



DECISION OF THE TRAFFIC COMMISSIONER FOR SCOTLAND

In the matter of the

**Transport Manager Asad Muhammed
OM2004554**

Public Inquiry held at Edinburgh on 14/11/2019

Decision

1. That Transport Manager, Mr Asad Muhhamed, no longer satisfies the requirements of Section 13A(3) to be of good repute in accordance with Schedule 3 of the Goods Vehicle (Licensing of Operators) Act 1995 and is unfit to manage the transport activities of an undertaking.
2. Mr Asad Muhammed is disqualified indefinitely from engaging in the role of Transport Manager in any Member State with effect from 23:45hrs on 19 December 2019.
3. Cull Bros Limited (OM2004554) was called to an inquiry before me on 14 November 2019. The company had held a standard international goods vehicle operator's licence since 6 August 2017. Mr Asad Muhammed was the company's transport manager from 31 May 2018 until his resignation on 27 January 2019. Mr Muhammed was called to a conjoined hearing with Cull Bros Limited on 14 November 2019 to consider his good repute and professional competence as a transport manager. He did not attend the inquiry. No reason for his failure to attend was provided to my office.
4. Mr Cull, sole director of Cull Bros Limited, attended at the inquiry on 14 November 2019. The evidence disclosed a significant number of offences, including breaches of the rules in relation to drivers' hours, falsification of records, and failures to comply with the undertakings on the company's licence. I made adverse findings in terms of Sections 13A(2), 13A(3), 26(1)(c)(iii), 26(1)(e), 26(1)(f), 26(1)(g) and 26(1)(h) of the 1995 Act. At the conclusion of the hearing, I gave an oral decision revoking the company's operator's licence with immediate effect and disqualifying Cull Bros Limited, and Mr Cull, from holding or being involved with an undertaking holding an operator's licence for a period of five years. I gave credit to the operator, in balancing,

for taking responsibility and being open and honest about his shortcomings during the inquiry.

5. Mr Wardrop, Traffic Examiner, gave evidence at the hearing. He had carried out the investigation in relation to Cull Bros Limited's operation and had interviewed Mr Muhammed twice in the course of that investigation.
6. Mr Wardrop made an unannounced visit at Mr Muhammed's place of work on 14 January 2019 to attempt to speak to him about the Cull Bros Limited operation. During the interview, Mr Muhammed told Mr Wardrop that he had been trying to meet with the Mr Cull to carry out his duties as transport manager. He had, however, experienced difficulty getting hold of Mr Cull and gaining access to the operating centre.
7. Mr Wardrop became concerned that Mr Muhammed was not exercising continuous and effective management of Cull Bros Limited's transport operation. Mr Muhammed did not seem to know what vehicles Mr Cull was operating or what companies he was undertaking work for. He was not involved in scheduling nor was he aware of the types or number of drivers being used by Cull Bros Limited. Mr Wardrop concluded, as a result, that Mr Muhammed would be unlikely to be able to perform his duties in ensuring that the laws relating to driving and operation of vehicles were adhered to. In addition, Mr Muhammed could not advise who Cull Bros Limited's maintenance provider was.
8. Of significant concern was the fact Mr Muhammed was unable to answer basic questions put to him regarding the rules on drivers' hours or the working time directive. Mr Muhammed was not aware, for example, of the detail of the rules regarding the downloading of tachograph units and was unclear as to the requirements for drivers' CPC. I noted that Mr Muhammed had told Mr Wardrop that he had gained his CPC in early 2018 albeit the certificate lodged with the papers for the inquiry was dated 25 July 2017. At the conclusion of the interview, Mr Wardrop advised that he required to arrange a further formal interview with Mr Muhammed in relation to his role as transport manager.
9. Mr Wardrop met again with Mr Muhammed on 5 June 2019. Correspondence sent to Mr Wardrop in advance of the meeting by Mr Muhammed suggested that he felt ambushed in relation to the earlier meeting and forced to answer what he referred to as 'random questions' set to test his CPC knowledge.
10. When asked at interview on 5 June 2019 what his duties were as transport manager for Cull Bros Limited, Mr Muhammed replied that 'he was more of a consultant'. His involvement in implementing systems for the operator had been limited to a few meetings and discussions on the phone. In the eight or so months he had been transport manager he had gone to the operating centre five times in total but had managed to meet with Mr Cull only twice. He advised that he had looked at the paperwork on one occasion and that it looked fine to him. He had been shown the tachograph software, but the key to allow him remote access to the system for the purposes of analysis had never worked and he advised that they 'had never managed to sort that out'. Mr Muhammed remained unable to answer basic questions put to him by Mr Wardrop regarding transport manager duties, stating that "he just hadn't had time" to look the answers up.

11. He advised that Mr Cull applied for an increase in his authorisation but that he hadn't discussed that with him beforehand. He stated that he was constantly trying to honour the contract and seek payment from Mr Cull in order that he could 're-commence' his duties as transport manager. He openly admitted to Mr Wardrop that he had stopped carrying out transport manager duties altogether when Mr Cull had stopped paying him. When asked why he did not resign sooner, Mr Muhammed advised that Mr Cull was his first client and that he 'wanted to make a success of it'. Mr Cull had strung him along and always had a good reason for not making payment. He stated that he had been in a tough spot financially and that that had clouded his judgement.
12. Mr Muhammed admitted that his role as transport manager had never really begun and he was aware that Cull Bros Limited was not operating compliantly. He produced copies of text messages and emails exchanged between him and Mr Cull which showed that he had, sporadically, attempted to engage with Mr Cull on transport matters. The last occasion upon which that appears to have happened was on 13 September 2018 but the correspondence, for the most part, focuses on Mr Muhammed's attempts to persuade Mr Cull to make payment of monies he considers he was owed. Mr Muhammed did not appear to accept that he had failed in his capacity as transport manager.
13. Mr Cull's evidence at inquiry was that Mr Muhammed had not been acting as his transport manager since around July or August 2019. He hadn't paid him since then. He admitted that he had sometimes arranged for Mr Muhammed to attend at the operating centre but then had not turned up to meet him as agreed. He was of the view that it was his fault that Mr Muhammed had not been able to carry out his duties.
14. Notwithstanding Mr Cull's position, it was clear that Mr Muhammed had, at no point, meaningfully exercised his role as transport manager for Cull Bros Limited. It appeared that he may have intended to do so when first appointed, but a combination of Mr Cull's avoidance tactics and his failure to assert himself, meant that he never actually got around to doing so. Mr Muhammed therefore, failed to exercise continuous and effective management of Cull Bros Limited's transport operation as was required of him as transport manager.
15. I was particularly concerned by Mr Muhammed's attitude toward his role as transport manager. I had regard, in particular, to paragraph 25 of the Senior Traffic Commissioner's statutory document number 3 and noted that a responsible transport manager faced with such circumstances should have resigned. Mr Muhammed did not. He continued with the charade, motivated by his own greed and self interest in securing payment from Mr Cull. It was only in January 2019, prompted by Mr Wardrop's investigation, that he resigned his position. He also failed to attend at an inquiry before me in circumstances where I was satisfied that good service of his call up to such had been made. That failure indicated a lack of respect for the licensing regime and was further evidence of Mr Muhammed's failure to take his obligations as a transport manager seriously.
16. I found Mr Muhammed's inability to answer even the most basic questions put to him by Mr Wardrop about general transport manager duties to be of concern. I would expect a transport manager who had fairly recently completed the full CPC course to be able to answer simple questions such as those which appear to have been posed. While I accept that Mr Muhammed may have felt 'ambushed' when he was first interviewed, he could not make that claim in relation to the second interview.

17. In balancing my decision, I took account of the evidence that Mr Cull had made it almost impossible for Mr Muhammed to carry out his duties as transport manager. It was clear that Mr Muhammed had sporadically attempted to try and engage with Mr Cull on transport matters. I also acknowledge that this was Mr Muhammed's first appointment as a transport manager and that he was, therefore, relatively inexperienced.
18. Nevertheless, transport managers exist to provide professional competence to operators who require it. They must provide continuous and effective management of the transport operation in respect of which they are appointed. The offences in this case, particularly in relation to driver's hours, were numerous and serious and there is no doubt that Mr Muhammed's failure, over such a lengthy period, to exercise continuous and effective management of Cull Bros Limited's operation facilitated that offending. Moreover, he appeared, either through lack of understanding, or an unwillingness to accept (I was unable to determine which given his failure to appear at inquiry), that he had failed in his role, choosing instead, to blame all on Mr Cull.
19. Standing all of the foregoing, I find it proportionate to conclude that Mr Muhammed has lost his repute as a transport manager. I am obliged therefore, by virtue of paragraph 16(2) of Schedule 3 of the 1995 Act to disqualify him from acting as such.
20. This was a bad case, and one in which I had serious concerns in relation to Mr Muhammed's attitude. He prioritised his own self-interest ahead of his professional obligations, continued to do so for a lengthy period, and failed to acknowledge his mistake in so doing. He failed to attend an inquiry before me and appeared to know very little about the specifics of the transport manager role. Given the seriousness and nature of Mr Muhammed's failings, I do not consider him fit to work for any undertaking as a transport manager and I have decided to disqualify him indefinitely.
21. I was unable to think of any rehabilitative measure which I could specify in this case. I was reminded of the words of my predecessor Ms Aitken in her decision in **T/2014/42 Brian Robert Cutmore**:

"I cannot think of any rehabilitative measure which would restore the attitude of mind and fortitude towards compliance which is an essential characteristic for a transport manager".
22. I have reached a similar conclusion in relation to Mr Muhammed and therefore specify no rehabilitation measure. That having been said, it is open to Mr Muhammed to apply in the future to have his disqualification cancelled, or varied, if he can find a means of demonstrating that he has developed his skills, learned lessons, and is fit to be trusted.

Claire M Gilmore
Traffic Commissioner for Scotland
19 December 2019