



WEST MIDLANDS TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 8 MAY 2019

OPERATOR: A J REMOVALS & STORAGE LTD

LICENCE OD1110976

Decision

1. The standard national goods vehicle operator's licence OD1110976 held by A J Removals & Storage Ltd is revoked with effect from 0001 hours on 1 July 2019, pursuant to Section 27(1)(a) and (b) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").
2. A J Removals & Storage Ltd and company director Azam Amin are disqualified for three years, from 1 July 2019 until 1 July 2022, from holding or obtaining any type of operator's licence in any traffic area and (in Mr Amin's case) 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.
3. Azam Amin has lost his good repute as a transport manager, pursuant to schedule 3 paragraph 1 of the 1995 Act. Under paragraph 16(2) of that schedule, he is disqualified, for a period of three years from 0001 hours on 1 July 2019 until 1 July 2022, from acting as a transport manager on any operator's licence.

Background

Operator details

1. A J Removals & Storage Ltd ("A J Removals") holds a standard national goods vehicle operator's licence OD1110976 for two vehicles. The sole director of the company is Azam Amin and he is also the nominated transport manager on the licence.

DVSA report

2. In December 2018 I received a report from DVSA traffic examiner James Phillips. He reported that he had stopped the operator's vehicle BU12 YTT on 21 May 2018. The vehicle was being driven by the director and transport manager Azam Amin. The

vehicle was laden with empty removals boxes and blankets and Mr Amin informed the traffic examiner that he was on a journey from a job in Bromsgrove back to the operating centre in Halesowen. A check revealed that Mr Amin was not using his tachograph card. TE Phillips issued him with a 24 hour driving prohibition and a £300 fixed penalty. He informed Mr Amin that the vehicle would be immobilised for the duration of the prohibition: Mr Phillips then went to fetch the immobilisation cable but when he returned to the parking area, Mr Amin had driven away.

3. On 4 June 2018 Mr Amin appealed to DVSA against the fixed penalty, stating that he had been using vehicle BU12 YTT on 21 May for personal use, on his day off, to do some gas work to a large range cooker, unpaid as a favour for a friend. Mr Amin was a qualified gas engineer and he provided a copy of his Gas Safe Register Card. Mr Amin attached to his appeal a letter dated 24 May 2018 from a Mrs XXXXXX from an address in Bromsgrove, confirming that Mr Amin was a friend of hers and that he had carried out unpaid gas work for her on 21 May.
4. TE Phillips subsequently interviewed Mrs XXXXXX at her home. She stated that Mr Amin was *not* a friend of hers and that she only knew him through being a customer of A J Removals whom she had used when she moved house from Kidderminster to Bromsgrove on 21 May. Mr Amin and two others had also attended her house the previous day on 20 May to dismantle a gas cooker and an American fridge-freezer and to take other items of furniture into storage. She provided a copy of the invoice for £1000 she had received for "removal". When she had visited A J Removals' premises on 24 May to pay the invoice she had been asked to sign a pre-prepared letter as a favour to Mr Amin. Mrs XXXXXX further stated that she had briefly read the letter and signed it but now conceded that she should have taken more care to understand what she was signing. Re-reading the letter, she now wished to retract it. Mrs XXXXXX provided to TE Phillips a witness statement confirming her account above.
5. On 16 July 2018 TE Phillips visited Azam Amin at A J Removals' premises. He asked Mr Amin why he had been driving without a tachograph card on 21 May: Mr Amin replied that it was "because I wasn't actually working for anybody that day." He had been helping some staff and doing a favour for a friend. Asked why he had driven off from the check site despite being prohibited from doing so, Mr Amin said that he could not actually recall being told that he could not drive the vehicle; he had also been a bit angry at being given a fixed penalty, unjustly in his view. He had also feared for the security of his vehicle being left at the check site, since it had been vandalised twice in the past.
6. TE Phillips asked Mr Amin if he had used BU12 YTT on 21 May to carry Mrs XXXXXX's goods. Mr Amin said that he had but she had not paid for removals work, she had paid for the storage of furniture which had been carried on a van. TE Phillips then produced a copy of the invoice Mrs XXXXXX had received which showed £1000 for removals and £76 for storage. Mr Amin stated that Mrs XXXXXX had not paid him on the day of 21 May. He went on to state that "she paid for removals services and for storage and the use of the truck but she didn't pay me for my services."
7. TE Phillips's report also noted that Mr Amin had also failed to change the details of specified vehicle W148 WNS to reflect a change of registration number to M10 OVU which had taken place at least a year ago.

Public inquiry

Call to public inquiry

8. Concerned by this report, I decided to call the operator to a public inquiry. The call-up letter was sent on 11 December 2018, citing Sections 26(1)(b), (ca), (e), (f) and (h)

and 27(1)(a) and (b) of the 1995 Act as well as Article 4.1(a) of Regulation EC 1071/2009. By letter of the same date Mr Amin was also called in his capacity as transport manager to consider his repute.

9. In preparing for the public inquiry I noted that Mr Amin had written to my office on 16 July 2018 (the same day that TE Phillips had visited him) to notify me that he had received a fixed penalty of £300 for driving without a tachograph card and that he had decided to pay it although he “still did not fully agree with the issuing of it”. He stated that he had earlier that day been interviewed by TE Phillips but it was still his understanding that he had not been doing anything wrong in driving a 7.5 tonne vehicle without using his tachograph card “as I was doing a favour for a friend”. He acknowledged that he had driven the vehicle while under prohibition and was very ashamed of this conduct.

Holding of public inquiry

10. The inquiry was originally due to be held in Birmingham on 31 January 2019. However, Mr Amin was subsequently prosecuted by DVSA for using a false instrument so the inquiry was adjourned until the court case (and later sentencing) could take place. The inquiry was held on 3 May 2019, by which time I had been informed that Mr Amin had pleaded guilty to using a false instrument and had been sentenced to 200 hours of community service.
11. Present at the inquiry was director and transport manager Azam Amin, represented by Claire McCarthy, solicitor, of CE Transport Law. DVSA traffic examiner James Phillips also attended, as did transport consultant Charlie Ahmed, who had audited the operator and found it to be generally compliant.
12. Ms McCarthy had provided a submission for which I was grateful. The submission made the following points:
 - i) the removals job for Mrs XXXXXX was originally scheduled to take one day only but Mrs XXXXXX had at the last minute decided to have some goods put in storage rather than moved to the new house. This prolonged the job into a second day. However, only the originally quoted (one day job) price was charged: so in Mr Amin’s eyes he had been working for free on the second day. He now accepted that, however the arrangement was structured, he was being paid to move the goods and should have used a tachograph card;
 - ii) Mr Amin did not recall being told about the prohibition by TE Phillips on 21 May but did remember being asked to park up. He had driven off because he was angry at being issued with a fixed penalty and was concerned about the security of his vehicle;
 - iii) Mr Amin had asked Mrs XXXXXX to write that he had been doing gas fitting work rather than removals because he feared that he was in severe trouble for driving off. He had stupidly attempted to cover his tracks;
 - iv) Mr Amin was otherwise a person of exemplary character (references were provided) and a reasonably compliant operator. It was likely that he could be trusted to comply in the future; he did not deserve to go out of business. The operator and transport manager should be given another chance to demonstrate that they were of the required good repute.

Evidence of TE James Phillips

13. TE Phillips's report was accepted by Ms McCarthy. In addition, Mr Phillips stated out that he had handed the 24 hour prohibition notice to Mr Amin at the roadside: he had no reason to think that Mr Amin was not aware of the prohibition.

Evidence of Azam Amin

14. Mr Amin stated that he had not read the prohibition notice until he had returned to the operating centre. However, he had realised as soon as he had driven away that he had done the wrong thing. He had intended to go back but had panicked. In his own mind he had believed that he was working unpaid for Mrs XXXXXX on 21 May because he had only charged her for one day's work. He accepted that he had drafted the letter for Mrs XXXXXX to sign in an attempt to have the fixed penalty for not using a tachograph card overturned. He now regretted his actions: he had never been in trouble before. He had been on a transport manager CPC refresher course in January 2019 and had brought in Invergold Associated Ltd to provide guidance on compliance. He was willing to undertake to continue to employ transport consultants to provide assistance for a day or so each month.
15. Any regulatory action would have a severe effect on the business, which employed five full time equivalent people on a PAYE basis. The company had a number of smaller vehicles and could survive a suspension.

Concluding remarks

16. Summing up, Ms McCarthy accepted that there had been deliberate deception and that the non-compliance fell into the "severe" category of the Senior Traffic Commissioner's statutory guidance document 10. However, there were some positive factors: Mr Amin had sincerely held the view that he was doing Mrs XXXXXX a favour and did not need to use a tachograph; the operator was broadly compliant and had a good MOT record, with no roadworthiness prohibitions. It was the operator's first public inquiry. Weight should be given to the sentence of the court, which had already brought a significant degree of shame upon Mr Amin. The false instrument was a one-off offence in 15 years of an otherwise good record and Mr Amin had paid a high price for it. He could be trusted to comply in the future. Suspension and/or curtailment would be an appropriate and proportionate outcome rather than revocation and any disqualification.

Adjournment and further information

17. At this point I adjourned the inquiry in order to prepare and issue a written decision.

Considerations

18. Mr Amin has been convicted of a serious offence as defined in Schedule 3, paragraph 3(2) of the 1995 Act. Moreover, the serious offence is directly related to the operation of heavy goods vehicles. In practice a number of offences were involved. First was Mr Amin's failure to use a tachograph card to record his journey on 21 May 2018. It does not matter whether a job which was originally planned to take one day in the end took two: it was still a commercial transaction under which Mrs XXXXXX paid A J Removals to move her goods to storage and her new house. As a qualified transport manager Mr Amin should have been perfectly well aware of this.
19. Having been found to be driving without a card, Mr Amin then drove off while under prohibition. I do not accept that Mr Amin did not realise that he had been issued with a prohibition: he was handed a piece of paper clearly marked "Prohibition Notice" which in bold capital letters states that the driver is prohibited from driving until 24 hours rest has been taken. The fact that Mr Amin feared for the security of his vehicle if it was left at the check site shows that he knew that it was supposed to remain there.

20. Having flouted the prohibition notice Mr Amin then proceeded to make matters worse by fabricating the claim that he had been doing gas repair work for a friend and had not needed to use a tachograph card. He drafted a letter to this effect and induced his customer Mrs XXXXXX to sign it. At his interview under caution on 16 July 2018 he began by maintaining his claim that he had not been working for anybody on 21 May 2018 and that he had been doing a favour for a friend. Even when confronted with the invoice for £1000 to Mrs XXXXXX, Mr Amin continued to obfuscate, saying that she had not paid on the day (as if that made any difference) and that she had paid for removals and storage but not for his (Mr Amin's) services. Later that day (16 July) Mr Amin wrote to my office, continuing to maintain the fiction that he had been doing a friend a favour. Only much later, when he was prosecuted for using a false instrument, did he accept that what he had done was wrong.
21. Mr Amin's offence was therefore not a one-off moment of madness. The original offence - driving without a card - was compounded, firstly by driving away whilst under prohibition. That might have been a heat of the moment action which Mr Amin could have gone some way towards remedying by volunteering the truth subsequently. Instead, over a period of several months, he constructed and then sought to defend the fiction – both to TE Phillips and myself - that he had been doing a favour for a friend. This is not the action of a reputable transport manager or operator.

Balancing exercise

22. I conducted a balancing exercise. On the positive side of the balance were the operator's good MOT pass rate and lack of roadworthiness prohibitions (albeit from only one encounter). There was also the fact that Mr Amin has attended a transport manager CPC refresher course. But on the negative side was the fact that Mr Amin sought to conceal an original serious offence (driving without a card) which should never have been committed by a professional transport manager by the even more serious offence of creating and attempting to sustain a false account of what had happened.
23. I conclude that that the positive factors are very significantly outweighed by the negative factors above. The Upper Tribunal is on record as stating that lying to DVSA officials and/or to traffic commissioners may be sufficient in itself to entail loss of repute. In this case the falsehood was a serious and continuing one.

Findings

24. I make a formal finding that Azam Amin is not of good repute, for the reasons outlined in paragraphs 18-21 above. Because Mr Amin is the sole director and controlling mind of A J Removals, I also find that the operator is not of good repute (Section 27(1)(a) and (b) of the 1995 Act refers). The operator licensing system is based on trust, and Mr Amin's conduct over the weeks and months following the stop on 21 May 2018 and the deception he practised has betrayed that trust.

Priority Freight and Bryan Haulage

25. I have concluded that, owing to Mr Amin's conduct I can no longer trust this operator or transport manager. The answer to the *Priority Freight* question of how likely it is that this operator will comply in the future is therefore "very unlikely". A negative answer to this question would tend to suggest a positive answer to the *Bryan Haulage* question of whether the operator's conduct is so serious that it should be put out of business. In practice, A J Removals may be able to continue in business, using the smaller 3.5 tonne vehicles which it operates, but if the effect of the revocation of the licence is to put it out of business, this will be an outcome which Mr Amin's deception will have merited.

Decisions

Operator licence

26. Having concluded that Mr Amin has lost his repute as transport manager, revocation of the licence is mandatory under Section 27(1)(b) of the 1995 Act. Revocation is also mandatory under Section 27(1)(a) as the company now lacks professional competence and also itself lacks good repute. The revocation will take effect on 1 July 2019.

Disqualification – company and director

27. For the reasons outlined above, and having performed the same balancing exercise described in paragraphs 22-23, I conclude that both A J Removals and Azam Amin deserve to be disqualified under Section 28 from holding a licence in the future. In deciding upon the length of the 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) but a period of between five and ten years where an operator has falsified records (which Mr Amin has). However, I have given Mr Amin some credit for being honest with me at the inquiry about his past dishonesty and for his otherwise (generally) compliant operation and have determined upon a disqualification of three years, which I consider proportionate, appropriate, and in line with the STC's guidelines.

Disqualification – transport manager

28. Having concluded that Mr Amin's good repute is lost I must also disqualify him under paragraph 16 of Schedule 3 to the 1995 Act from being a transport manager on any licence. For the same reasons which have led me to conclude that a three year disqualification from holding a licence is appropriate, I am disqualifying him from acting as a transport manager for the period of three years.



Nicholas Denton

Nicholas Denton
Traffic Commissioner
14 May 2019