



NCN: [2020] UKUT 375 (AAC)
Appeal No. T/2020/33

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER
(TRAFFIC COMMISSIONER APPEALS)**

ON APPEAL from a DECISION of the TRAFFIC COMMISSIONER

Before: M Hemingway: Judge of the Upper Tribunal
S James: Member of the Upper Tribunal
D Rawsthorn: Member of the Upper Tribunal

Appellant: St Joseph Executive Travels Gatwick Limited

Reference: PK2014360

Date of Hearing: 21 December 2020 (remote)

DECISION OF THE UPPER TRIBUNAL

This appeal to the Upper Tribunal is dismissed.

CASES REFERRED TO

Bradley Fold Travel Ltd v Secretary of State for Transport [2010] EWCA Civ 695.

REASONS FOR DECISION

1. This appeal to the Upper Tribunal has been brought by St Joseph Executive Travels Gatwick Limited (“the Operator”), from a decision of the Traffic Commissioner for London and the South East of England (“the TC”) embodied in a letter of 23 January 2020, revoking its standard operator’s licence.
2. We held an oral hearing of the appeal remotely, by consent, using Cloud Video Platform (CVP). The Operator was represented by its director Ms Navaluxmy Loganathan. We are satisfied that she was able to make the same points during the remote hearing as she would have done had there been a traditional face-to-face hearing. She confirmed, at the outset, that she was content with a remote hearing.
3. The Operator had been granted the relevant licence on 30 July 2018. It authorised three vehicles. Ms Loganathan told us, at the hearing, that the vehicles had been used for “*school runs*”. Put simply, section 14ZA(2) of the Public Passenger Vehicles Act 1981 (“the 1981 Act”) requires a licence holder such as the Operator to have a Transport Manager. The Operator did have one (“TM-A”). However, on 15 January 2020 he wrote to the Office of the Traffic Commissioner (“OTC”) to say he had resigned his position. He went on to explain that he was doing so with the “*full knowledge and agreement of the Operator*”. On 23 January 2020 the OTC wrote to the Operator (it sent identical letters to three separate addresses it had on file) pointing out that the lack of a Transport Manager meant it now lacked professional competence (see section 14ZA(d) of the 1981 Act). It warned of the risk of revocation of the licence, drew attention to relevant legislation, indicated the giving of a period of grace in which to rectify matters might be granted if sought, and explained there was a right to request a Public Inquiry if wished. A deadline of 13 February 2020 for a response was given.
4. It is not a matter of dispute that the Operator did not respond. That being so, and faced with nothing to suggest there was a Transport Manager in place, a Traffic Commissioner (“TC”) decided to revoke the licence. The TC did so by applying section 17 of the 1981 Act which makes revocation mandatory in such circumstances. Notification of that decision was sent by letter of 21 February 2020. The Operator was informed of the right of appeal to the Upper Tribunal.
5. On 28 April 2020, rather than at that stage lodging an appeal, Ms Loganathan wrote to the OTC to say that the Operator had now found a new Transport Manager (“TM-B”) and that he had been “*given a form to fill in and to send to you*”. She asked, in effect, for the revocation decision to be reconsidered. She also said that, were it to be considered more appropriate, the Operator could re-employ TM-A instead. We would pause there to observe that the procedure for adding or replacing a Transport Manager involves the relevant Operator in completing and submitting standard form GV80A along with completed form TM1 which the relevant new Transport Manager must sign but which must then be countersigned on behalf of the Operator. It is not simply a case of a new Transport Manager submitting documentation direct to the OTC without further involvement of the Operator. In any event, it appears that TM-B did not submit any documentation to the OTC at all. The OTC responded to the letter of 28 April 2020 by reminding the Operator of the processes involved in pursuing an appeal to the Upper Tribunal.

6. The Operator's appeal to the Upper Tribunal was received later than the permitted time. But, on 22 July 2020, time was extended so as to admit it. In the grounds of appeal, prepared by Ms Loganathan, it was acknowledged that TM-B had not submitted any paperwork to the OTC, it was stated that TM-A was ready and willing to resume his duties and it was requested that the licence be reinstated. Before us, Ms Loganathan explained she had been involved in the industry for a number of years but had, in recent times, experienced some problems of a personal nature which had had an adverse but temporary impact upon her ability to deal with administrative matters. TM2 had been unhelpful. She had received relevant correspondence sent to her by the OTC. As to forms, she had simply given form TM1 to TM-B for completion but had not herself submitted anything to the OTC concerning the appointment of a new Transport Manager. TM-A remains prepared to resume working for the Operator. She had no criticisms of the OTC. It was she who had been at fault. She asked us, in effect, to find a way to ensure the Operator could continue in business.

7. Paragraphs 17(1) of Schedule 4 to the Transport Act 1985 provides:

“the Upper Tribunal are to have full jurisdiction to hear and determine on all matters (whether of law or of fact) for the purpose of the exercise of any of their functions under an enactment relating to transport”.

8. Paragraph 17(3) of that Schedule provides that the Upper Tribunal may not take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal. The Upper Tribunal's jurisdiction was examined by the Court of Appeal in *Bradley Fold Travel Ltd and Another v Secretary of State for Transport* [2010] EWCA Civ 695. It was stated that the Upper Tribunal has the duty, on an appeal to it, to determine matters of fact and law on the basis of the material before the TC but without the benefit of seeing and hearing from witnesses. It was further stated that the burden lies on an appellant to show, in order to succeed on appeal, that the process of reasoning and the application of the relevant law requires the Upper Tribunal to adopt a different view to that taken by a TC.

9. We accept, without reservation, that Ms Loganathan was entirely and commendably frank at the hearing. We accept, having heard from her, that she was significantly distracted by other considerations when the material events we have described above occurred. We believe her when she says she is now eager to move forward and when she says that TM-B is now willing to once again come on board. But the fact does remain that, given the above events, the Operator lacked a Transport Manager in circumstances where the law required it to have one. There was no request for a period of grace or, indeed, no response at all to the OTC's correspondence concerning that. Revocation in circumstances where a Transport Manager is required for reasons of professional competence but is not in place is, absent a period of grace, mandatory. It follows that the TC had to make the decision as to revocation which was made. It cannot be said the decision was made in error of law or that it was plainly wrong.

10. Given the above, we have no alternative but to dismiss the appeal. Having said that, and not wishing to pre-judge matters in any way, we see no reason on the material before us to suppose that the Operator in the guise of Ms Loganathan will not be able to obtain a new licence if a fresh application were to be made with a suitably qualified Transport Manager, though we appreciate the process might involve her having to attend an Operator's instruction or refresher course of some sort. We also stress that any decision on a new licence will be

made by a TC on the basis of material available at that point. Further, whilst it is a matter for her, we would suggest she may wish to give some thought to seeking professional advice if she does decide to seek a new licence.

11. This appeal is dismissed.

M Hemingway
Judge of the Upper Tribunal
Dated: 29 December 2020