



WEST MIDLANDS TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 6 SEPTEMBER 2018

HARDIP SINGH BAINS T/A CLEAVERS REMOVALS AND STORAGE
OD1021220

Decision

1. David Cleaver has lost his good repute as a transport manager, pursuant to schedule 3 paragraph 1 of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act"). Under paragraph 16(2) of that schedule, he is disqualified, with immediate effect and for an indefinite period of time, from acting as a transport manager on any operator's licence in any Member State of the European Union.
2. Cleavers Removals Ltd is free to request a public inquiry to consider its application for a standard national licence, but if it does not do so by close of business on 2 November 2018 I shall refuse the application under Section 13A(2)(b) and 13C(2) and (4) of the Goods Vehicles (Licensing of Operators) Act 1995.

Background

Cleavers Removals Ltd

1. On 23 May 2018, Cleavers Removals Ltd applied for a standard national goods vehicles operator's licence for six vehicles. The directors of the company are Hardip Singh Bains and his son Baljit Singh Bains. The nominated transport manager on the application is Harminder Heer.

Previous history of Hardip Singh Bains

2. Hardip Singh Bains trading as Cleavers Removals and Storage held standard national licence OD1021220. The licence was granted in 2003 and, from October 2011, the nominated transport manager was David Cleaver. The licence lapsed on 30 June 2018 when the operator did not renew it.
3. Before the licence lapsed, it had been the subject of a DVSA investigation after an S-marked prohibition (denoting a serious maintenance failure) had been issued in July

2017 for a vehicle with three loose wheel nuts out of six. DVSA vehicle examiner Gary Hickin visited the operator in April 2018 and found that:

- i) there had been a change of entity in that the vehicles were being operated by a limited company, Cleavers Removals Ltd rather than by Hardip Singh Bains as a sole trader;
 - ii) there was a high MOT failure rate of 38% over the past two years (and 56% over the past five years (national average 16% and 18% respectively));
 - iii) very few safety inspection reports were available. Three vehicles had only two inspection reports each, although inspections were supposed to be carried out every 11 weeks. A fourth vehicle had no reports at all. The reports which were available were not fully completed. Vehicles were given a metered brake test only at the annual MOT;
 - iv) although driver defect reports were available, none of the reports recorded any defect;
 - v) the transport manager David Cleaver was not available at the time of Mr Hickin's visit. Baljit Singh Bains, to whom Mr Hickin spoke, stated that Mr Cleaver was on holiday. A letter dated 30 April 2018 from Hardip Singh Bains confirmed that "our transport manager was on holiday when you visited our premises and is due back 4th May 2018."
4. In the wake of VE Hickin's report, I received a submission from my team leader on 28 June 2018, recommending that the nominal operator, Hardip Singh Bains, and transport manager David Cleaver be called to a public inquiry. I agreed to this recommendation on 29 June 2018. Call-up letters to both Hardip Singh Bains and David Cleaver were sent on 27 July 2018.
5. In the meantime, however and unbeknownst to my clerk, the licence had terminated on 30 June 2018 when Mr Bains failed to renew it.

Public inquiry

6. The public inquiry went ahead in Birmingham on 6 September 2018. Hardip Singh Bains attended, represented by Martin Smith, barrister. Nominated transport manager (on the sole trader licence) David Cleaver did not appear: he had written to my clerk on 8 August 2018 to say that he had sold the business 10 years ago to Hardip Bains and had helped Mr Bains out for a while but was now retired. He did not believe his transport manager CPC should be affected as he was not involved with current vehicle inspections or maintenance. He would not be attending the inquiry as he was not in the UK in September or October. The implication of this letter was that Mr Cleaver had not been involved as transport manager with the operator for a considerable time: this seemed to be at odds with the claim by both Baljit and Hardip Bains that Mr Cleaver had merely been on holiday at the time of VE Hickin's visit in April 2018.
7. Hardip Singh Bains had brought various documents to the inquiry as I had requested. I noted that the safety inspection reports available contained numerous driver detectable defects (defects such as broken lights, mirrors etc which drivers should identify on their daily walk-round check rather than leave them to be picked up at the next 11 week inspection). The tyre tread depths sections were blank; no brake tests were recorded; the vehicles were not signed off as roadworthy.

8. In opening the inquiry I observed that it was somewhat unusual in that the licence which had been called had terminated automatically since my decision to call it. However, I was still able to deal with the question of the repute of Hardip Singh Bains and David Cleaver and this would clearly have implications for the company's application. The application could not be disposed of at this public inquiry, as the applicant company had not been called. However, the outcome of the inquiry might give some pointers to the likely outcome of the application.
9. For Hardip Singh Bains, Mr Smith explained that his business had split between removals and storage in 2014, when Cleavers Removals Ltd had been set up. It was accepted that David Cleaver had spent less and less time with the business after that. Hardip Singh Bains too had become ill in 2014 and had spent less and less time at work. He had had an operation in May 2018 and had returned to work gradually from 1 July 2018. He accepted that things had not been run as they should have been which was why he had not sought to renew the sole trader licence when it terminated on 30 June 2018. Drivers had not been recording defects; there had been no downloading of driver cards or tachograph units until June 2018; vehicles had not been submitted for safety inspections at the promised frequency, although they had been given pre-MOT inspections; Baljit Bains had made a false statement to VE Hickin when he had told him that Mr Cleaver was on holiday.
10. Mr Smith stated that there had now been a big turnaround. Vehicles had been parked up since 30 June and had not operated, but drivers had recorded defects properly until then and their checks had been quality assured by Mr Bains. Various driver training programmes had been put into effect; a new suitable transport manager had been nominated in the company's application; Mr Bains had undertaken operator licence management training. The company was prepared to offer an audit undertaking.

Findings

11. After considering the evidence I have reached the following findings:
 - i) Sole trader Hardip Singh Bains was operating in the wrong entity from 2014 onwards. The company Cleaver Removals Ltd was the de facto operator but did not have an operator's licence;
 - ii) Nominal transport manager David Cleaver was not exercising continuous and effective management of the transport side of the business and had not done so for several years. The operator therefore lacked professional competence;
 - iii) The directors of the applicant company Cleavers Removals Ltd, Baljit and Hardip Bains both sought to mislead VE Hickin about Mr Cleavers' involvement when they falsely claimed (Baljit when VE Hickin visited in April and Hardip in his letter to VE Hickin in May) that David Cleaver's absence was due to him being on holiday. Because of this deception, I find that Hardip Singh Bains lacks good repute (I was not able to reach a similar finding re Baljit Bains as he had not been called to the public inquiry);
 - iv) The sole trader licence was operated in a highly non-compliant way over an extended period of time, largely because no transport manager was in practice in place. A vehicle incurred an S-marked prohibition for a potentially highly dangerous defect; drivers did not do proper walk-round checks; vehicles were not given regular safety inspections; no tachograph downloads were performed. All this appears to have taken place when the person in charge was Baljit Singh Bains (Hardip Singh Bains being absent through illness);

- v) Transport manager David Cleaver is not of good repute. He has long been a name only on the licence and has failed to carry out his responsibilities to ensure compliance. He failed to notify me that he was no longer working as transport manager and had retired: the effect of this failure was to allow an operator to continue with the outward appearance of professional competence whereas the reality was that vehicles were operated in an unsafe and highly non-compliant way by people who had no idea of how to manage matters correctly.

Conclusion

- 12. In view of the compliance history of the sole trader licence and in view of the fact that both directors of Cleavers Removals Ltd falsely claimed to VE Hickin that transport manager David Cleaver was performing his functions and was merely on holiday at the time of his visit, I have serious doubts that Cleavers Removals Ltd is of good repute and that it would be capable of operating compliantly if granted a licence. The company is free to request a public inquiry to consider its application, but if it does not do so by close of business on 2 November 2018 I shall refuse the application under Section 13A(2)(b) and 13C(2) and (4) of the 1995 Act.
- 13. Having concluded that transport manager David Cleaver is not of good repute I am bound to disqualify him from acting as a transport manager in the future. I am doing so for an indefinite period of time but he is free to request a hearing before a traffic commissioner if he wishes to argue for the time-limiting or cancellation of the disqualification.



Nicholas Denton

Nicholas Denton
Traffic Commissioner
10 October 2018