



WEST MIDLANDS TRAFFIC AREA
DECISION OF THE TRAFFIC COMMISSIONER
PUBLIC INQUIRY HELD IN BIRMINGHAM ON 23 MAY 2018
OPERATOR: R M COMMERCIALS LTD
LICENCE OD1143919

Decision

1. The standard international goods vehicle operator's licence held by R M Commercials Ltd is suspended for 28 days with effect from 0001 hours on 1 July 2018 until 0001 hours on 29 July 2018, pursuant to Section 26(1)(c)(iii), (f) and (h) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").
2. Ex-transport manager Jeffrey Smith retains his good repute. Prospective transport manager Derick Lewis has until 28 June 2018 to submit his original certificate of professional competence. If this is not done, the operator's licence will be revoked under Section 27(1)(a) on 29 June without a further public inquiry.
3. The following undertaking will be added to the licence:
 - i) an independent audit of the operator's compliance with maintenance and drivers hours' requirements will be carried out by the RHA, FTA or other suitable independent body, by 31 October 2018. The audit should cover at least the applicable elements in the attached annex. A copy of the audit report, together with the operator's detailed proposals for implementing the report's recommendations, must be sent to the traffic area office in Birmingham within 14 days of the date the operator receives it.

Background

Operator details

1. R M Commercials Ltd ("RM") holds a standard international goods vehicle operator's licence (OD1143919) for five vehicles and five trailers There are five vehicles in possession. The licence was granted on 18 May 2016. The sole director of the company is Richard Morrin. The nominated transport manager at the time of grant was Sandra Smith, who resigned in September 2016. In December 2016 the operator nominated David Forrester as transport manager. In mid-August 2017 he

was replaced by Jeffrey Smith. Mr Smith resigned three months later on 13 November 2017. On 22 January 2018 the operator submitted the nomination of Derick Lewis as transport manager.

DVSA reports

2. On 27 November 2017 one of the operator's vehicles, VU11 BHO, was stopped at the roadside by DVSA and found to be fitted with an AdBlue emulator. It received an S-marked prohibition. A subsequent maintenance investigation by vehicle examiner Nigel Hopwood found shortcomings:
 - i) VU11 BHO had operated with an AdBlue emulator for the five months since it had come into the operator's possession;
 - ii) safety inspection records were not being fully completed – there was no detail about brake efficiency on many sheets;
 - iii) trailer inspections were not being carried out at the stated eight week interval;
 - iv) there was a very poor MOT pass rate, only two first time passes out of nine presentations;
 - v) the driver defect system reporting was ineffective;
3. Mr Hopwood noted that when he returned in April 2018 for a follow-up visit after his initial visit and report in February only a small number of the actions the company had promised to take in their February reply had been put in place. For instance, the company had stated it would purchase a decelerometer: this had not been done. Nor had it put into effect the promised AdBlue usage recording system or any AdBlue training for drivers.
4. I also received a report from DVSA traffic examiner Kathrine Cox. A stop of vehicle VU11 BHO on 19 June 2017 had revealed that the driver Roger Jones had driven without a card for one hour 40 minutes three days previously in an attempt to disguise a daily driving hours offence. Further inquiries revealed that driver Dean Henry had also driven without a card. On five further occasions, the driver card of director Richard Morrin had been inserted into the tachograph unit very shortly after Dean Henry's card had been withdrawn (as little as 25 seconds in one case) and the vehicle had been driven on. Many of these changeovers were in the middle of the night. Ms Cox suspected that Richard Morrin had lent his tachograph card to Dean Henry for the purpose of disguising drivers' hours offences.
5. Ms Cox's visit to the operator on 24 August 2017 found that no data had been downloaded either from driver cards or vehicle units: the operator did not even have a company card with which to carry out vehicle unit downloads.
6. Ms Cox visited the operator again on 24 April 2018. Richard Morrin told her that none of his first three transport managers had been effective. He had been trying to run everything owing to the lack of a transport manager. He was now handing over to Derick Lewis, the new nominated transport manager. Mr Lewis told Ms Cox that office administrator Mark in fact did the downloads as he (Mr Lewis) did not fully understand how to use the software. He was booked on a course.

Public inquiry

7. I was concerned by these reports and decided to call the operator to a public inquiry. The call-up letter was sent on 3 May 2018, citing Sections 26(1)(b), (c)(iii), (f) and 27(1)(a) and (b) of the 1995 Act. By letter of the same date, previous transport

manager Jeffrey Smith was called to consider his reputation, as he had been the transport manager in situ throughout most of the time the vehicle had been running with an AdBlue emulator.

8. The inquiry was held in Birmingham on 15 March 2018. Present were company director Richard Morrin, ex-transport manager Jeffrey Smith and prospective transport manager Derick Lewis. Transport consultant Christopher David and vehicle examiners Nigel Hopwood and Kathrine Cox were also present. The operator was represented by Harry Bowyer, solicitor, of Smith Bowyer Clarke.

Further information

9. Shortly before the inquiry I was provided with a copy of an audit carried out by Christopher Davis on 3 May 2018. His conclusion was that the new transport manager (Mr Lewis) "has started to put systems in place to improve the company's compliance. There are many areas of compliance that need to be addressed and then kept at the required standard and the company needs to allocate the resources to make it fully compliant as quickly as possible." One of the weak spots continued to be drivers' hours management: there were a total of 26,380km over the five specified vehicles where the driver could not be identified (largely because of missing downloads). Mr Davis also commented that vehicle safety inspection records were not making their way quickly enough into the vehicle files: there was no record of several inspections which had been supposedly carried out in April or early May 2018.

Evidence of Richard Morrin

10. Mr Morrin made the following points:
 - i) his first two transport managers, Sandra Smith and David Forrester, had not carried out their functions properly or at all;
 - ii) while Jeffrey Smith, the third transport manager, had introduced tachograph downloading and analysis, he had failed to put vehicle files in order or get the operator to where it needed to be on compliance;
 - iii) RM had not fitted the AdBlue emulator: it must have been present when purchased. No one had noticed that the vehicle was not using AdBlue or that the Ad Blue gauge was permanently recording a half-full tank;
 - iv) he had not lent his tachograph card to driver Dean Henry. He accepted however that neither he nor Henry had made a manual record of the positioning journeys to and from the switchover point. Nor had he (Morrin) carried out the required walkround check when taking over the vehicle. He accepted that he had not made a record of his other work (as a director) on the days in question and that by taking over a vehicle in the middle of the night after having worked as a director during the day he had breached the daily rest requirements. He presented some run sheets which recorded that the vehicle had been driven by Mr Henry and Mr Morrin on the days in question;
 - v) he was looking at taking on IRTEC qualified staff in order to improve the poor MOT pass rate. He accepted that he had not carried out his promise to purchase a decelerometer for the workshop but this was because he had decided to invest in a roller brake testing facility instead. Meanwhile vehicles were being given roller brake tests by an outside provider ;

Evidence of Derick Lewis

11. Mr Lewis stated that he had started work as a transport manager on 1 February 2018. He had found no vehicle files. He had addressed this issue and had also made sure that the right vehicles were specified: he had found that some vehicles on the licence were no longer in use and that some vehicles in use were not on the licence. He had not been fully aware of how the Tachomaster system functioned but he had learnt on the job and was booked on a specialist course on 6 June. Richard Morrin had acted on all his suggestions and had spent money on improving compliance.

Evidence of Jeffrey Smith

12. Mr Smith said that he had produced drivers' hours infringement reports and missing mileage reports during his time as transport manager. He had resigned because he did not think that Richard Morrin was treating compliance seriously. He had tried to introduce vehicle files but had been told by Mark (the administrator) that they would take up too much room in the office.

Concluding submission

13. Summing up, Mr Bowyer accepted that most of the operator's effort had been made since the receipt of the call-up letter. But this was better than simply awaiting the inquiry. Mr Morrin was booked on an operator licence management course; there was a Tachomaster course for Mr Lewis and CPC courses booked for drivers. Evidence had been presented that Mr Morrin had not lent his card to driver Henry. The operator had not been aware of the AdBlue emulator present on one of its vehicles. On balance the operator could be trusted to comply in future. Suspension of the licence would cause it serious damage by preventing it from being able to fulfil an important sub-contract. It could survive a curtailment.

Findings

14. The operator 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 NO_x (amongst other substances), the vehicle does not comply with requirements relating to conformity of production. AdBlue is a chemical which reduces nitrogen oxide (NO_x) emissions from diesel engines. Its use is essential for many vehicles to meet Euro 5 or better emissions standards. The device found had the effect of turning off the use of AdBlue: the stated maximum NO_x emission levels of the vehicle were thus being exceeded. I accept that the operator did not fit the device, but it was negligent in not spotting that it was fitted. I would expect a professional HGV driver to be curious that the vehicle apparently never needed refilling with AdBlue and that the gauge never moved from half-full. I would expect an operator to monitor a vehicle's use of fuel and AdBlue and to notice if it was not using any.
15. The operator has lacked professional competence for much of its life. The first transport manager Sandra Smith never turned up and was never paid. The second, David Forrester, was wholly useless. The third, Jeffrey Smith, lasted only three months and clearly the relationship between him and Richard Morrin was dysfunctional. The fourth, Derick Lewis, only started work on 1 February 2018. Even today he has not submitted his certificate of professional competence to the central licensing unit in Leeds.
16. The operator has failed to fulfil its undertaking to ensure the observance of drivers' hours rules (Section 26(1)(f) of the 1995 Act refers). No downloads were performed for the first year of the licence. Serious infringements of the drivers' hours rules were committed, not least by the director himself. There is still a large amount of missing mileage and driver infringements today.

17. The operator has failed to fulfil its undertaking to keep vehicles fit and serviceable. The MOT pass rate is very poor and the vehicles have incurred roadworthiness prohibitions (Section 26(1)(c)(iii) also refers).
18. The operator has operated vehicles which were not specified on the licence.

Conclusion

19. This operator has come very far below the compliance standards it signed up to when applying for the licence and which the public has a right to expect. Only in the last few weeks has it made any significant effort to improve. Richard Morrin has not treated compliance with the respect it deserves: I saw touches of his insouciant and over-confident approach during the hearing. He displayed little awareness of how negligent his conduct has been. Only very recently, with the benefit of advice from solicitors and transport consultant, does the penny seem to have dropped and greater efforts to comply made. But the consultant's report from as recently as 3 May made clear how much road there was still to travel.
20. I conclude that the operator's conduct has been "severe to serious" when measured against Annex 3 of the Senior Traffic Commissioner's Statutory Guidance Document 10. There have been persistent operator licence failures with an inadequate response. I have seriously considered revoking the licence, which is a potential outcome for the "severe to serious" category, but I have concluded that I can – just – be confident that the operator has at last got the message and is likely to comply in future. Nevertheless, in line with the STC's guidelines, I consider that a meaningful suspension period - 28 days - is merited, to drive home to the operator the unacceptability of the way in which it has managed the licence for its first two years and to give it a period in which to ensure that the necessary systems and expertise are at last in place.
21. If such a period of suspension puts the operator out of business then, borrowing from the words of the Upper Tribunal in the Dundee Plant Hire case, "so be it".

Transport manager repute

22. I have decided not to remove Jeffrey Smith's good repute. It is plain that he found it difficult to work with Mr Morrin and with others at the company. There is however some evidence that he made improvements – introducing the Tachomaster system for instance and producing driver infringement reports. He was not fully effective – for example he failed to identify the presence of the AdBlue emulator on a vehicle and his excuse for failing to establish vehicle files is weak. In his favour is the fact that he resigned when he realised that many of his efforts to improve compliance were falling on stony ground. The removal of his good repute, in the circumstances, would be disproportionate.

Transport manager Derick Lewis

23. I would be prepared to accept the nomination of Mr Lewis as transport manager provided he submits to CLO in Leeds the original of his transport manager CPC qualification by 28 June 2018. If he does not do this, the operator will (again) lack professional competence. I am not prepared to grant any further period of grace so if the deadline is not met (or a valid nomination for another TM not submitted by the same date) the licence will be revoked under Section 27(1)(a) at that point without a further public inquiry.

Nicholas Denton

Nicholas Denton
Traffic Commissioner
25 May 2018