



IN THE NORTH EAST OF ENGLAND TRAFFIC AREA

PUBLIC INQUIRY

In respect of the application by UAB AUTOEVA

For the return of

VEHICLE REGISTRATION NUMBER : HFO715

**under the Goods Vehicles (Licensing of Operators) Act 1995
(amended by the Transport Act 2000) (“the Act”)**

And

The Goods Vehicle (Enforcement Powers) Regulations 2001

And

**The Goods Vehicle (Enforcement Powers) (Amendment) Regulations 2009
(“the Regulations”)**

BEFORE

**ANTHONY SECULER
DEPUTY TRAFFIC COMMISSIONER**

HEARD AT THE OFFICE OF THE TRAFFIC COMMISSIONER, LEEDS,

ON

6TH JULY and 26TH SEPTEMBER 2018

Decision

The application to return vehicle HFO715 to the applicant, is GRANTED.

Background

1. On Friday 18th May 2018 a Lithuanian registered tractor unit HFO715 was stopped en route from Doncaster to Blyth by DVSA. The driver Viktor Lepechin produced a Community authorisation document stating that the vehicle was being operated by IC Logistics, Lithuania.
2. DVSA Traffic Examiner Simon Freeman ascertained that the vehicle had entered the UK on 8th May 2018 and completed delivery of its international load on 9th May. The vehicle had then undertaken a number of journeys to collect vehicles and deliver them to a dismantling yard in Sandtoft on 9th, 10th (x.2), 16th (x.4) and 17th May.
3. On 14th May the driver was on duty from 13.12 to 19.14 travelling 65km in 1 hour 50 minutes driving time. No documentation could be produced to TE Freeman in connection with this operation, the driver stating a collection had been cancelled.
4. The vehicle had also undertaken 2 deliveries of accident damaged vehicles on 15th May to Halifax and Birkenhead.
5. On 17th May TE Freeman noted that the digital trace seemed to indicate that the driver had done more than the single journey from Sandtoft to a collection in Blyth and then back to Sandtoft.
6. TE Freeman deemed each of the collections and deliveries as commercial domestic journeys requiring authorisation under an Operator's Licence. In the case of IC Logistics, a Lithuanian operator, he deemed the number of loads to exceed the 3 permitted under Cabotage regulations. He also deemed the period of operation to have exceeded the 7 days allowed from the unloading of the international load on 9th May.
7. IC Logistics had previously been warned of the consequences of illegal cabotage in a pre-impounding warning letter dated 28th December 2017. As a consequence, on 18th May, the driver and the company boss were informed that the vehicle was going to be impounded by DVSA.
8. On 11th June, the OTC received an application for the return of the vehicle from IC Logistics as leaseholder stating that journeys other than the 2 cabotage

operations on 15th May were collections of vehicles “for our own purpose” and were not in contravention of section 2 of the Act.

9. On 12th June, an application was received from UAB Autoeva, as owners of the vehicle, stating that they did not know of the unlawful use of the vehicle by the lessee, IC Logistics.

The Hearing

10. On 6th July 2018 representatives from the applicant company attended the hearing and Traffic Examiner, Simon Freeman and Senior Traffic Examiner, Kevin Barnes attended on behalf of DVSA.
11. Documentation in respect of the loads and the lease arrangement was presented to DVSA Examiners at the hearing. They sought further particulars of the terms of the lease and evidence of monitoring of the terms by the applicants. The hearing was adjourned for this documentation to be produced and considered.
12. On 19th July, DVSA wrote by email to challenge the validity of the lease and the monitoring of the terms. TE Freeman also challenged the independence of the owners and IC Logistics, stating that the director of IC Logistics was one and the same director as UAB Autoeva. Clearly this would have had a considerable bearing on the question of knowledge.
13. The hearing was reconvened on 26th September with representatives from IC Logistics, Director, Nerijus Kazlauskas and Transport Manager, Andrius Kazakevicius, and representatives from the applicant company, Monika Tumenaite, lawyer, and Gabrielius Rusas, in attendance, along with DVSA Examiners as before.

Evidence and Findings

14. Having heard evidence in full from UAB Autoeva, IC Logistics, and DVSA, I am satisfied that DVSA had reasonable cause to suspect that the vehicle HFO715 was being used illegally under section 2 of the Act.
15. The case of Nolan Transport and VOSA ((2012) UKUT 221) confirms that in respect of cabotage operations, clear evidence of each operation is required to

be made available by the driver to DVSA (formerly VOSA) at the roadside. In this case far too much information has been provided after the detention of the vehicle, including the fact that the vehicle was leased.

16. On the evidence presented at the hearing, I find that IC Logistics used the vehicle in contravention of section 2 of the Act. The journeys to collect vehicles were clearly “in connection with any trade or business” carried on by IC Logistics and documentation was inadequate or lacking in respect of certain journeys, the 65km on 14th May and the unexplained excess mileage on the 17th May. I also note that the CMR sheets are not fully completed, times and distances are missing.
17. Turning to the claim by the applicant, it is not disputed that they are the legal owners of the vehicle. They maintain that they did not know that the vehicle was being used in contravention of section 2 and the onus is on the owner to satisfy me that they probably did not know. I am told that IC Logistic did not pass on the pre-impounding warning letter nor did they inform the applicant that there had been previous prohibitions or, indeed, that the vehicle had been impounded.
18. Whilst DVSA asserted that the monitoring of the lease agreement was lax, this is not sufficient to satisfy me that the lease was not genuine or that any of the 5 categories of knowledge set out in *Societe Generale Equipment Finance Ltd. v VOSA (2013/221)* are established.
19. As for the suggestion of a common sole director for the applicant company and IC Logistics, this was not borne out by the evidence. I find the evidence of the applicant company, from the recent records of the Lithuanian equivalent of Companies House, far more convincing than the web-page extracts produced by DVSA, which were said to be unofficial, unreliable and several years out of date.

Decision and Reasons

20. I am satisfied that the applicant company as owners of the vehicle probably did not know of the unlawful use by IC Logistics and I therefore order the return of vehicle HFO715 to the applicant.



Anthony Seculer
Deputy Traffic Commissioner,
North East of England Traffic Area.

1st October 2018

On 28th September, the OTC received an email from IC Logistics stating that work undertaken by the vehicle following the two cabotage journeys on 15th May was “not for hire & reward, and therefore as per the Article 1 section 5 of the EC Regulation No 1072/2009 on common rules for access to the international road haulage market, would be exempt”. I note that IC Logistics has had time since 18th May 2018 to present full arguments in support of their use of the vehicle to DVSA. Previous submissions made reference to Article 8 and “hire or reward” without reference to the additional/alternative limb of “for, or in connection with, any trade or business carried on by him”.

As the submission arrived after the hearing, the point regarding Article 1 has not been fully argued before DVSA Examiners. There has already been considerable delay in this case and as the submission does not have a material bearing on my decision to return the vehicle to the owner/applicant, I have not made definitive findings on this particular submission.