



WEST MIDLANDS TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

VIRTUAL PUBLIC INQUIRY HELD ON 19 JUNE 2020

OPERATOR: BIRMINGHAM SKIPS LTD

LICENCE OD2024804

Decision

1. The restricted goods vehicle operator's licence held by Birmingham Skips Ltd is revoked with effect from 0001 hours on 23 July 2020 pursuant to Sections 26(1) (e) and (f) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").
2. Birmingham Skips Ltd and Christopher O'Donnell are disqualified for eighteen months, from 23 July 2020 until 23 January 2022, from holding or obtaining any type of operator's licence in any traffic area and (in Mr O'Donnell'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.

Background

Operator details

1. Birmingham Skips Ltd holds a restricted goods vehicle operator's licence (OD2024804) for five vehicles. There are five vehicles currently specified on the licence. The licence was granted on 7 August 2019, originally for three vehicles: a subsequent increase to five vehicles was granted on 18 November 2019. The sole director of the company is Christopher O'Donnell.
2. At the time of the original grant of the licence in August 2019 the company could not demonstrate a full month's worth of funds sufficient to support the licence. It therefore agreed to a finance undertaking under which, by February 2020 (the exact date appears to have been unspecified), it would submit evidence of finances in its own name over the months of November and December 2019 and January 2020. The evidence should show that the operator had average funds over that period to cover five vehicles on a restricted licence (in this case £9,900).

was. He had now restructured his other businesses to spend more time on Birmingham Skips Ltd.

11. I asked why, despite this new-found attention to the skips business, it appeared that vehicles were still not being given regular preventative maintenance inspections. Several such inspections appeared overdue and it looked as though two vehicles had never been inspected at all. Mr O'Donnell said that the vehicles were currently with the new maintenance provider. He had recently changed providers after the previous one had informed him in March that he was unable to continue to maintain the fleet due to COVID-19 issues.
12. I asked why vehicle YJ55 AHC had continued in operation after its MOT had expired on 29 February 2020. Mr O'Donnell said he thought an exemption had been applied for. In an email sent after the inquiry later that day he stated that his then maintenance provider had been unable to book a date before the end of February and that by the time the date booked in March came round, MOT tests had been suspended. He had asked a colleague to apply for the necessary exemption but she had neglected to do this and he had not checked that it had been done.
13. I asked what reason the drivers had given for driving for several thousand kilometres without using a tachograph card. Mr O'Donnell said that he had not yet pursued this.
14. Mr O'Donnell said that he had bought the assets of a previous operator, Birmingham Skips South Ltd in spring 2019. I asked him whether he had started operating in advance of the grant of the operator licence in August 2019 (some of the maintenance documentation pointed to this). He accepted that he had. I asked him why he had started operating before the licence was granted, despite warnings in the correspondence not to do so. Mr O'Donnell said that he did not have an answer to this question.
15. Mr O'Donnell said that he was willing to go on an operator licence management course and had already sent his lead driver Shane Baker on such a course on 12 June. I asked Mr O'Donnell why he had not gone on the same course: he replied that he had been attending to his other business.
16. Summing up, Mr Smith accepted that the picture on compliance had not been good, but there had been significant improvements over the last two weeks. These included:
 - i) online driver entitlement checking had commenced. Previously there had just been simple physical checks of the licences;
 - ii) regular checking of the drivers' eyesight;
 - iii) the engaging of A S Miles to download tachographs weekly and brief drivers on infringements;
 - iv) the appointment of a new maintenance provider to replace the previous inadequate one;
 - v) the operator had no prohibitions (although I noted that there had been no encounters of its vehicles either);
 - vi) the engaging of a tyre contractor to check tyres on a weekly basis and produce a report. Previously they had simply changed tyres without any paperwork;

- vii) roller brake tests would henceforth be carried out every six weeks, along with the preventative maintenance inspection;
 - viii) the sending of driver Shane Baker on an operator licence management course. Mr O'Donnell had also previously sent an employee on the course, in summer 2019 soon after the licence had been granted: however that employee had subsequently left the business.
17. On the effects of the various types of possible regulatory action, Mr Smith said that the operator could cope with a curtailment from five to three vehicles, although this would really hurt. Any more drastic curtailment and the operator would have to close. A suspension would cause significant problems in collecting the skips: 200 were out at present. In Mr Smith's opinion, the answer to the *Priority Freight* question of how likely it was that the operator would comply in the future was "very likely", as the new systems which had been brought in over the past two weeks would continue, and Mr O'Donnell would be devoting proper attention to the business. This therefore spoke against a revocation of the licence, which would be disproportionate.

Findings

18. After having considered the evidence, I make the following findings:
- i) the operator has not fulfilled the promise, made on application, that the vehicles would be given preventative maintenance inspections every eight weeks (Section 26(1)(e) of the 1995 Act refers). There appear to have been no such inspections between August/September 2019 and March/April 2020, leaving gaps in the inspection schedule of around six months. Two vehicles appear never to have had safety inspections;
 - ii) the operator has failed to fulfil its undertaking to ensure the lawful operation of vehicles (Section 26(1)(f) refers). YJ55 AHC was operated after its MOT expired on 29 February 2020. Although MOTs were suspended by DVSA from 21 March 2020 (and vehicles with an MOT due in March given an automatic extension of three months), the vehicle should have been tested in February. While it is possible to apply for an MOT exemption in the case of vehicles which are returned to operation after having been off the road, it is by no means clear whether YJ55 AHC ever was off the road, but from the driver defect records available, it has evidently been in regular use since 3 April 2020. What is also certain is that the necessary application for MOT exemption was not made until shortly after the public inquiry on 19 June 2020 and that the vehicle was not given a preventative maintenance inspection before any return to use;
 - iii) the operator has failed to fulfil its undertaking to ensure the observance of rules relating to drivers' hours and tachographs. For more than nine months, until two weeks before the inquiry, no downloads of driver cards or vehicle tachograph were ever carried out. The operator was therefore incapable of identifying drivers' hours infringements and taking any action on them. More than 10,000km of missing mileage have been identified on the two vehicles A S Miles managed to download – kilometres driven either by drivers whose cards have never been downloaded or where drivers simply failed to insert their cards;
 - iv) the operator failed to fulfil its undertaking to provide evidence of financial resources over the period 1 November 2019 to 31 January 2020 by the end of February 2020. When it did so later in March, the funds demonstrated fell far short of that necessary to support a licence of five (or even one) vehicles;

- v) the company commenced operating vehicles some months before the licence was granted on 7 August 2019, despite being reminded in letters from CLO dated 26 June 2019 and 16 July 2019 that it could not commence operating HGVs before the licence was granted.

Balancing exercise

19. I conducted a balancing exercise, weighing up the positive features identified by Mr Smith in his summing up against the negative features listed in the findings above. Although I accept that the operator has made attempts to improve over the last two weeks, these have come very late in the day and are heavily outweighed by the very serious failures in compliance from August 2019 to early June 2020. The company operated HGVs illegally before the licence was even granted; it has failed to have its vehicles given periodic safety inspections at anything like the promised intervals; it has completely failed to take any action to monitor drivers' hours; and it has failed (continuing to the day of the inquiry) to prevent a vehicle operating without an MOT.
20. Christopher O'Donnell has embarked upon the business of HGV operation without the slightest knowledge of the regulatory requirements (although they are helpfully summarised on the application form just above his signature) and without the slightest effort – until called to this inquiry – to find out what those requirements are. He left everything to his staff, simply assuming (without any evidence) that they would run and were running matters compliantly. He has stated to me that he is now going to focus on the skips business to ensure against repetition of these mistakes, but this is still essentially a promise for the future. I would have been more impressed had he actually attended the operator licence management course which his driver attended on 12 June 2020 rather than pleading continued occupation with his other businesses. I further note that the fact that YJ55 AHC was out of MOT seemed to come as a surprise to him and that, after the inquiry, he deployed his traditional excuse of failure by staff to implement his instructions. I am afraid that Mr O'Donnell did not at all come across to me as possessing the necessary focus and dynamism to ensure that his vehicles and drivers would be managed compliantly from now on.

Conclusions

21. I asked myself the *Priority Freight* question of how likely it is that the operator will comply in the future. The hard evidence suggests that it is highly unlikely. The company has shown, in operating HGVs before the licence was granted, that it is prepared to put commercial convenience ahead of the requirement to abide by the law. Mr O'Donnell failed to take any responsibility for ensuring that the business was run compliantly and, as recently as 12 June, was giving priority to his other businesses rather than attend the training course that he so desperately needs. His email after the inquiry about the vehicle out of MOT shows that he is still in his traditional "blame the staff" mode rather than accepting responsibility himself.
22. A negative answer to the *Priority Freight* question normally suggests a positive answer to the *Bryan Haulage* question – does the company deserve to be put out of business? In this case I am persuaded that it does. Had I been able to look into a crystal ball when I granted the licence in August 2020 and seen that, not only was the company already operating vehicles, but that it would fail to fulfil the undertaking it gave on finances, would then show so low a financial level that payments to creditors were bounced by the bank, would have its vehicles inspected every six months or not at all rather than every eight weeks as promised, would operate a vehicle out of MOT and would take no action at all to download tachographs and monitor drivers' hours, then I would not have granted a licence in the first place. This is a very bad case and the operator deserves to go out of business on that account.

Decisions

Operator licence

23. The licence is revoked under Section 26(1)(e) and (f) of the 1995 Act. I am giving 30 days before the revocation takes effect so that the company can recover the skips which it has out on placement. The revocation takes effect at 0001 hours on 23 July 2020.

Disqualification - operator

24. Because of the company's and Mr O'Donnell's widespread and prolonged failure to operate compliantly, I have determined to disqualify them under Section 28 of the 1995 Act from holding or obtaining an operator's licence. 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 (which this is). The illegal operation before the grant of the licence and the serious failure to abide by the undertakings given justify a disqualification longer than a year. I have therefore fixed upon a disqualification period – eighteen months – in the middle of the three year range. If Mr O'Donnell wishes ever to re-enter this industry, he should use this period to reflect on what went wrong and acquire the necessary knowledge and understanding of the duties and responsibilities of a goods vehicles operator licence holder.

Enforcement of this decision

25. Given the history of operating before the licence was granted, I have less than complete faith that the company will comply with this decision. I am therefore requesting DVSA and the Police to employ their ANPR and on-road resources to identify and stop vehicles operated by the company after 23 July 2020. Any such vehicle they find carrying goods on the public road after this date will be liable to be impounded.
26. If this or any other of Mr O'Donnell's companies are found to be operating heavy goods vehicles without a licence, his chances of successfully applying for an operator's licence in the future will be massively reduced.



Nicholas Denton

Nicholas Denton
Traffic Commissioner
23 June 2020