



WEST MIDLANDS TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 22 OCTOBER 2018

OPERATOR: FOREIGN CAR SPARES LTD

LICENCE OD1084211

Decision

1. The restricted goods vehicle operator's licence held by Foreign Car Spares Ltd is suspended for 28 days with effect from 0001 hours on 1 January 2019 until 0001 hours on 29 January 2019, pursuant to Sections 26(1)(c)(ii) and (f) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").
2. Under Section 26(6) of the 1995 Act, I direct that the operator's specified vehicle may not be used under any other operator's licence during the period of suspension.
3. The licence is curtailed, with immediate effect and for an indefinite period of time, from four vehicles to one, pursuant to Section 26(1)(c)(iii) of the 1995 Act.

Background

Operator details

1. Foreign Car Spares Ltd holds a restricted goods vehicle operator's licence (OD1084211) for four vehicles. On the date of the inquiry there were two vehicles specified on the licence, although it became apparent that one of them (W285 JJA) had in fact been sold several years previously. The directors of the company are Afsar Khan and Dawood Khan.

DVSA report

2. In July 2018, I received a DVSA report which stated that:
 - i) at a roadside stop on 12 January 2018 the driver of the operator's vehicle FS55 FCS had been found to be carrying more than the legally permitted maximum of 42 days' worth of tachograph charts;

- ii) checks of records present in the vehicle showed that it had been driven by director Afsar Khan who did not have the required certificate of professional competence (driver CPC);
- iii) the vehicle had also been driven by an Ershad Khan who likewise did not possess a CPC.

Other information

- 3. The operator's prohibition record was poor: I noted that its vehicles had incurred three roadworthiness prohibitions from three roadside encounters over the last two years: for an inoperative indicator (on the 12 January 2018 stop); for significant deterioration in the exhaust (27 March 2017) and two inoperative indicators (7 March 2017). The MOT initial pass rate over the last five years was only 37% (three passes from eight presentations) against a national average of 82%.
- 4. At the stop on 27 March 2017 the operator's driver, Omar Shireen, was found to be driving otherwise than in accordance with a licence and of exceeding the maximum permitted axle weight. He was convicted of the former offence in October 2017 and received a fixed penalty for the latter.

Public inquiry

- 5. I was concerned by the above information and decided to call the operator to a public inquiry. The call-up letter was sent on 17 September 2018, citing Section 26(1)(c)(i), (ii) and (iii) and (f) of the 1995 Act.

Holding of public inquiry

- 6. The inquiry was held in Birmingham on 22 October 2018. Present was director Dawood Khan and DVSA traffic examiner Robert Lees.
- 7. In mitigation, Mr Khan made the following points:
 - i) they had been ignorant about driver CPC rules. Ershad Khan had had his CPC at some stage but it had expired. They had not realised that it needed to be renewed every five years. Ershad Khan had now requalified and Afsar Khan was half way through his CPC modules;
 - ii) he was booked on an operator licence management course;
 - iii) on 27 March 2017 driver Shireen had collected two vehicles which were different to his usual load which meant that he exceeded the weight he was permitted to drive.
- 8. I examined the operator's maintenance records and found that some safety inspection sheets showed that defects were not being rectified. For example, the inspection sheet dated 13 September 2017 recorded defects such as worn pedal rubbers, seat belts and an insecure indicator light all of which defects were still present on the next six week inspection. The inspection sheets did not record any rectification.
- 9. No driver defect reports were brought to the inquiry, despite these being explicitly requested in the call-up letter.
- 10. I examined tachograph charts and noted that they all recorded driving as the first activity of the day: there was no record of other work at the start of the shift, as I would have expected if drivers had been carrying out a proper walk-round check.

11. Insufficient evidence of financial resources was brought to the inquiry. I adjourned the inquiry for a written decision and pending provision of financial information. This was supplied some days later and showed sufficient available funds.

Findings

12. After considering all the evidence I have reached the following findings:
- i) 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). It failed to ensure the return of charts within 42 days. It failed to ensure that drivers were recording walk-round checks correctly on the charts.
 - ii) the operator has failed to fulfil its undertakings to ensure the lawful driving of vehicles. Two drivers have driven without a CPC and a third has driven without the correct entitlement;
 - iii) the operator has failed to fulfil its undertakings to ensure that vehicles are kept fit and roadworthy. The prohibition rate is very high (Section 26(1)(c)(iii) refers) and the MOT pass rate is very poor.
 - iv) the operator's driver has been convicted of driving otherwise than in accordance with his licence (Section 26(1)(c)(ii) refers).

Conclusions

13. There has been a high degree of ignorance and neglect in the way in which this operator has managed its licence. The degree of non-compliance is serious to severe as defined by the Senior Traffic Commissioner's statutory guidance document 10 and the mitigating factors adduced are of relatively little weight. It would have been more impressive for example if the director had actually attended the operator licence course before the inquiry, rather than merely booked it. Against this background, I conclude that a suspension of 28 days is necessary and in line with the STC's guidelines, to bring home to the operator the seriousness of its non-compliance and allow it a period to design improved compliance systems and/or bring in outside expertise to assist. The suspension will take commence at 0001 hours on 1 January 2019.
14. I am also curtailing the licence indefinitely to its current level of one vehicle. I need to see at least six months fully compliant running before being prepared to amend or cancel the curtailment.



Nicholas Denton
Traffic Commissioner
13 December 2018