



WEST MIDLANDS TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 3 JANUARY 2019

APPLICANT: YASER KHALAYLA TRADING AS HALESFIELD MOTOR SPARES

Decision

1. The application for a restricted goods vehicle operator's licence for three vehicles made by Yaser Khalayla trading as Halesfield Motor Spares is refused, pursuant to Section 13B and 13C (2) and (4) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").

Background

Applicant details

1. Yaser Khalayla t/a Halesfield Motor Spares applied for a standard national goods vehicle operator's licence for three vehicles on 31 July 2018. The application was later downgraded to one for a restricted licence.

DVSA stop

2. The application was made after a 7.5 tonne vehicle operated by Mr Khalayla, RX51 EHK, was stopped by DVSA at the roadside on 28 February 2018. It was transporting damaged vehicles to Mr Khalayla's premises so that parts could be salvaged and exported. The driver was not using a tachograph. Mr Khalayla did not have an operator's licence, erroneously considering that he benefitted from the exemption from licensing enjoyed by recovery vehicles.
3. DVSA traffic examiner Peter Yarranton subsequently visited Mr Khalayla on 8 May 2018 and explained the law to him. He arranged for an information pack to be sent to Mr Khalayla. TE Yarranton told Mr Khalayla that should he be found to be operating before a licence was granted then he could be prosecuted and his vehicle impounded.

Further information

4. More than two months later, on 31 July 2018, Mr Khalayla submitted an application. On 7 August 2018 the central licensing office wrote to acknowledge receipt of the application. In bold text, the letter advised Mr Khalayla that "**you cannot lawfully operate goods vehicles with a gross plated weight exceeding 3.5 tonnes....until you have been granted authority to do so, the resulting grant fee has been paid and the licence documents issued. If you do so...you risk having your application refused.**"

5. Notwithstanding this warning, Mr Khalayla's vehicle was again stopped by DVSA on 26 September 2018 and found to be operating without a licence. TE Yarranton visited Mr Khalayla again on 11 December 2018 to interview him about this. Mr Khalayla stated that he had thought that TE Yarranton had told him in May 2018 that he could use the vehicles as long as he had applied for a licence.

Public inquiry

6. In the light of this persistent operating without a licence I decided to consider the application at a public inquiry. The call-up letter was sent on 20 November 2018 and the inquiry was held in Birmingham on 3 January 2019. Present were Yaser Khalayla, assisted by transport consultant Kasad Ali.
7. Mr Khalayla stated that he had applied for an interim licence and thought that because he had paid the fee for this he could operate. It transpired that Mr Khalayla had not in fact applied for an interim licence.
8. Mr Khalayla further stated that he had not known that he had to wait for the licence to be granted before he could operate. The traffic examiner had told him that once he had applied he could operate. I expressed doubt about this, particularly since this statement directly contradicted TE Yarranton's written report which stated that he had specifically told Mr Khalayla he could **not** operate before a licence was granted. I took Mr Khalayla to CLO's letter of 7 August 2018 and asked him why he had failed to realise from that that he could not commence operating until the application was granted. Mr Khalayla said that he had not read it.
9. Mr Khalayla had not brought the call-up letter nor associated bundle to the inquiry. Nor had he brought any documents relating to his proposed maintenance system or drivers' hours regime, despite being explicitly requested by the call-up letter to do so. In short, he has entirely failed to treat the licence application process and the associated public inquiry with the respect and attention required. I level the same criticism against transport consultant Kasad Ali: it is shocking that he allowed his client to appear at the inquiry without any documentation and that he did not verify Mr Khalayla's false claim to have applied for an interim licence.

Conclusion

10. Mr Khalayla embarked upon his business of transporting damaged and scrap vehicles without ever troubling to find out whether an operator's licence was required. A moment's research on the gov.uk website would have told him it was. One of his vehicles having been stopped on 28 February 2018 and found to be without the required licence, Mr Khalayla took no immediate action. TE Yarranton visited in person on 8 May 2018 and explained what Mr Khalayla needed to do, warning of the consequences of continued operation without a licence. Mr Khalayla took a further two and a half months to submit an application. Despite being warned explicitly by CLO's letter of 7 August 2018 not to operate until the application was granted, he continued to operate, his vehicle being stopped on 26 September while again transporting damaged vehicles.
11. Mr Khalayla has shown by his actions, related above, that he cannot be trusted to comply with the law. He has simply ignored it, despite several reminders of the potential consequences of doing so. He brought no material to the inquiry relating to his prospective maintenance and drivers' hours compliance regimes (Section 13C (2) and (4) of the 1995 Act refers). In the circumstances, I have no confidence at all that he will be a compliant operator. I find that he is not a fit person to hold an operator's licence (Section 13B refers).

Decision

12. The application is accordingly refused.

Future

13. Any future application from Mr Khalayla stands no realistic chance of success unless at least 12 months have passed without further illegal operation (with evidence provided) and Mr Khalayla has attended an operator licence management course. This is the bare minimum for a future application to be made: there is no guarantee that it would be successful.

A handwritten signature in cursive script that reads "Nicholas Denton". Below the signature is a horizontal line.

Nicholas Denton
Traffic Commissioner
3 January 2019