



WEST MIDLANDS TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 17 OCTOBER 2019

OPERATOR: MFC TRANSPORT LTD

LICENCE OD1097654

Decision

1. The standard national goods vehicle operator's licence held by MFC

Background

Operator details

1. MFC Transport Ltd holds a standard national goods vehicle operator's licence (OD1097654) for three vehicles and three trailers. There are three vehicles in possession. The licence was granted in August 2010. The sole director of the company is Hardeep Singh. The nominated transport manager on the licence until her resignation on 1 September 2019 was Karyn Sanghera.

April 2016 public inquiry

2. The operator attended a public inquiry in April 2016 when its application for an increase from four vehicles and four trailers to seven vehicles and seven trailers was refused and the licence was curtailed to three vehicles and three trailers for the period of two months, following findings of very high prohibition rates and use of an unauthorised operating centre.

February 2019 public inquiry

3. At a further public inquiry in February 2019 I suspended the operator's licence for 28 days and permanently curtailed the licence from four vehicles to three after a DVSA report had revealed continued very high MOT failure and prohibition rates. Brakes were a particular problem, with the vehicles not being given any kind of metered brake test. Hardeep Singh had responded to the DVSA vehicle examiner saying that improvements to brake testing would be introduced, but in the event had done nothing by the date of the inquiry to bring this about. At the conclusion of the inquiry, the operator agreed undertakings to have a compliance audit by 30 June 2019 and to have vehicles roller brake tested at every six-week inspection. Transport manager Karyn Sanghera retained her repute but was warned that if the operator continued to ignore her advice or failed to implement the necessary compliance measures she should resign and inform my office.

Audit report

4. In July 2019 I received a copy of the audit report (which had not been carried out by the 30 June deadline and which my clerk had had to chase). This noted that no roller brake tests were being carried out, contrary to the specific undertaking given by the operator at the February public inquiry. I therefore recalled the operator to a further inquiry, held in Birmingham on 17 October 2019. The call-up letter was sent on 12 September 2019. Both director Hardeep Singh and by now ex-transport manager Karyn Sanghera (who had resigned with effect from 1 September) attended.

Public inquiry

5. Amongst the maintenance documentation presented to me by Hardeep Singh were 12 roller brake test print-outs from "Midlands Trucks Wolverhampton". I was slightly surprised to see these in view of the auditor's comments that there was no evidence of such tests having been carried out. However, on closer inspection I noticed that virtually all of the print-outs had exactly the same test percentage results and the same imbalances. Specifically, 9 of the 12 printouts showed exactly the same measured vehicle weight (8410kg) with exactly the same weights and results for each axle. Three different vehicles were involved, over a period between April and September 2019 – all with exactly the same presentation weights and brake percentages. This stretched credulity well beyond breaking point.
6. Other suspicious features of the print-outs included:
 - a) a spelling mistake in the word "imbalance" which was always written as "imbalace";
 - b) a spelling mistake at the bottom left of each sheet where the word "RESULT" was spelt as "RFSULT";
 - c) the fact that the figures were all out of alignment;
 - d) the fact that the Midlands Trucks postcode at the bottom left of each sheet was in mixed lower and upper case.
7. The above issues caused me to have severe doubts about the authenticity of these brake test results. I adjourned the inquiry in order to make inquiries of Midlands Truck & Van Wolverhampton. Before I did so, I made it very clear to Hardeep Singh that if these documents were not genuine, he should tell me now. He insisted that they were indeed genuine.
8. A few days later I received a report from David Woodbine, Service Manager at Midlands Truck & Van Wolverhampton. Mr Woodbine told me that:

- a) vehicle FX60 CAE had been given **one** roller brake test by Midlands Truck & Van, on 3 October 2019;
 - b) there were no records of vehicle SK62 HHJ having been tested. However, there was a record of MFC Transport bringing in vehicle SK62 HHG for **one** brake test on 8 October 2019 (this may possibly have been an error in entering the registration number);
 - c) vehicle FY63 OFO had never been given a brake test by Midlands Truck & Van.
9. The clear implication of this report was that all 12 of the brake test documents provided by Hardeep Singh were false, since none of the tests in question was dated 3 or 8 October. A total of only two roller brake tests, not 12, had in fact been carried out on the three vehicles over the eight months since the public inquiry in February 2019. I further noted that the brake test print-outs supplied by Mr Woodbine differed in format from the ones provided by Hardeep Singh at the inquiry and did not contain the spelling and other mistakes that were in the operator's documents.
10. Before making findings on this issue, I gave the operator a chance to comment on Mr Woodbine's report. Hardeep Singh responded to the effect that he understood that the print-outs were in the wrong format, but continued to maintain that all the tests had in fact been carried out. He had paid cash to the person who carried out the test, which he now realised was wrong.
11. I also received comments from the ex-transport manager Karyn Sanghera. She stated that she had many times pressed Hardeep Singh to show her the roller brake test print-outs. Sometimes he had replied that he was getting them done; on other occasions he maintained that the annual brake test at MOT would suffice. She had never seen any brake test results until the public inquiry when Hardeep Singh had handed the print-outs to me. She stated that "long before February 2018 Hardeep would always struggle to take orders or listen to any advice, it was always his way, not the legal required way." Eventually she had resigned (on 1 September 2019 with immediate effect by mutual consent).

Conclusions

12. I am not persuaded by the explanation of Hardeep Singh that the roller brake tests were carried out on a private cash-paid basis with one of the Midlands Truck & Van staff. That does not explain why nine of the tests achieved identical results or why the print-outs were such clearly amateur forgeries. If the tests had been carried out genuinely on the dates indicated on the print-outs, one might have expected Hardeep Singh to show those print-outs to his transport manager and to the auditor. Both asked to see the roller brake test results but were not shown any. I conclude therefore that Hardeep Singh's explanation is another falsehood. I find that the vehicles have not been given roller brake tests every six weeks, contrary to the undertaking given at the February 2019 inquiry. Worse, I find that the documents purporting to show such tests are forgeries. I find that Hardeep Singh either produced these forgeries himself or conspired to produce them.
13. It is difficult to exaggerate the seriousness of Hardeep Singh's conduct. Having had his company's licence suspended for the very significant period of 28 days at the inquiry in February 2019, in part because of the operator's complete failure to have its vehicles properly brake-tested (even after a warning from the DVSA vehicle examiner), and having undertaken at the February inquiry henceforth to have vehicles roller brake tested every six weeks, I should have hoped that he would have

made every effort to comply. Instead, he chose to do nothing. When called up by letter of 12 September to the inquiry on 17 October 2019 he had two vehicles tested at Midlands Truck & Van and used those genuine results to create 12 documents purporting to show that all three vehicles had been regularly roller brake tested throughout the period between the two inquiries.

14. Given Hardeep Singh's preference for forging brake testing documents rather than having essential brake testing carried out, and because when afforded a chance to come clean at the inquiry he preferred to maintain a bare-faced lie, I have no alternative but to find that the company is not of good repute (Section 27(1)(a) of the 1995 Act applies). The operator has also failed to fulfil its undertaking to give its vehicles regular brake tests (Section 26(1)(f) applies). I find nothing to put on the positive side of the balance.
15. I have considered the *Priority Freight* question of how likely it is that this operator will comply in the future. Because this has been the operator's third public inquiry in three years, and because its response to the second was to cheat rather than to comply, there is compelling evidence to suggest that this is highly unlikely. That in turn suggests a positive answer to the *Bryan Haulage* question of whether the company deserves to go out of business. I am persuaded by its reprehensible conduct that it does.

Decisions

Operator licence

16. In the light of the above, I have decided to revoke the licence, and am doing so with effect from 7 December 2019. The revocation is pursuant to Section 26(1)(f) and Section 27(1)(a) of the 1995 Act.

Disqualification – company and director Hardeep Singh

17. For the reasons outlined in paragraphs 13 and 14 above, and having performed the same balancing act described therein, I conclude that both the company and its director Hardeep Singh should 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 (this is the company's third) and a period of between five and ten years where there has been an element of falsification. As I have found, there has been falsification in this instance: the serious nature of Hardeep Singh's dishonest conduct means that a significant disqualification is appropriate. I have determined upon a disqualification period of five years as being proportionate, appropriate and in line with the Senior Traffic Commissioner's guidelines.

Repute – transport manager

18. I have considered the question of Karyn Sanghera's repute. On the negative side is that she has failed to exercise the required continuous and effective management of this licence, despite being warned at the inquiry in February 2019 that she must do so. On the more positive side, I can see that she has made efforts to bring a wayward Hardeep Singh into compliance although ultimately he chose to ignore her. Because she did in the end resign from the licence, as I had advised her to do if her efforts were coming to nought, I am holding back from removing her good repute. But this was a close-run decision. Ms Sanghera should be in no doubt that, on any other licences she is associated with, now and in the future, a much close level of control by the transport manager is expected and required. To this end, she must attend a two day transport manager refresher course by 31 January 2020.

Nicholas Denton

Nicholas Denton
Traffic Commissioner
7 November 2019