



WEST MIDLANDS TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 6 DECEMBER 2018

OPERATOR: HEAVY METAL MOVEMENTS LTD

LICENCE OD2003109

Decision

1. The standard international goods vehicle operator's licence held by Heavy Metal Movements Ltd is revoked with effect from 0001 hours on 19 January 2019, pursuant to Sections 26(1)(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 Raymond Blackley is lost, pursuant to Schedule 3 of the Goods Vehicles (Licensing of Operators) Act 1995. Under paragraph 16 of that Schedule, he is disqualified for the period of three years with effect from 0001 on 19 January 2019 until 0001 hours on 19 January 2022 from acting as a transport manager on any operator's licence in the European Union.
3. Raymond Blackley 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 19 January 2019 and terminate at 0001 hours on 19 January 2022.

Background

Operator details

1. Heavy Metal Movements Ltd holds a standard international goods vehicle operator's licence (OD2003109) for four vehicles and six trailers. There are three vehicles in possession. The sole director of the company is Raymond Blackley, who is also the nominated transport manager. The licence was granted on 19 July 2017 after a public inquiry which I had called to determine what if any links there were between Heavy Metal Movements Ltd and John Bruce, a notorious and convicted waste criminal with a long history of illegal HGV operation and of using others as fronts for his continued operations.

July 2017 public inquiry

2. At the public inquiry on 19 July 2017, Mr Blackley told me that he had known John Bruce for seven years. He had purchased the vehicles he intended to operate from Mr Bruce: Heavy Metal Movements Ltd had insured them in its name and had refinanced them through Haydock. Mr Bruce's business, UK Plant Services, had paid Heavy Metal Movements Ltd to remove waste from Ridgeway Park Farm, Mr Bruce's illegal waste site. Mr Blackley told me that Heavy Metal Movements Ltd would be operating in an entirely different sector from UK Plant Services – it bought and sold industrial metal. Mr Blackley stated that he was also a director of Biomass Technologies Ltd. He did not mention being the director of any other company. He emphasised that he had no other connection with John Bruce other than doing paid-for work such as waste clearance. At the conclusion of the inquiry I granted the application for a licence for four vehicles, with an undertaking that John Bruce would not be involved with the operator in any capacity whatsoever.

DVSA stop

3. In December 2017, DVSA stopped a vehicle VU11 BKE at the roadside and issued it with an immediate prohibition because the trailer parking brake was not working. The vehicle was displaying a Heavy Metals Movements Ltd licence disc and the driver, Brian Ingram, stated he was working for that company. The vehicle, however, had never been specified on Heavy Metal Movement's licence and no such disc had therefore ever been issued. In a subsequent interview with DVSA in March 2018, Mr Blackley stated that he had never operated vehicle VU11 BKE and had not used driver Ingram, although tachograph data from the vehicles on Heavy Metal Movements' licence showed that Mr Ingram had in fact driven the vehicles specified on the company's licence on two occasions in October and November 2017. Mr Blackley said that this must have been arranged by another driver without his knowledge.

New public inquiry

4. I was concerned by the above report and decided to call the operator to a public inquiry. The call-up letter was sent on 31 October 2018, citing Section 26(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, Raymond Blackley was also called in his capacity as transport manager to consider his repute. Brian Ingram was called to a parallel driver conduct hearing.

Further information

5. Shortly before the inquiry, I received a letter from Mr Blackley. The letter made the following points:
 - i) VU11 BKE and another vehicle were being operated by UK Plant Services (John Bruce's business). Mr Blackley had taken driver Ingram in his (Mr Blackley's) van to a body shop premises in the Midlands to pick up one of the vehicles for Mr Ingram to drive back to base;
 - ii) he had been informed by DVSA that Mr Ingram had driven vehicle MV12 SFF on 25 October 2017. But at this time the vehicle was not owned by Heavy Metal Movements: it had been returned to John Bruce and removed from Heavy Metal Movements' licence [in fact a check confirmed that it was not removed from that licence until 25 November 2017];
 - iii) he believed that John Bruce had told driver Ingram to say that he was working for Heavy Metal Movements, in an attempt to disguise his continuing operations without a licence;

6. In preparation for the inquiry I also noted that:
 - i) Raymond Blackley was the sole director and shareholder of a company called UK Plant Services Ltd, incorporated on 24 April 2018;
 - ii) Raymond Blackley was the sole director and shareholder of a company called UK Plant and Sales Ltd, incorporated on 25 April 2017;
 - iii) between 6 February 2017 and 20 August 2018 Raymond Blackley had been the sole director of a company called UK Plant and Haulage Management Ltd. The company secretary and sole shareholder throughout this period was John Bruce. The company had been dissolved via compulsory strike off on 4 July 2017 but had been restored, following an appeal by Mr Blackley, on 10 April 2018.

Holding of public inquiry

7. The inquiry was held in Birmingham on 6 December 2018. Present were director and transport manager Raymond Blackley, as well as DVSA vehicle examiner Paul Matthews and traffic examiner Edward Evans.
8. I asked Mr Blackley why he had not mentioned at the inquiry in July 2017 that he was the director of UK Plant and Sales Ltd and of UK Plant and Haulage Management Ltd, the latter company being owned by John Bruce who was also the Company Secretary. He had mentioned only his directorship of Biomass Technologies Ltd. Mr Blackley stated that he had not considered the other companies relevant. He had only become director to try to ensure that monies owing to him by John Bruce were paid.
9. I asked Mr Blackley why, if he was endeavouring to avoid association with John Bruce, he had set up a company, UK Plant Services Ltd, in April 2018 using the same name – UK Plant Services - as the trading name used by Mr Bruce as a sole trader. I noted that Mr Bruce had been sentenced to 26 months prison in May 2018 for serious waste offences. Mr Blackley said that it seemed like a good name for the business.
10. I asked Mr Blackley why he had only become aware in March 2018 that Mr Ingram had driven Heavy Metal Movements' vehicles on two occasions in October and November 2017. Surely the information downloaded from the vehicle units would have revealed this long before? Mr Blackley stated that he had only just obtained a company tachograph card in March 2018, after making several applications to the DVLA. I pointed out that the licence had been granted in July 2017, and that the operator should have seen to it that it acquired a company tachograph card as soon as possible thereafter. Instead it had taken eight months.
11. Mr Blackley had not brought any vehicle maintenance records or drivers' hours infringement reports, despite an explicit request in the call-up letter to do so. He stated that he himself was on the road almost all the time and that his administrator had left and had not been replaced. He had asked his ex-wife to submit the maintenance and drivers' hours records. She was certain that she had done so (submitting the drivers' hours records in the form of a dongle). I observed that they were not in the envelope which we had received – this had contained Mr Blackley's letter to me, details of finances, a maintenance contract and a vehicle service agreement, and five driver defect report books. There were no maintenance or drivers' hours records.
12. Mr Blackley said that he had had only a few days in which to get the evidence together. I pointed out that the call-up letter and brief had been signed for by a "D Campbell" on 2 November, almost five weeks before the public inquiry. Mr Blackley said that this was his sister who had not passed the documents to him in a timely manner. I observed that we had written to the correspondence address of the company: it was up to him to make arrangements within the company so that important correspondence was drawn to his attention.

13. Five driver defect report books were among the documents supplied: there was a total of one defect reported over these five books. Mr Blackley stated that defects were dealt with as they arose.
14. In closed session we discussed financial standing. The evidence provided of financial standing over the three month period 1 July to 31 October 2018 showed an average available balance of £13,220, well short of the £21,150 necessary to support four vehicles. Mr Blackley stated that a bank letter promising further available finance of £30,000 was still valid. However, I could find no record of such a letter ever having been presented and Mr Blackley provided no evidence that it was still in force even if it had originally existed.

Findings

15. After considering all the evidence I have reached the following findings:
 - i) the operator lacks appropriate financial standing. The evidence supplied shows that it is well short of the amount necessary to support four vehicles (Section 27(1)(a) of the 1995 Act refers);
 - ii) Raymond Blackley's business involvement with the convicted criminal John Bruce is much more substantial than he led me to believe at the public inquiry in July 2017. At that inquiry he told me that he was fully aware of Mr Bruce's nefarious activities and that, while he had purchased some vehicles from Mr Bruce and cleared some waste for him, there was no ongoing connection between the two. This was simply false. I find that Mr Blackley has knowingly misled me in an attempt to conceal the closeness of his relations with Mr Bruce. I can no longer trust Mr Blackley to tell the truth and I find that he is consequently not of good repute (Section 27(1)(a) and (b) of the 1995 Act refers);
 - iii) the operator has failed to fulfil its undertaking to ensure that laws relating to drivers' hours and tachographs are observed (Section 26(1)(f) of the 1995 Act refers). Given that the operator did not acquire a company tachograph card until March 2018, some eight months after its licence was granted, it clearly cannot have been downloading vehicle tachograph units at least every 90 days, as required by law. No evidence was provided to substantiate the claim that the operator had to make several applications before DVLA supplied a company tachograph card;
 - iv) the operator has failed to fulfil its undertakings to ensure the lawful driving of vehicles. The operator claimed to be unaware that driver Ingram had driven its vehicles on at least two occasions, which demonstrates that it was failing to check driver entitlement before drivers took out its vehicles;

Conclusions

16. The operator lacks financial standing and revocation of the licence is therefore mandatory under Section 27(1).
17. Raymond Blackley is not of good repute. He is an associate of known criminal John Bruce. He misled me about this relationship at the July 2017 public inquiry. As he is not of good repute, he cannot act as a transport manager. The licence now lacking a transport manager, revocation is also mandatory under Section 27(1).
18. Prior to arriving at these conclusions I asked myself the Priority Freight question of how likely it is that the operator will comply in the future. Given Mr Blackley's attempts to mislead me, and given his failure to take the call-up letter seriously and bring the requested maintenance and drivers' hours records, I have no hesitation in concluding that it is extremely unlikely. Had I been aware of the true nature and extent of Mr Blackley's association with Mr Bruce at the July 2017 public inquiry I would not have granted the application in the first place. 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 19 January 2019, 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 Raymond Blackley 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 100 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 or deceit is involved. This is Mr Blackley's first disciplinary public inquiry, but I have found at it that he has ignored the very clear strictures against involvement with Mr Bruce that I laid down at the first one and that he misled me at that first inquiry about the extent of his association – omitting to mention that he was the director of a company of which Mr Bruce was the sole shareholder and secretary. He has been deceitful. I have therefore 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 Blackley's good repute is lost I must also disqualify him under paragraph 16 of Schedule 3 to the 1995 Act. I am disqualifying him from acting as a transport manager for the period of three years: the reason for this period is the same as that which applies to his disqualification from holding a licence.

Enforcement of this decision

22. I am requesting DVSA and the Police to employ their ANPR and on-road resources to identify and stop vehicles operated by Heavy Metal Movements Ltd on and after 19 January 2019, as I have limited faith in the company's complying with this decision. Any such vehicle they find carrying goods on the public road on or after this date will be liable to be impounded.



Nicholas Denton
Traffic Commissioner
18 December 2018