



WEST MIDLANDS TRAFFIC AREA
DECISION OF THE TRAFFIC COMMISSIONER
VIRTUAL PUBLIC INQUIRY HELD ON 8 JUNE 2020
OPERATOR: CHIEF VEHICLE RENTALS LTD
LICENCE OD1112534

Decision

1. The restricted goods vehicle operator's licence held by Chief Vehicle Rentals Ltd is suspended for 14 days with effect from 0001 hours on 22 June 2020 until 0001 hours on 6 July 2020, pursuant to Section 26(1)(f) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").
2. Pursuant to Section 26(6) of the 1995 Act I direct that the operator's specified vehicle SG17 XEC must not be used under any other operator's licence during the period of suspension.
3. The following undertaking has been added to the licence:
 - i) an independent audit of the operator's compliance with maintenance and drivers' hours requirements will be carried out by the RHA, FTA or other suitable independent body by 30 November 2020. The audit should cover at least the applicable elements in the attached annex. A copy of the audit report, together with the operator's detailed proposals for implementing the report's recommendations, must be sent to the traffic area office in Birmingham within 14 days of the date the operator receives it from the auditor.

Background

Operator details

1. Chief Vehicle Rentals Ltd holds a restricted goods vehicle operator's licence (OD1112534) for one vehicle. There is one vehicle currently in possession. The licence was granted in 2014. The directors of the company are Shaun Cunningham, Martyn Cresswell and Emma Prudden.

DVSA Investigation

2. In February 2020 I received a report on the operator from DVSA traffic examiner Edward Evans. Mr Evans reported that:
- i) the company's vehicle had been stopped by police in Scotland on Tuesday 29 October 2019 and that the police had found that:
 - a) the driver had driven for 5 hours 10 minutes on Sunday 27 October with no qualifying break and without a tachograph card;
 - b) although he had only finished this driving at 2338 hours on 27 October, he had commenced driving again only 2 hours and 9 minutes later at 0147 hours on Monday 28 October. He had proceeded to drive for a total of 13 hours and 9 minutes that day over a shift that lasted for 20 hours. He had inserted his tachograph card for only 3 hours 26 minutes during that time.
 - ii) he (Mr Evans) had visited the operator on 8 January 2020 and found that, although the operator was downloading driver cards and vehicle units within the required deadlines and sending data off to an outside company for analysis, no analysis was being received. This appeared to have been the case for several years;
 - iii) he had uncovered three further significant instances of driving without a card over the period 1 August 2019 to 8 January 2020
 - iv) a Mr Bevan, the member of staff in charge of drivers' hours, had stated that he had informed head office on several occasions of the need to put a suitable analysis system in place but had not heard anything further.

Public inquiry

3. Concerned by this report, I called Chief Vehicle Rentals Ltd to a virtual public inquiry which was held on MS Teams on 8 June 2020. Present were company director Shaun Cunningham, company employee Lloyd Sieminski and (by phone only) company employee Kesha Bangay. DVSA traffic examiner Edward Evans also attended. Mr Bevan was invited but was ill.
4. Mr Cunningham said he had thought that the absence of analysis reports from the outside provider meant that there was no problem to report. He had not been aware of Mr Bevan saying that a suitable system should be put into place: there had been a significant management restructuring in late 2019 and it was possible that this had slipped through the cracks;
5. Mr Cunningham said that vehicle tachographs were now downloaded every 28 days and driver cards at the end of every day if possible and at least every 28 days. Taken by me to vehicle unit data which showed that data relating to March 2020 had only been downloaded and analysed on 3 June, five days before the inquiry, Mr Cunningham said that the 28 day frequency was the intention from now on. It had not proved possible to do the downloads during the COVID-19 crisis when some staff had been furloughed.
6. The driver who had been stopped in Scotland in October had been given several days to complete the job. He had not been under any pressure from the company to break the rules. The company's policy was to pay for overnight stays in hotels for drivers but the driver in question had decided to do the job in one go in order to get back home early.

7. I asked Mr Cunningham why the company's HR department had written to the driver on 24 February 2020 saying that there was insufficient evidence even to call him to a disciplinary hearing. He stated that they had not at that time had the evidence in the DVSA report, although TE Evans then stated that he had communicated all the evidence to the operator during his visit on 8 January 2020.
8. I identified a further significant instance of driving without a card on 17 March 2020. Mr Cunningham was unable to account for this otherwise than by saying it might have been when the vehicle had been rented out. However, Mr Bangay, when he later joined the inquiry, was able to explain that this was when the vehicle had been taken by the maintainer for a service and MOT. The maintenance records supported this explanation.
9. I asked why the six-week inspection intervals had been occasionally stretched to seven and even nine weeks. Mr Cunningham said that as far as he was aware the six week intervals had been respected. Mr Bangay said that the mobile mechanic used by the company had been ill at one point and had had to delay an inspection.
10. Summing up, Mr Cunningham stated that he, Mr Bangay and Mr Sieminski had all attended a virtual operator licence management course in April 2020. The processes were now in place to conduct timely tachograph downloads and analyses so that the problem could not be repeated. Reporting procedures were in place to keep management informed. The company could not operate properly without its specified vehicle.

Considerations

11. Mr Cunningham was not as well-prepared for this inquiry or as on top of the drivers' hours issue as I had expected him to be. His statement that he had assumed that the lack of analysis reports meant that there was no problem clashed with Mr Bevan's statement to TE Evans that he (Mr Bevan) had alerted management to the lack of a proper analysis system and had received no reply. I felt that Mr Cunningham was a little too ready to blame the long-standing failure to obtain tachograph analyses on a management restructuring exercise which was a time-limited one. In any case, a restructuring exercise does not absolve a company from the obligation to comply with the law.
12. I was shocked by the company's laid-back approach to the very serious drivers' hours infringements committed by its driver. The driver drove for more than 18 hours over 27 and 28 October 2019, with the longest period between driving being 2 hours 9 minutes. He sought to conceal this by driving for all but 3 hours 26 minutes without a card inserted into the tachograph unit. These are very serious offences which could have had catastrophic consequences for the safety of other road users. TE Evans spelt all this out to the operator in January 2020. Yet in its letter to the driver of 24 February 2020, the operator stated that there was insufficient evidence even for a disciplinary hearing to be held.
13. I also find it concerning that, even after TE Evans had drawn the company's attention to the inadequacy of its procedures for identifying driving without a card, the operator waited until 3 June 2020 before carrying out an analysis of the vehicle unit. This showed a considerable amount of driving without a card on 17 March 2020. There turned out to be an innocent explanation for this, but Mr Cunningham was aware neither of the driving without the card nor the explanation. I would have expected that a director faced with a public inquiry would have taken a closer personal interest in rectifying the problem and in injecting some more drive and energy into it.

Findings

14. After considering the evidence, I find that the company has failed to fulfil its undertaking to ensure that the rules on drivers' hours and tachographs would be observed (Section 26(1)(f) refers). No analysis was carried out over a considerable period of time: the result was that drivers were occasionally driving for significant periods of time without a card, disguising serious infringements and entirely undetected by the operator.
15. I also find that the operator has been slow to take effective corrective action. The new download frequencies are an intention for the future rather than improvements already introduced. I do not accept that the COVID-19 crisis is a sufficient excuse for failing to tackle the problem of driving without a card. It would have been perfectly possible for a member of staff to attend a vehicle every 28 days to perform a tachograph unit download. The failure even to invite the driver to a disciplinary hearing to discuss his offences was a serious dereliction of responsibility.

Decision

16. I consider that the company's shortcomings fall within the "serious to moderate" category as defined in the Senior Traffic Commissioner's Statutory Guidance Document No 10. The starting point for regulatory action in this category is suspension for up to 28 days. Because this is the operator's first inquiry I am imposing a suspension of 14 days, together with an audit undertaking (which the operator agreed to at the inquiry). The suspension will take effect at 0001 hours on 22 June (to give the company a little time to prepare for it). A suspension of the licence is required to mark the seriousness of the driver's conduct and the lack of operator systems – over an extended period - to detect and deal with it.
17. The vehicle must not be used by this or any other operator during the suspension period. The operator should submit to my office by 10 July evidence of odometer readings on 22 June and 6 July. This can be done by interrogating the tachograph unit.

A handwritten signature in black ink that reads "Nicholas Denton". The signature is written in a cursive, slightly stylized font. Below the signature is a short horizontal line.

Nicholas Denton
Traffic Commissioner
8 June 2020