



WEST MIDLANDS TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 4 SEPTEMBER 2019

OPERATOR: H & J TRANSPORT LTD

LICENCE OD0201609

Decision

1. The standard international goods vehicle operator's licence OD0201609 held by H & J Transport Ltd is revoked with immediate effect, pursuant to Sections 26(1)(f) and 27(1)(a) and (b) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").
2. H & J Transport Ltd and George David Hunt are disqualified indefinitely from holding or obtaining any type of operator's licence in any traffic area and (in Mr Hunt'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. George David Hunt has lost his good repute, pursuant to Schedule 3 paragraph 1 of the 1995 Act. Under paragraph 16(2) of that Schedule, he is disqualified, with immediate effect and for an indefinite period of time, from acting as a transport manager on any operator's licence.

Background

Operator details

1. H & J Transport Ltd holds a standard international goods vehicle operator's licence (OD0201609) for ten vehicles and ten trailers. The licence was granted in 1992. The sole director of the company is George David Hunt who is also the nominated transport manager on the licence.

DVSA Reports

2. In July 2019 I received a DVSA report which stated that:
 - i) the operator was failing to download drivers' digital tachograph cards within the maximum 28 day period;
 - ii) the operator was failing to download vehicle tachograph units within the maximum 90 day period;

- iii) drivers were committing numerous, repeated and significant infringements of drivers' hours rules; some drivers had also frequently driven without a tachograph card inserted in the unit;
- iv) the operator had only analysed tachograph data annually, although it had now ceased paying even for annual analysis as George Hunt stated that he knew his drivers were breaking the rules and that he didn't need to pay an analysis company to be told that;
- v) claims made by the operator about improvements in drivers' hours compliance turned out, upon closer examination, to be false;
- vi) George Hunt holds his transport manager qualification through acquired rights; he had never undertaken any form of refresher training;
- vii) There was a high MOT failure rate – from the 10 presentations over the past two years there have been only two first time passes.

Public inquiry

3. Concerned by this report, I decided to call both operator and transport manager to a public inquiry. The call-up letters were sent on 17 July 2019, with the public inquiry to be held in Birmingham on 4 September 2019.

Offer of surrender

4. On 16 August 2019 the operator wrote to my office saying that George Hunt was resigning as transport manager and enclosing his acquired rights CPC certificate. The letter added that the company had "seized trading" (sic) on 16 August; it was therefore surrendering its licence and would not be attending the inquiry.
5. I refused the offer of surrender and maintained the public inquiry. Five drivers were also due to attend parallel driver conduct hearings the same day.

Public inquiry

6. The public inquiry was held on 4 September 2019. As expected, George Hunt failed to appear. The drivers who attended stated that H & J Transport Ltd had left it to them to drive to the tachograph analyst Greenman to download their cards and they had frequently failed to do this as they were never paid for the extra journeys involved. No infringements had ever been drawn to their attention. While the company had never explicitly instructed them to ignore the law, the culture was one of "get back to the yard whatever it takes". Although long-lasting and disruptive roadworks on the M5 and M6 near the operating centre had been in situ for some time, the company had never made any adjustment in schedules to take account of them.

Findings

7. I have reached the following findings on the evidence available:
 - i) the operator has failed to fulfil its undertaking to ensure that rules on drivers' hours and tachographs are observed. DVSA's report is evidence of an almost wholesale abrogation of the operator's responsibilities in this area (Section 26(1)(f) of the 1995 Act refers);
 - ii) transport manager George Hunt is not of good repute (Section 27(1)(b) refers). He has made no effort to run a compliant drivers' hours regime and the

improvements in compliance he claimed to DVSA that he had made were untrue;

- iii) the company, lacking a reputable transport manager, lacks professional competence (Section 27(1)(a) refers);
- iv) no evidence of finances was presented: the company cannot therefore demonstrate financial standing (Section 27(1)(a) refers). I note that, despite the claim that the company has ceased trading, it is still shown as "Active" in Companies House records.
- v) the operator has failed to fulfil its undertaking to keep vehicles fit and serviceable (Section 26(1)(f) refers). The MOT pass rate is extremely poor and vehicles have been clearly circulating in an unroadworthy condition.

Conclusions

8. I conducted a balancing exercise. On the negative side of the equation were the above findings. There was nothing to put on the positive side: Mr Hunt's refusal to attend the inquiry deprived him of the opportunity to present any mitigating factors.

Decisions

Operator licence

9. The company lacks financial standing, a reputable transport manager and professional competence. Revocation is mandatory under Section 27(1)(a) (and (b) of the 1995 Act. I am also revoking the licence under Section 26(1)(f) for wholesale failure to observe drivers' hours rules and to keep vehicles roadworthy. The revocation will take effect immediately.

Disqualification – operator

10. For the reasons outlined above, and having performed the same balancing act described, I conclude that both the company and its director George Hunt should be disqualified under Section 28 from holding a licence in the future. The disqualification is for an indefinite period of time.

Disqualification – transport manager

11. Having concluded that Mr Hunt'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. I am disqualifying him for an indefinite period of time.



Nicholas Denton
Traffic Commissioner
5 September 2019