



WEST MIDLANDS TRAFFIC AREA
DECISION OF THE TRAFFIC COMMISSIONER
PUBLIC INQUIRY HELD IN BIRMINGHAM ON 23 JANUARY 2019
OPERATOR: ABC SKIP HIRE LTD
LICENCE OD1142930

Decision

1. The restricted goods vehicle operator's licence held by ABC Skip Hire Ltd is revoked with effect from 0001 hours on 16 February 2019 pursuant to Section 26(1)(c)(iii), (e), (f) and (h) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").
2. Balwinder Singh is disqualified for two years, from 16 February 2019 until 16 February 2021, 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.

Background

Operator details

1. ABC Skip Hire Ltd holds a restricted goods vehicle operator's licence (OD1142930) for six vehicles. The licence was granted in March 2016. On the date of the inquiry there were four vehicles specified on the licence. The sole director of the company is Balwinder Singh.

DVSA Investigation

Vehicle examiner

2. In November 2018 I received a report from DVSA vehicle examiner Andrew Jones who had carried out a maintenance investigation into the operator. Mr Jones reported that:
 - i) the operator's vehicles had been issued with four roadworthiness prohibitions from four encounters;
 - ii) the preventative maintenance inspections (PMIs) were not being carried out at the promised six week intervals;
 - iii) driver defect reporting was sporadic, ineffective and not enforced by the operator;

- iv) the MOT failure rate was 100% from nine presentations;
- v) vehicle NX07 DYS had been given an S-marked prohibition (denoting a serious maintenance failure) on 27 April 2017 for, amongst other things, an excessively worn brake pad with metal to metal contact with the brake disc. The defect had been reported on the previous PMI on 25 March, more than a month previously: clearly nothing had been done to rectify it;
- vi) the same vehicle had had a bald tyre identified at the PMI on 29 July 2017. But no immediate action could have been taken as the driver subsequently reported the bald tyre on his daily defect reports from 31 July to 14 August 2017 inclusive. During this period the vehicle had covered a further 1265 km;
- vii) vehicle AE55 ADZ had been specified on the licence in October 2017 but only one PMI report dated 18 August 2018 was available.

Public inquiry

3. Concerned by this report, I decided to call the operator to a public inquiry. The call-up letter was sent on 28 November 2018, citing Section 26(1)(c)(iii), (ca), (e), (f) and (h) of the Goods Vehicles (Licensing of Operators) Act 1995. The inquiry was due to take place on 23 January 2019.

Traffic examiner report

4. After the call-up letter had been issued I received a report dated 15 January from DVSA traffic examiner Kate Cox. In it she stated that she had visited the operator on 14 January 2019 and found that the company had no systems in place for managing digital tachographs despite operating a digital vehicle since March 2017. Balwinder Singh had agreed with her that he had in fact put no systems in place to ensure compliance with drivers' hours, either with digital or analogue vehicles. Ms Cox's report was forwarded by my office the same day (15 January) to the operator.

Public inquiry

5. The public inquiry took place in Birmingham on 23 January 2019. Present were Balwinder Singh, director, and DVSA vehicle examiner Andrew Jones. The company was represented by Mr Fiaz of Midland Solicitors.
6. In preparing for the inquiry I noted that the operator had had a further MOT failure, on 28 November 2018, since Mr Jones had compiled his report, making ten failures from ten presentations over the life of the licence.
7. I looked through the maintenance files presented by the operator at the inquiry and found some issues of concern. For vehicle FX53 CSZ there was a gap of more than seven months between PMIs on 6 January 2018 and 18 August 2018. There was a gap of more than seven weeks until the next PMI on 11 October 2018, suggesting that even after VE Jones's visit in September 2018 the stated six week PMI intervals were not being adhered to. All the PMI sheets had numerous defects, many of which, such as broken lights or non-functioning washers, should have been picked up by drivers on their daily walk-round check. Most driver defect reports reported no defects.
8. Vehicle SF53 FRX had had no PMI between 26 June 2018 and 14 November 2018, a gap of almost five months. Again, this post-dated the vehicles examiner's visit in September 2018. All PMIs contained numerous defects. The PMI sheet for 7 May 2018 was signed off by the maintenance contractor as "all defects must be repaired before drive on the road." There was no evidence that the defects were repaired.

9. The PMI for vehicle AE55 ADZ dated 18 August 2018 noted that the 2-year tachograph calibration had been due by 17 August 2018, the day before. The next PMI, on 29 September 2018, noted that the calibration was still overdue. The calibration was eventually carried out on 3 October 2018, seven weeks after the due date. The PMI sheet dated 5 January 2019 showed numerous driver detectable defects: the ABS warning light on the dash; nearside indicator light inoperable; air leak from foot brake when pedal pressed; number plate light inoperable; off side rear light lens broken; offside read marker light inoperable; passenger step loose/broken; washers not working. The driver defect report for the days 3, 4 and 5 January was a nil defect report. I noted that, despite the fact that the week at the top of the weekly report sheet was clearly headed "3/1/19 – 5/1/19", the driver had ticked the boxes for 1, 2 and 6 January as well. The uniform nature of the ticks and the fact that they related to days when the operator had not operated suggested strongly that the reports had been manufactured in haste after the event and were not true and contemporaneous records of a driver walk-round check. I also noted that the driver's signature on the defect reports bore no resemblance at all to his signature on his driving licence.

Evidence

10. For the operator, Mr Fiaz stated that the findings of the DVSA examiners were accepted. Balwinder Singh had put his faith in a qualified in-house fitter and in the compliance system he had inherited when he had taken over the business from the previous owner, a sole trader operator licence holder. Some PMI sheets had gone missing, possibly in a burglary (although no crime number for this existed). He was now having PMIs conducted by an outside maintenance contractor John Bailey (although it subsequently emerged that Mr Bailey was only identifying defects; they were then supposedly rectified by the in-house fitter). Lindsey Reid, Mr Singh's office manager, was now going to be put through the transport manager CPC exam and had received her study pack.
11. VE Jones examined the latest maintenance reports and noted that the same defects were reoccurring at subsequent PMIs: eg for vehicle SF53 FRX a leaking foot brake valve was reported on PMI sheets dated 16 June 2018, 14 November 2018 and 9 January 2019. It had been signed off as rectified in each case by the in-house fitter Jatinder Singh but it was highly unlikely that it had been properly repaired.

Closing submission

12. Mr Fiaz said that Balwinder Singh had learnt a lot from the DVSA investigations and the public inquiry process. He had relied over much on drivers carrying out checks correctly and on the in-house fitter knowing his trade. He realised now that this was a mistake. Matters would be remedied from today. He intended to contract out all maintenance, including rectification of defects. He would be prepared to reduce the number of vehicles on his licence from six to three if the traffic commissioner required it. He also intended to acquire newer vehicles which would be less prone to safety defects.

Findings

13. I adjourned the inquiry to take a written decision. After considering all the evidence I have reached the following findings:
 - i) the operator's vehicles have incurred four roadworthiness prohibitions from four encounters over the life of the licence, including one S-marked prohibition where a brake pad was worn down to the metal (Section 26(1)(c)(iii) of the 1995 Act refers). Another prohibition occurred at the annual MOT test, where a vehicle was found to have two wheel nuts loose and a tyre with tread worn away;

- ii) the operator has failed to have vehicles inspected at the six week intervals promised when it applied for the licence (Section 26(1)(e) refers). There are very large gaps in the PMI records. Even after VE Jones's visit there have been gaps of more than six weeks, as detailed above. The long list of defects at each PMI for each vehicle shows that inspections should in fact be at lower intervals than six weeks;
- iii) the operator has failed to fulfil its undertaking to keep vehicles fit and serviceable (Section 26(1)(f) refers). As well as the prohibitions referred to above, the MOT failure rate at 100% is appalling. Vehicles have also failed on numerous items: for example, at its test on 27 August 2018, vehicle SF53 FRX failed on steering, horn, lamps, exhaust systems, fuel tanks and system, speedometer/tachograph, and service brake performance. On 24 May 2018, vehicle FX53 CSZ failed on suspension, brake systems and components, steering, service brake performance and axles/wheel bearing. The operator's vehicles are clearly not in a roadworthy condition;
- iv) the operator has failed to fulfil its undertaking to ensure that drivers record defects promptly and in writing. I find that the driver defect records presented to me were clearly false records created afterwards, intended to convey the impression that drivers carried out daily checks and recorded them. Drivers have consistently missed obvious defects and no corrective action has been taken by Mr Singh. Depressingly, this poor performance has continued even after the operator was warned about the issue by VE Jones in September 2018.
- v) the operator has failed to fulfil its undertaking to ensure that the rules on drivers' hours and tachographs are observed. It has had a digital vehicle for almost two years yet the first driver card download data was only produced on 22 January 2019, the day before the inquiry. The operator does not have a company card to download from the vehicle unit. Analogue tachograph charts have not been properly analysed if they have been analysed at all;
- vi) Balwinder Singh has been extremely negligent in his management of the licence. He put his faith in other people (fitters and drivers) but completely ignored the multiple signs (in the form of MOT failures and prohibitions) that they were not doing their job. Despite acquiring a vehicle with a digital tachograph in March 2017, he took no action to acquire the necessary equipment to download and analyse data.

Conclusions

14. The operator has been operating seriously unroadworthy vehicles throughout the life of the licence and, despite VE Jones's visit in September 2018, continues to do so. MOT failure and prohibition rates of 100% and for multiple items were ignored by Balwinder Singh, despite being screamingly obvious warning signs that urgent corrective action was required. After VE Jones's visit he moved the PMIs back to a maintenance contractor but, incredibly, left rectification of the defects identified at the PMI in the hands of his clearly inadequate in-house fitter.

Balancing act and decision

15. I carried out a balancing act. On the negative side were the findings outlined above. There was little to put on the positive side, beyond Balwinder Singh's good intentions for the future and the fact that Ms Reid has received a transport manager CPC study pack. These factors are heavily outweighed by the company's failure over such a long period of time to ensure that its vehicles are roadworthy. This failure continues today. Given Balwinder Singh's management of the licence so far, and his inability to respond in any meaningful way to the shortcomings identified by VE Jones, I have no

confidence in his ability to turn things around. The answer to the *Priority Freight* question of how likely it is that the operator will comply in the future is “extremely unlikely”. The answer to the *Bryan Haulage* question of whether the operator deserves to go out of business is that it does. It has consistently over a period of almost three years sent onto the road seriously unroadworthy vehicles, posing a significant danger to the safety of other road users. It has ignored the many warning signs posted by MOT failures, prohibitions and the vehicle examiner’s shortcomings report. This is one of the worst cases of inadequate maintenance and poor vehicle condition that I have seen, I have no hesitation in revoking the licence under Section 26(1)(c)(iii), (e) and (f) of the 1995 Act.

16. The revocation will take effect at 0001 hours on 16 February 2019. I am allowing this period in order for the operator to recover its skips that are out with customers. I am allowing less than the 28 days normally given, because of the serious nature of the roadworthiness issues identified above.

Disqualification of Balwinder Singh

17. I have also considered whether to disqualify Balwinder Singh from holding an operator’s licence and from being a director of any company holding such a licence. Given his gross failure to manage the licence compliantly and his failure to take any meaningful or effective corrective action after VE Jones’s visit in September 2018, I have concluded that a period of disqualification is justified. Mr Singh needs time out of the industry to reflect on what went wrong and to undergo the necessary change of mindset in which compliance is accorded the necessary priority. He must understand that operating HGVs is a serious business and that the rules and regulations which apply to it must be observed.
18. 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, which this is. Given the seriousness of the road and vehicle safety issues which the inquiry has uncovered, as well as Mr Singh’s sustained neglect of the problems, I do not consider a disqualification at the lower end of this range appropriate. Because Mr Singh has been negligent rather than deliberately circumventing the law I am imposing a disqualification of two years - in the middle of the range rather than at the top.



Nicholas Denton
Traffic Commissioner
24 January 2019