



WEST MIDLANDS TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 13 SEPTEMBER 2018

OPERATOR: K J HUDSON MACHINERY SERVICES LTD

LICENCE OD1134681

Decision

1. The standard national goods vehicle operator's licence held by K J Hudson Machinery Services Ltd is revoked with effect from 0001 hours on 17 November 2018, pursuant to Sections 26(1)(c)(iii) and (f) and 27(1)(a) and (b) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").
2. The good repute of transport manager Godfrey Pritchard is lost, pursuant to Schedule 3 of the Goods Vehicles (Licensing of Operators) Act 1995. Under paragraph 16 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 the European Union. Before he can act as a transport manager again, he must retake and pass the transport manager CPC examination.
3. Kenneth Hudson is disqualified for a period of three years 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. The disqualification will take effect at 0001 hours on 17 November 2018 and terminate at 0001 hours on 17 November 2021.

Background

Operator details

1. K J Hudson Machinery Services Ltd ("K J Hudson") holds a standard national goods vehicle operator's licence (OD1134681) for four vehicles and four trailers. There are four vehicles in possession. The licence was granted in January 2015. The sole director of the company is Kenneth Hudson. The nominated transport manager on the licence until 15 February 2018 was Godfrey Pritchard. The current transport manager (appointed on 28 April 2018) is Barry Hudson.

History

2. K J Hudson had previously held a restricted operator's licence (OD1044443), granted in 2005. This licence was revoked in December 2014 after a public inquiry in October 2014 heard that the operator's vehicles and drivers had incurred numerous prohibitions

and fixed penalties. In the light of K J Hudson's history, the deputy traffic commissioner when granting its subsequent application for a standard national licence in January 2015, secured an undertaking to have an audit carried out by the RHA by 30 June 2015. In the event, the audit proved to be sparse in detail and was not done by the RHA. A further audit was requested by 31 January 2016 and this was carried out.

DVSA report

3. In July 2018 I received a report from DVSA vehicle examiner Christopher Walker. His report stated that:
 - i) the operator's vehicle YJ09 EOD had been stopped on 5 February 2018 and found to be fitted with a device that disabled the AdBlue system. This would have increase the NOx emissions from the vehicle to beyond the permitted limit for its engine. An S-marked prohibition was issued;
 - ii) Kenneth Hudson had informed Mr Walker that he had bought the vehicle in April 2017 knowing that the emission system was inoperative but had thought that was all right as he did not intend to use it in the London low emission zone;
 - iii) at Mr Walker's visit to the operator, prohibitions had been issued to one vehicle and one trailer;
 - iv) a vehicle file for one vehicle was not available for inspection;
 - v) there was insufficient evidence of meaningful brake tests for vehicles and trailers;
 - vi) the driver defect reporting system was failing;
 - vii) on 18 September 2017, vehicle BU56 DFK had been stopped at the roadside. It was being operated by K J Hudson but was not specified on the licence on that date. Nor was there a margin on the licence on that date.
4. I checked the operator's prohibition record as of 31 July 2018: this showed that vehicles had been issued with ten roadworthiness prohibitions from 21 encounters over the life of the licence since January 2015; trailers had been issued with eight prohibitions from 19 encounters. These levels of prohibitions were almost double the national average.

Public inquiry

Call-up

5. In the light of Mr Walker's report and the operator's prohibition history (including the use of an AdBlue emulator) I decided to call the operator and previous transport manager Godfrey Pritchard (who had been in post when almost all of the problems had occurred) to a public inquiry.
6. The call-up letter was sent on 1 August 2018, citing Sections 26(1)(b), (c)(iii), (ca) and (f) 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, previous transport manager Godfrey Pritchard was also called to the inquiry to consider his repute.
7. In preparation for the inquiry, I looked at the audit carried out in January 2016. I noted that, while there were many (at least eight) references to Mr Hudson's involvement with maintenance, record keeping, drivers' hours monitoring etc., there was no reference at all to the then transport manager Godfrey Pritchard.

Holding of public inquiry

8. The inquiry was held in Birmingham on 13 September 2018. Present were director Kenneth Hudson, current transport manager Barry Hudson and previous transport manager Godfrey Pritchard. Mr Pritchard was represented by counsel David Munro.

Evidence of Kenneth Hudson

9. Mr Hudson said that he had not appreciated that it was illegal to operate a vehicle whose AdBlue pollution reduction system had been switched off. He had thought it was acceptable to operate such a vehicle so long as it did not enter a low emission zone.
10. Since Godfrey Pritchard's resignation as transport manager a new transport manager Barry Hudson had been employed: he had made improvements to compliance. Mr Pritchard had not been an absentee transport manager – he had looked at maintenance records and popped in to have a look at tachograph reports which Trutac had sent back after analysing the data.

Evidence of Godfrey Pritchard

11. Mr Pritchard had been an old friend of Kenneth Hudson. He had stated on the transport manager application that he would be working 30 hours a week as transport manager, but this arrangement was always intended to be temporary: he had understood that Kenneth Hudson was arranging for others to take the transport manager CPC exam. In the event they had failed. He (Mr Pritchard) had not accepted any payment for his services as transport manager and did not have a contract with the operator, despite signing the application form to confirm that he did have a contract. Over time, as his own operation (Mr Pritchard has his own operator's licence) had got busier, he had found that he could not maintain both roles. He had not been in a position to do more than advise Mr Hudson on his licence. He had not been aware of the prohibitions incurred by the company's vehicles; he had not known that an audit had been carried out and had thus never seen the audit or been involved with responding to its recommendations. He had not checked drivers' entitlement beyond looking at their plastic licence cards which he had thought sufficient. He had not known about the AdBlue emulator on vehicle YJ09 EOD until the S-marked prohibition for it had been issued: he had resigned shortly afterwards.
12. He was conscious that he should have ended the transport manager arrangement with K J Hudson long before he did so. He ran his own standard international licence to a high standard. His attempt to help a friend, Kenneth Hudson, had severely backfired.

Evidence of Barry Hudson

13. Barry Hudson said that, since he had become transport manager drivers had been given training, a new maintenance provider Cebon Motors engaged to do the regular safety inspections, and driver entitlement checks instituted every three months with DVLA. He worked 45 hours a week as a full time driver and devoted five hours a week to his transport manager duties.
14. I noted that the 2016 audit had recorded that brake tests were being carried out on vehicles by the (then) maintainers every 12 weeks. I could, however, find no recent brake tests results in the maintenance records. Three brake tests results (two for vehicles and one for a trailer) were subsequently located and sent to me after the inquiry by the operator, along with a note dated 18 September 2018 from the current maintainer Cebon Motors which stated that "due to a miscommunication on our part" brake tests have not been carried out on each of [K J Hudson's] vehicles." Given that brake problems accounted for many of the numerous prohibitions incurred, I found it concerning that the practice of regular roller brake testing of all vehicles and trailers – noted in the 2016 audit - had been allowed to lapse.

15. I examined the recent safety inspection reports provided by the operator and noted that almost all contained numerous driver detectable defects such as non-functioning lights or defective tyres – defects which should be identified by drivers and rectified on their daily walk-round checks, not await the next six week inspection. There was little sign of any noticeable improvement in the effectiveness of walk-round checks since VE Walker had commented upon it.

Findings

16. After considering all the evidence I have reached the following findings:

- i) the operator's vehicles and trailers have incurred numerous prohibitions (Section 26(1)(c)(iii) of the 1995 Act refers). There has been a total of 18 prohibitions out of 40 encounters in the life of the licence, including the S-marked prohibition for the AdBlue emulator. This high prohibition rate is particularly disappointing since this was one of the issues which caused Mr Hudson's previous sole trader licence to be revoked;
- ii) the driver defect reporting system is clearly ineffective and the operator has therefore failed to fulfil the undertaking that drivers would report defects in writing (Section 26(1)(f) refers). Many of the prohibitions are for items which should have been spotted by drivers on their walk-round check – such as bald tyres, missing registration plates and inoperative indicators.
- iii) the operator has lacked professional competence for most of the life of the licence (Section 27(1)(a) refers). Nominal transport manager Godfrey Pritchard never had a contract with the operator (despite both director and transport manager signing the nomination form to confirm that he did), was never paid, and never exercised anything like the effective and continuous management which is the legal requirement. The fact that he was oblivious of the numerous prohibitions and of the audit which was a formal undertaking on the licence shows that his involvement was minimal.
- iv) transport manager Godfrey Pritchard is not of good repute (Section 27(1)(b) refers). He made a false statement on the TM nomination form and entirely failed to exercise the functions and responsibilities of a transport manager. His continued presence as a name on the licence in effect allowed K J Hudson to operate with the outward display of professional competence even though no one with the required qualifications was exercising any degree of management. This was a particularly irresponsible act by Mr Pritchard because K J Hudson had a known history of failure to comply which had resulted in the revocation of its previous licence.
- v) although Barry Hudson came across as a more effective transport manager than Godfrey Pritchard, I am not prepared formally to accept him on to the licence. He cannot, in my view, work 45 hours a week as a driver in addition to his work as a transport manager. For one thing that would take him over the maximum permitted weekly working hours; for another, the state of this licence and the level of compliance demand a much greater intensity of activity by a transport manager than might be the case for a compliant operator.
- vi) the operator K J Hudson is not of good repute (Section 27(1)(a) refers). The company director took a deliberate decision to acquire a vehicle on which the AdBlue system had been suppressed. Further, the director knowingly operated for at least three years without a functioning transport manager. There was no contract with Mr Pritchard, Mr Pritchard was not paid, his involvement with the business was tangential. Knowingly operating for such an extended period

without professional competence is not compatible with the requirement to be of good repute. The seriousness of the operator's conduct is exacerbated by the fact that it knew full well that the deputy traffic commissioner had only been prepared to grant a standard licence in January 2015, not a restricted one, because that gave him the reassurance he needed that, this time, the company would manage its licence in a professional manner. By proceeding to operate without a functioning transport manager, the company has circumvented the decision of the deputy traffic commissioner.

Conclusions

17. Given my findings that both operator and transport manager lack good repute, revocation of the licence is mandatory under Section 27(1)(a) and (b) of the 1995 Act.
18. I nevertheless asked myself the Priority Freight question of how likely it is that the operator will comply in the future. Given that the history of this licence and the numerous prohibitions seems to be a continuation of all the shortcomings of the previous restricted licence, and given Mr Hudson's willingness to operate without the legally required transport manager and acquire a vehicle with its AdBlue system illegally suppressed, I have no hesitation in concluding that it is extremely unlikely. The AdBlue fraud and the prolonged and conscious operation without any transport manager involvement mean that the answer to the Bryan Haulage question of whether the operator deserves to go out of business is that it does.

Operator

19. I am revoking the licence with effect from 17 November 2018, to give the operator time to wind down its business in an orderly manner.
20. Because of the serious nature of the findings above, I conclude that Kenneth Hudson 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 but a period of between five and ten years for serious cases where an element of falsification is involved. As this is the second public inquiry which Mr Hudson has attended, and he does not appear to have learnt at all from the previous one, I have concluded that a disqualification period of three years is the minimum I can impose which is proportionate, appropriate, and in line with the STC's guidelines.

Transport manager

21. Having concluded that Mr Pritchard's 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. Mr Pritchard appeared out of his depth as a transport manager – he clearly had an out-of-date appreciation of its role and of some of its key responsibilities. His failures and lack of basic knowledge are not such as will be cured by the mere passage of time. I am therefore disqualifying Mr Pritchard from acting as a transport manager for an indefinite period of time, at least until he retakes and passes the transport manager CPC examination.



Nicholas Denton

Nicholas Denton

Traffic Commissioner
12 October 2018