



SOUTH EASTERN AND METROPOLITAN TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD AT WEST CROYDON ON 15 MARCH 2019

OPERATOR: J&P SCAFFOLDING LTD

Decision

1. The restricted licence OK1133415 held by J&P Scaffolding Ltd is revoked with effect from 0001 hours on 28 April 2019, pursuant to Section 26(1)(h) of the Goods Vehicles (Licensing of Operators) Act 1995 (“the 1995 Act”).
2. Company director Jacek Pawlaczyk is disqualified for two years, from 28 April 2019 until 28 April 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 and licence history

1. J&P Scaffolding Ltd holds a restricted licence for two vehicles, with the authorised operating centre at Rear of 400 Edgware Road, London NW2 6ND. The sole director of the company is Jacek Pawlaczyk. The licence was granted in November 2014.
2. The company was first called to a public inquiry on 12 February 2016. On that occasion I suspended the licence for five days after I had found that Mr Pawlaczyk had no understanding of the responsibilities of an operator, had failed to attend three seminars for new operators run by DVSA and had been slow to take improvement action following a visit from DVSA. Mr Pawlaczyk undertook to attend an operator licence management course by 30 April 2016, which he subsequently did.

DVSA report

3. In January 2019 I received a report from DVSA vehicle examiner xxxxx . He reported that he had visited the operator in September 2018 and had found various shortcomings, viz:
 - i) a high MOT final failure rate of 30%;
 - ii) excessive intervals between safety inspections on a couple of occasions;
 - iii) no metered brake tests were being carried out;
 - iv) safety inspection sheets not being signed off by the maintenance provider;
 - v) operator using an unauthorised operating centre in Hounslow, London TW6 2ND.
4. xxxxx further reported that although Mr Pawlaczyk had started the visit with a perfectly pleasant manner, when his attention had been drawn to the shortcomings his mood had changed. He had shouted at xxxxx that he (Mr xxxxx) did not know what he was doing and that he had recently got a good score from DVSA. Mr xxxxx had attempted to explain that this was a traffic examiner report concerning the drivers' hours regime, not maintenance, but Mr Pawlaczyk had refused to listen. Mr xxxxx stated that so threatening was Mr Pawlaczyk's behaviour that he had been scared for his life and had pleaded with the maintenance provider (present for part of the meeting) not to leave the company's office without him.

Public inquiry

5. I was very concerned by this report and decided to hold a public inquiry. The call-up letter was sent on 28 January 2019 citing Section 26(1)(a), (c)(iii), (ca), (e), (f) and (h) of the 1995 Act. The inquiry was also due to consider the application by the operator, made in June 2018, for an increase to four vehicles all to be based at the new Hounslow site.
6. The inquiry took place in West Croydon on 15 March 2019. Present were company director Jacek Pawlaczyk, with Charles Stansfield, solicitor, representing. DVSA vehicle examiner xxxxx and senior vehicle examiner xxxxx were also present.
7. Mr Stansfield explained that Mr Pawlaczyk had been disappointed that Mr xxxxx had found shortcomings and had been angry with the maintenance provider, who had been failing to sign vehicles off as roadworthy. Mr Pawlaczyk was a physically imposing man with a loud voice: he could give the impression of being intimidating.
8. Mr xxxxx said that once he had pointed out some shortcomings Mr Pawlaczyk had become aggressive, shouting and pointing his finger in his face. He had also smoked in Mr xxxxx face. He (Mr xxxxx) had panicked and had been shaking. The maintenance provider had come and calmed Mr Pawlaczyk down. Mr xxxxx had begged the maintenance provider not to leave him alone with Mr Pawlaczyk: the maintenance provider had had to leave and Mr xxxxx

had left with him. Asked by Mr Stansfield whether he had asked to leave, Mr xxxxx said that Mr Pawlaczyk had been standing in front of the door and he had been scared to ask to be let out. I asked if any of the verbal abuse had been racist: Mr xxxxx said it had not.

9. Senior vehicle examiner xxxxx stated that Mr Pawlaczyk had visited the DVSA office on 15 October 2018 for a discussion about his behaviour towards Mr xxxxx. Mr Pawlaczyk had assured him that he would send a letter of apology to Mr xxxxx but had subsequently failed to do this. Mr Pawlaczyk said that his solicitor (not at that time Mr Stansfield) had advised him not to apologise, on the grounds that this would be admitting fault.
10. Mr xxxx confirmed that Mr xxxxx had been off work with stress after the incident. He also confirmed that Mr xxxxx had never made any allegations of this kind in his years as a vehicle examiner.
11. Mr Stansfield accepted that Mr xxxxx had been upset by the encounter. But there was no allegation of physical violence, or of verbal abuse or of bad language (apart from one "bullshit"). Mr xxxxx had stated that he wanted to leave but had not put this to the test. In short, there was no evidence on which the traffic commissioner could conclude that Mr Palwaczyk had been deliberately aggressive.

Considerations

12. The public inquiry presented me with two very different versions of the encounter between Mr xxxxx and Mr Pawlaczyk on 4 September 2018. Mr xxxxx has been known to me for several years during my time as traffic commissioner for London and the South East. I have always found him to be a reliable and level-headed witness and, like Mr xxxxx, know that Mr xxxxx is not in the habit of making wild accusations. This is the first accusation of operator intimidation that he has made, to my knowledge. I have no hesitation in preferring Mr xxxxx version of events.
13. It is not acceptable for DVSA examiners to have to face aggressive and threatening behaviour from operators. I accept that Mr Pawlaczyk did not physically assault Mr xxxxx (there was no claim that he did) but I am also clear that Mr Pawlaczyk's shouting, smoking, and close proximity finger wagging did intimidate Mr xxxxx and caused him to fear what might happen next. An operator who indulges in such behaviour is not fit to hold a licence.
14. Mr Pawlaczyk might possibly have made amends by a fulsome apology but in the event chose not to do so even though he had agreed with the senior vehicle examiner that he would. If he was advised by a solicitor not to do so, it was extremely bad advice.

Conclusions

15. The shortcomings identified by Mr xxxxx were not especially serious and would have been unlikely to have resulted in serious regulatory action against the licence. But the verbal abuse and threatening behaviour by Mr Pawlaczyk puts a completely different complexion on events. The line between what is an acceptable and an unacceptable reaction to a shortcomings report was

crossed by a considerable margin. Operators who lie to DVSA or who (as in this case) behave in an aggressive manner calculated to intimidate DVSA staff cannot expect to retain their licence. I am therefore revoking the licence under Section 26(1)(h) – a material change to the licence in that its holder can no longer be judged fit to hold it. The revocation will take effect on 28 April 2019.

16. I also conclude that Mr Pawlaczyk's behaviour warrants his disqualification from holding a licence and from being the director of a company holding one. I consider that a two year disqualification is the minimum which is appropriate. I have taken into account that no physical assault or racial abuse took place, but it is clear to me that Mr xxxxx was put in genuine fear for his safety by Mr Pawlaczyk's aggressive behaviour and demeanour. Two years out of the industry should give time for Mr Pawlaczyk to reflect on his behaviour, understand that it has no place in a company which aspires to hold an operator's licence and resolve to conduct himself more appropriately in future.



Nicholas Denton
Traffic Commissioner
26 March 2019