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DECISION OF THE TRAFFIC COMMISSIONER FOR THE NORTH WEST OF ENGLAND

In the matter of the
Goods Vehicles (Licensing of Operators) Act 1995 (The Act)

NPH HAULAGE LIMITED
OC2003343

&

TRANSPORT MANAGER – RICHARD DALE

Public Inquiry at Golborne
on 24 January 2019.

Decisions

NPH Haulage Ltd

On findings in accordance with S.27 (1) (a) of the Act so far as good repute, financial standing and professional competence is concerned, and S.26 (1), (b), (e), (f) and (h) of the Act. I direct revocation of the licence on 8 February 2019 at 23:45 hrs.

Richard Dale TM

I find his repute is lost.
I disqualify him from holding office as a TM *indefinitely*.

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Background

1. **NPH Haulage Ltd** (OC2003343) (hereafter NPH) is the holder of a Standard National Goods Vehicle Operator's licence for 2 vehicles and 2 trailers, granted substantively on 28 February 2018, after a period of interim running from May 2017. Its sole director is Ms Nina Hatcher.
2. The nominated Transport Manager (TM) until his resignation on 1 September 2018 was Richard John Dale. He had been in post from the outset of the licence.
3. Whilst this operator's licence has no prior regulatory history, its existence came about in tragic circumstances following a serious road traffic accident occasioned to a vehicle on the licence of A Hodkinson, a sole trader (OC0288941), which involved an un-insured third party. **{REDACTED}**.
4. Mr Hodkinson's sole trader licence was marked as terminated on 5 January 2016: He had acted as TM on his own licence. Ms Hatcher subsequently obtained her licence in the name of her company to provide for her and her son, as a successor business to that of Mr Hodkinson.
5. The NPH licence has not been the cause of serious regulatory concern (before the events bringing it to this Public Inquiry). There have been no prohibitions (albeit no recorded encounters) and the 50% MOT pass rate reflects a single MOT failure for headlamp aim.
6. The resignation of the TM, Richard Dale, however triggered inquiries, when Ms Hatcher admitted that she was ignorant of his decision to resign, bringing into question the nature and extent of the role he was carrying out and the relationship between them.
7. From the papers before me, and having heard evidence from Ms Hatcher and Mr Dale, the former represented by Scott Bell, solicitor, at a Public Inquiry at Golborne on 24th January 2019, I noted the underlying facts are not in dispute. They can be appropriately set out here.

The circumstances

Professional competence:

8. Ms Hatcher had met, and become friends with Richard Dale, when his son was contracted to repair over an extended period, the cherished vehicle seriously damaged in the road accident, which precipitated Mr Hodkinson's death. Richard Dale worked in that business as a "yard man".
9. The two became friends and when it had become clear that Ms Hatcher wished to continue the haulage business, he was prepared to be nominated as its TM. It was common ground that this was intended to be a short-term arrangement.

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10. Both Ms Hatcher and Mr Dale accepted that whilst this business relationship continued *on paper* from May 2017 to September 2018, the reality was that throughout this period Mr Dale was no more than “a TM in name only”. He never visited NPH, which was based in Preston, Lancashire from his base in Malton, North Yorkshire. He played no part in the oversight of transport operations, and Ms Hatcher admitted that because of her long-term knowledge of the industry, in which she had worked for very many years, she had taken primary responsibility for the vehicles. She had planned to be the TM herself but had failed the case study part of the examination, and events, including the responsibility for her 9-year-old son and driving when possible, had prevented her undertaking a resit.
11. It was accepted by both Ms Hatcher and Mr Dale that the latter had never been paid, nor a rate for the job ever agreed and that their joint certification on the TM1 form submitted that a contract between them was in place, was a false one.
12. Neither had acted with the appropriate impetus to address this situation, which was entirely unacceptable from the first day of the operator’s licence. There was an acceptance by them that friendship and the desire to offer support for someone placed in difficult circumstances, had affected the exercise of good judgement. Before me, each identified letting the other down badly, and Mr Dale admitted, “deep down knowing what (he) was doing was wrong”. Only the non-payment of bills for repair work by his son had led him to the “drastic” decision to resign and bring matters to light, although no animosity existed between them.
13. Application is made for the appointment of a new TM now identified and more local to Ms Hatcher.

Financial standing:

14. Financial standing is not met and the operator requests a period of grace to resolve matters. It is accepted that standing has not been met for some time that no notice of such a material change was given and that simple reduction of the fleet to a single vehicle would not achieve the requirement.

Fit and serviceable vehicles:

15. My perusal of preventative maintenance records disclosed show some stretching of frequencies, inadequate first use checks by drivers and a vehicle with tyres at 1mm, which was allowed back onto the road with a decision made to “monitor”, even though the contractor described the need for a safety critical repair.

Submissions

16. I am asked to find that notwithstanding these findings, the licence be allowed to continue and Mr Dale to retain his good repute as a TM.

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17. I am referred to the straightforward and open presentation of both Ms Hatcher and Mr Dale. Indeed, they have “held their hands up” with no prevarication. The context for the scenario is a sad one. The adverse circumstances here described are not, as is sometimes the case, also reflected in serious compliance issues that would bring road safety sharply in to focus. Albeit that I was able to determine from my review of records produced issues of a type that ought to have been addressed by a competent TM, carrying out their proper role.

Consideration

18. I have weighed all of these matters, alongside the predominant concerns in this case, which probably lie slightly less in the arena of road safety but substantially in the realm of the protection of fair competition in the industry.

19. Any regulatory analysis would have to recognise that facilitating the continuation of an operator’s licence for some 15 months, without professional competence is a serious matter going to repute, whether as a company director or as a TM. Very significant issues of trust going forward are raised.

20. Such findings are compounded by the false statements made in the TM1 form and that this arrangement was a charade right from the beginning. I ask myself what message is given to the compliant industry if an operator is allowed to withstand such findings, and retain a licence, or their repute. I reach that conclusion even when I factor in the personal circumstances underlying these events. Whilst the parties before me have been honest and remorseful today, there is a gulf between their position with all possible mitigations of it and their lengthy period of misconduct, which is undermining of the licencing system, even when the director has no previous regulatory history.

Decision

21. In respect of the operator’s licence, having addressed the relevant case law, I conclude that I am unable to trust this director to be compliant at this time, and further that it is right that NPH is excluded from holding an operator’s licence. I record that the operator’s repute is lost in accordance with S.27 (1) (a) of the Act.

22. I step back from exercising my powers to disqualify either the company or Ms Hatcher, this despite my finding the company’s repute has been lost, as an act of mercy and in reflection of the circumstances that underlie the appalling decision-making of the protagonists.

23. For the record, I also make findings under S.26 (1), (b), (e), (f) and (h) of the Act. Also under S.27 (1) (a) so far as both financial standing and professional competence is concerned.

24. I am prepared to allow a short period to pass before revocation of the licence takes effect but I am not prepared for this to extend beyond 8 February 2019 at 23:45 hrs, to ensure an orderly closedown of activities.

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25. As far as Richard Dale is concerned, for the same reasons I conclude that the loss of his repute is an unavoidable consequence of his readiness to perpetuate an arrangement which he knew throughout to be a sham. Mr Dale tells me that he is looking to retire. I therefore disqualify him from holding office as a TM *indefinitely* on my finding that he has manifestly forfeited his repute.



Simon Evans
Traffic Commissioner
for the North West of England
28 January 2019