



## WEST MIDLANDS TRAFFIC AREA

### DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 20 DECEMBER 2018

APPLICANT: CLEAVERS REMOVALS LTD

#### **Decision**

1. The application made by Cleavers Removals Ltd for a standard national goods vehicle operator's licence is refused, pursuant to Section 13A(2)(b) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").

#### **Background**

##### *Cleavers Removals Ltd*

1. On 23 May 2018, Cleavers Removals Ltd applied for a standard national goods vehicles operator's licence for six vehicles. The directors of the company at that time were Hardip Singh Bains and his son Baljit Singh Bains. The nominated transport manager on the application was Harminder Heer.

##### *Previous history of Hardip Singh Bains*

2. On the date of the above application Hardip Singh Bains trading as Cleavers Removals and Storage held standard national licence OD1021220. The licence lapsed on 30 June 2018 when the operator did not renew it. Before the licence lapsed, however, it had been the subject of a DVSA investigation in April 2018 after an S-marked prohibition (denoting a serious maintenance failure) had been issued in July 2017 for a vehicle with three loose wheel nuts out of six. DVSA vehicle examiner Gary Hickin visited the operator and found that:
  - i) there had been a change of entity in that the vehicles were being operated by a limited company, Cleavers Removals Ltd rather than by Hardip Singh Bains as a sole trader;
  - ii) there was a high MOT failure rate of 38% over the past two years (and 56% over the past five years (national average 16% and 18% respectively);
  - iii) very few safety inspection reports were available. Three vehicles had only two inspection reports each, although inspections were supposed to be carried out every 11 weeks. A fourth vehicle had no reports at all. The reports which were

available were not fully completed. Vehicles were given a metered brake test only at the annual MOT;

- iv) although driver defect reports were available, none of the reports recorded any defect;
  - v) the transport manager David Cleaver was not available at the time of Mr Hickin's visit. Baljit Singh Bains, to whom Mr Hickin spoke, stated that Mr Cleaver was on holiday. A letter dated 30 April 2018 from Hardip Singh Bains confirmed that "our transport manager was on holiday when you visited our premises and is due back 4<sup>th</sup> May 2018."
3. In August 2018 the transport manager (on the sole trader licence) David Cleaver wrote to my clerk to say that he had sold the business 10 years ago to Hardip Singh Bains and had helped Mr Bains out for a while but was now retired. The clear implication of this letter was that Mr Cleaver had not been involved as transport manager with the operator for a considerable time: this was at odds with the claim by both Baljit and Hardip Bains that Mr Cleaver had merely been on holiday at the time of VE Hickin's visit in April 2018.
4. At a public inquiry into Hardip Singh Bains's licence in Birmingham on 6 September 2018 I found, amongst other things, that:
- i) the company Cleavers Removals Ltd, rather than the sole trader Hardip Singh Bains, had been the de facto operator from 2014 onwards. It had been operating without an operator's licence;
  - ii) nominal transport manager David Cleaver had not exercised continuous and effective management of the transport side of the business for several years;
  - iii) the directors of the applicant company Cleavers Removals Ltd, Baljit Singh Bains and Hardip Singh Bains had both sought to mislead VE Hickin about Mr Cleaver's involvement when they falsely claimed (Baljit when VE Hickin visited in April and Hardip in his letter to VE Hickin in May) that David Cleaver's absence was due to him being on holiday. Because of this deception, I found that Hardip Singh Bains lacked good repute (I was not able to reach a similar finding re Baljit Singh Bains as he had not been called to the public inquiry);
  - iv) the sole trader licence was operated in a highly non-compliant way over an extended period of time. All this appeared to have taken place when the person in charge was Baljit Singh Bains (Hardip Singh Bains being absent through illness).
5. My full written decision of 10 October 2018 is attached as an annex to this decision. I stated in that decision that if Cleavers Removals Ltd did not request a public inquiry to consider its application by 2 November 2018, then I would refuse it under Section 13A(2)(b) and 13C(2) and (4) of the 1995 Act.

**Public inquiry to consider the application from Cleaver Removals Ltd**

6. The company did request a public inquiry to consider its application: this was duly held in Birmingham on 20 December 2018. Present were (now sole) director Baljit Singh Bains and Harry Bowyer, of Smith Bowyer Clarke, representing the company. A new prospective transport manager, Mr Merilees, also attended.
7. For the applicant, Mr Bowyer made the following points:

- i) Hardip Singh Bains had now left the business;
  - ii) Baljit Singh Bains had not previously been involved in the transport side of the business. The failures in maintenance and drivers' hours systems had been down to his father rather than him;
  - iii) he (Baljit) had attended an operator licence management course in September 2018 and was determined to run compliantly;
  - iv) he had a new prospective transport manager who was recently qualified and did not want to blemish his record by being associated with a non-compliant operation;
  - v) the company had been using leased-in 3.5 tonne vehicles since the end of June 2018 (when the sole trader licence had been discontinued). The HGVs on the sole trader licence had been parked up since then, only moving round the block to warm the engines up;
8. I asked to see evidence that the invoices for the hire of the 3.5 tonne vehicles had actually been paid by Cleavers Removals Ltd. I was told that the invoices had been paid in cash, so no such evidence could be provided. Further questions elicited the information that much of the company's income was in cash and all the 16 casual staff were paid in cash. This appeared a highly dubious practice to me, and one which I will be referring to HMRC for possible follow-up action.
9. At the conclusion of the inquiry I reserved my decision pending provision by the company of digital tachograph data to back up its statement that vehicles had been parked up and had not been in commercial use since 30 June 2018.

*Further information*

10. On 3 January 2019 my clerk received from Baljit Singh Bains some of the data requested. It did not coincide with the statement made at the inquiry on 20 December that the vehicles have been parked up since July 2018 and had only moved for maintenance or "warming up" purposes. I noted that one vehicle had been driven 1760 km and the other 810 km over the period 5 September to 20 December 2018. These were not huge amounts but indicated much more than the odd movement for maintenance. For example, vehicle BU06 LTK was driven for 110 km on 28 November 2018 and a further 162km over the next four days. This does not seem consistent with simple maintenance movements, particularly since the company's maintenance contractor was only 1.6 miles away from the operating centre. It appeared to me rather to be consistent with the vehicle being used in commercial service on days when the 3.5 tonne vehicles did not suffice.
11. I also noted that data on vehicle movements from 1 July to 5 September 2018 had not been provided at all. I therefore instructed my clerk to ask Baljit Singh Bains for his comments on the apparent discrepancy between the statement at public inquiry and the data subsequently provided.
12. On 9 January 2019 Mr Bains replied, reiterating that the vehicles had only been moved when shunting in the yard, driven around the block, or driven long enough to get the engine warmed up. He had thought this acceptable as the vehicles were empty and not carrying any goods. Had the vehicles been left stationary all this time he was sure that they would have more issues with them in terms of maintenance. On the subject of the missing July-August 2018 data, he stated that he had contacted TruTac but could only go as far back as September 2018.

## Findings

13. After considering the evidence I have made the following findings:
- i) Cleavers Removals Ltd has operated without a licence since 2014, relying in error on the sole trader licence of Hardip Singh Bains;
  - ii) Baljit Singh Bains has been a director of the company throughout that period;
  - iii) Baljit Singh Bains was a director throughout the period of highly non-compliant operation, when the business lacked a transport manager and serious shortcomings in maintenance and drivers' hours oversight were revealed;
  - iv) Baljit Singh Bains deliberately misled the DVSA vehicle examiner in April 2018 when he claimed that transport manager David Cleaver was absent on holiday. He knew perfectly well that he had not exercised the functions of transport manager for many years;
  - v) vehicles BU06 LTK and BV57 FXD have, contrary to the statement made by Baljit Singh Bains at the 20 December 2018 inquiry, been operated in commercial service (albeit intermittently) since 30 June 2018. The mileage recorded by the tachograph data is simply not compatible with the odd movement for maintenance or warming up the vehicles. Baljit Singh Bains has been untruthful to me at that inquiry.
14. Sole director Baljit Singh Bains lied to the DVSA vehicle examiner in April 2018 and he failed to tell the truth about vehicle movements at the inquiry in December 2018. I have to be able to trust operators to comply with the rules and the above behaviour by the company's sole director shows me that it cannot be so trusted. The lack of truthfulness more than outweighs any positive factors, such as Mr Bains's attendance on the operator licence management course. I therefore find that company lacks the good repute necessary to hold a standard national goods vehicles operator's licence.

## Decision

15. As I have found that the company is not of good repute, I am accordingly refusing the application under Section 13A(2)(b) of the 1995 Act.



Nicholas Denton  
Traffic Commissioner  
30 January 2019