functions as transport manager in any fashion and the arrangement was no more than a "*sham*". The TC gave Mr Whitfield credit for ceasing to operate in August 2017 and for studying for his CPC. However, the way that his licence had been operated should cause Mr Whitfield to consider whether he had any future in the PSV world at all. He was certainly not capable of holding a licence at the present time and it followed that Mr Whitfield had lost his good repute and was disqualified from holding or obtaining a licence for a period of twelve months.

10. As for Mr Dale, he was a transport manager in name only and consequently, his good reputation had been forfeited. He was disqualified from acting as a transport manager indefinitely.

The Appeal

11. Mr Dale's grounds of appeal (with spelling mistakes corrected) were as follows:

"Mr Whitfield asked me if I could put my name as Transport Manager while he did the necessary paperwork filling in his own application. After that, I had no correspondence with Mr Whitfield. I phoned, text but no reply to this day. I've not seen or heard from Mr Whitfield since August 2017. To this day he was applying for his own CPC and operator licence. On the 16th January 2018 I was summoned to be at an inquest. But due to my wife being in hospital in the New Year we didn't know whether she would be here today and it completely changed my world and went out of my head. The Traffic Commissioner made a decision on his behalf to ban my licence as an operator I have done nothing to forfeit my licence whatsoever. I apply to have case heard again where I can put my case forward. My reputation as a taxi operator has been tarnished due to Mr Whitfield's actions. I've done nothing wrong only put my name forward as operator while Mr Whitfield applied for himself".

In a covering letter, Mr Dale amplified upon the detail of his wife's illness and added that Mr Whitfield had asked Mr Dale to be his transport manager "way before August 2017" while Mr Whitfield "did all the necessary paperwork". Mr Dale had tried to find him work but Mr Whitfield had not wanted to do it. Mr Dale assumed that Mr Whitfield had "not bothered" to apply for a licence and was selling his bus. It followed that Mr Dale's "part as transport manager was null and void". He had done nothing wrong. If Mr Whitfield "had completed what he started, then procedures, maintenance records, tachograph checks would have been in place. He didn't therefore I must disagree that my reputation has been jeopardized and I should have my CPC reinstated on the grounds of doing nothing wrong".

12. The hearing of Mr Dale's appeal was listed for 12 June 2018. On 4 May 2018, he returned the notice of attendance sent by the Upper Tribunal indicating that he would not be attending or be legally represented: "It is too far and too expensive for me to attend this meeting." As a result of receiving this indication, the hearing of the appeal was vacated, the Tribunal members having determined that this matter could be considered on the papers which we have done.

Discussion

13. This was a blatant case of someone putting themselves forward as a transport manager in name only and we find that it is irrelevant as to who suggested that course of action. As a qualified transport manager, Mr Dale should have known that to either suggest or agree that he complete a TM1 form indicating that he was to spend three hours a week as Mr Whitfield's transport manager

and that he had a contract to that effect, was an action that struck at the heart of the licensing system. The fact that Mr Dale fails to appreciate the significance of his own actions demonstrates that he is not fit to provide transport management functions to operators and that his good repute is lost. It follows that we are satisfied that the TC's approach to the evidence in this case is beyond criticism. Mr Dale's nomination as transport manager for Mr Whitfield enabled Mr Whitfield to operate the vehicle without complying with any of the undertakings and statements of intent attached to the licence. We further do not accept Mr Dale's assertion that he was not aware that Mr Whitfield was even operating his vehicle which contradicts the evidence of Mr Whitfield that he was undertaking work for Mr Dale who was receiving a commission from him in consideration for providing him with that work. We are further satisfied that this is such a serious case that disqualification for an indefinite period cannot be considered to be disproportionate.

14. It follows that we are satisfied that the TC's approach to the issue of good repute was neither plainly wrong nor disproportionate and we are further satisfied that this is a case where neither the law nor the facts impel us to interfere with the TC's decision as per the Court of Appeal decision in Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport (2010) EWCA Civ. 695. The appeal is dismissed.



Her Honour Judge Beech
20 June 2018