

TRAFFIC COMMISSIONER FOR THE WEST MIDLANDS



JIP TRANSPORT INTERNATIONAL SRL
Applicant

-v-

DRIVER AND VEHICLE STANDARDS AGENCY
Respondent

DECISION OF THE TRAFFIC COMMISSIONER

Decision

The application by JIP Transport International SRL for the release of vehicle IS11JIP, detained on 12 November 2019, is refused. The reasons for this decision are set out below.

Background

1. On 12 November 2019, DVSA traffic examiner Robert Lees impounded a Romanian registered vehicle IS11JIP operated by JIP International SRL, due to breaches of the cabotage rules. Documents on the vehicle showed that it was in the process of performing its fifth cabotage operation since it had completed its incoming international journey on 4 November. Article 8 of Regulation EC 1072/2009 states that, once the goods carried on the incoming international journey have been delivered, the operator may carry out up to three cabotage operations within seven days. Vehicle IS11JIP had exceeded both the three cabotage operations and seven day limits.

2. TE Lees noted that DVSA had stopped another vehicle (B70JWM) being operated by the same the Romanian company in March 2019, when breaches of the cabotage rules had also been found. The driver had been informed of the breaches and the vehicle had been directed to leave the UK immediately. In April 2019 DVSA had written to the company to warn it that future such transgressions could result in the vehicle being detained indefinitely.
3. On 13 January 2020, Zhalba Petar, General Manager of JIP Transport International, applied for the return of vehicle IS11JIP. The ground for appeal was that the user of the vehicle held a valid operator's licence at the time the vehicle was detained. The applicant requested a hearing, which duly took place in Birmingham on 6 February 2020.

Hearing

Ownership

4. Mr Petar produced evidence that the company was the registered keeper in Romania of the vehicle. As no other claimant had come forward. I was satisfied, on the balance of probability, that the company was the owner of the vehicle.

Evidence of DVSA and Mr Petar

5. For DVSA, traffic examiner Robert Lees rehearsed the points made in his written evidence.
6. Mr Petar claimed that he had never received the DVSA letter of April 2019 warning his company against illegal cabotage operations. We established that the letter from DVSA might have gone astray, as it had been addressed to the town of "Lasi" rather than the actual town of Iasi.
7. Mr Lees stated that, when the operator's vehicle B70JWM had been directed out of the UK in March 2019, the driver had been given paperwork explaining why it had been so directed. The company should have known at that point that it was breaking the rules.
8. Mr Petar stated that the vehicle IS11JIP was a tractor unit and had been picking up trailers which had arrived from mainland Europe by ship at Tilbury and taking them to destinations in the UK. In his view, these were international journeys not cabotage.

Consideration


9. I have considered the issues raised by Mr Petar. First, his argument that his company was performing international journeys rather than cabotage. In paragraph 15 of its decision *T/2011/060 Nolan Transport* (where Nolan Transport had made a similar claim) the Upper Tribunal concluded that:

"International carriage involves a journey by a 'vehicle'. In the case of articulated vehicles the definition of vehicle requires that a trailer can only take part in international carriage if coupled to a tractor unit. To make the point crystal clear a journey undertaken by an unaccompanied trailer from, for example, a port in Ireland to a port in Wales, cannot amount to international carriage."

10. I therefore find that there is nothing in Mr Petar's argument that his company was performing international carriage.
11. I also considered whether JIP Transport International might benefit from the provisions of the Combined Transport Directive 92/106/EEC which allows unrestricted cabotage under certain conditions if the road journey is a leg of a journey involving combined transport (although the applicant did not mention this directive or claim any benefit from its provisions). The pertinent condition in this case is that the initial and final road legs of the journey must be to/from points which are 150km or less from the port of embarkation and disembarkation. According to the documentation found in the vehicle, the road leg in the UK exceeded 150km on four of the five cabotage journeys. On the remaining journey, the road leg in Belgium had exceeded 150km. I was satisfied that the Combined Transport Directive could not be prayed in aid.
12. The question therefore to decide is whether JIP Transport International had knowledge that it was operating cabotage journeys in excess of those permitted. As a general point, any company engaged in the business of international haulage within the EU is expected, as a matter of course, to be familiar with the rules applying to cabotage. These are strictly enforced by almost all Member States, as the issue of cheaper hauliers from other parts of the EU undercutting domestic operators is a very sensitive one. So this is knowledge that the company certainly should have had.
13. That it did actually have the knowledge is a finding which I make, because of the stop of its vehicle B70 JWM in March 2019, when it was directed to leave the UK because it had exceeded its cabotage limit. The driver was given paperwork explaining why the vehicle had been directed to leave the UK. At that point, the company became fully aware that what it was doing was not acceptable to the UK authorities. It could have been in no doubt from that point that its view that picking up unaccompanied trailers from ports did not constitute cabotage was emphatically not shared by the UK authorities.
14. It is unfortunate that DVSA's subsequent letter of 10 April 2019 was incorrectly addressed, but the only new information that this contained was that future illegal cabotage was likely to result in an impounding. The company had already been informed in March that what it was doing was illegal.

Decision

15. I therefore conclude that the ground for application for the return of the vehicle is not made out: the application is thus refused. This decision will be notified to the applicant and to DVSA and it will be for DVSA to dispose of the vehicle once the 28 day period for appeal against this decision has ended.



Nicholas Denton

Nick Denton
Traffic Commissioner

14 February 2020