



NCN: [2021] UKUT 13 (AAC)
Appeal No. T/2020/29

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

ON APPEAL from the DECISION of the TRAFFIC COMMISSIONER

Before: M Hemingway: Judge of the Upper Tribunal
D Rawsthorn: Member of the Upper Tribunal
A Guest: Member of the Upper Tribunal

Appellant: Transkold Ltd

Reference: OK2001489

Date of Hearing: 17 December 2020 (remote hearing via BT Meet Me)

DECISION OF THE UPPER TRIBUNAL

This appeal to the Upper Tribunal is dismissed.

CASES REFERRED TO

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

REASONS FOR DECISION

1. This appeal to the Upper Tribunal has been brought by Transkold Ltd (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 February 2020, to revoke its goods vehicle operator's licence.
2. We held an oral hearing of the appeal via BT MeetMe. Mr R Champion, the Operator's director, had consented to such a hearing and he participated in it. We are satisfied that he was able to make the same points at the remote hearing as he would have done had there been a traditional face-to-face hearing.

3. It is not a matter of dispute that the Operator was, at all material times for the purposes of this appeal, required as a matter of law to have in place a transport manager (see section 13A(3) of the Goods Vehicles (Licensing of Operators) Act 1995). The Operator did, indeed, have in place a transport manager prior to February 2020. However, on 3 February 2020, that transport manager sent an e-mail to the Office of the Traffic Commissioner (OTC) in which he said he would “*like to remove myself as the CPC holder from the licence*”. In other words, he wanted to be removed from the licence as the Operator’s transport manager. He went on to explain “*I was going to be an outsourced Transport Manager but as far as I am aware Transkold has never proceeded with obtaining any vehicles and the company has never had any vehicles operating from the site under this licence*”. After making some further comments he stated, “*I have informed Transkold and I look forward to hearing from you*”. Unsurprisingly, the OTC wrote to the Operator, on 2 March 2020, stating that there was now no transport manager specified on the licence such that the requirement upon the Operator to be professionally competent (see section 13A(2)(d) of the Goods Vehicle (Licensing of Operators) Act 1995) might no longer be met. The letter was apparently sent by recorded delivery (the letter itself says it was sent by that means) and a copy was e-mailed to the Operator. It was stressed in the letter, correctly, that professional competence is a continuing and mandatory requirement for a licence holder.

4. The Operator was told in the letter to apply for a new transport manager to be added to the licence and to provide an explanation as to why the OTC had not been notified that it no longer had one. It was given until 23 March 2020 to do so. It was also explained that if the Operator was unable to nominate a new and appropriately qualified transport manager within the above time frame, a period of grace in order for it to do so could be asked for. The Operator was also told that a failure to respond to the letter would result in the revocation of the licence and that it had the right to request a Public Inquiry (PI).

5. The Operator did not reply to the letter of 2 March 2020. So, there was no request for a period of grace, there was no request for a PI to be held, and more troublingly there was no appointment of a new transport manager. Faced with all of that a decision was taken to revoke the licence and, on 23 March 2020, a letter was e-mailed to the Operator by the OTC informing it of that decision. It was not sent by post. The email address used by the OTC to send this letter was the same as had been used to e-mail the copy of the 2 March 2020 letter, being “reegan@transkold.co.uk”. The possible significance of the use of that email address will become apparent from what is said below.

6. On 6 April 2020 a member of the Operator’s administrative staff sent an email to the OTC stating (as we read it) that none of the above correspondence had been received and that “*the contact details you have on file are for an ex-employee who hasn’t worked for Transkold for almost two years*”. Pausing there, that is a reference to a person called Reegan whose work email address had been used by the OTC when the copy of the letter of 2 March 2020 and the letter of 23 March 2020 had been sent to the Operator. The OTC responded, on the same day, by providing further copies of those letters to a different e-mail address now being used by the Operator. After some unsuccessful attempts on the part of the Operator to persuade a TC that the revocation decision should itself be revoked, it lodged an appeal to the Upper Tribunal. Although that appeal was made later than the permitted time, that time was extended in order to admit it. The written grounds of appeal were to the effect that the Operator had not been aware that its transport manager had removed himself from its licence and had not received any of the relevant correspondence sent to it by the OTC until after its licence had been revoked.

7. At the hearing of the appeal Mr Campion reiterated that none of the correspondence had been received when it should have been. He explained that Reegan had been a former employee and that any emails which had been sent to Reegan's email inbox would not have been read. As to the Operator's former transport manager, the Operator had not known that he had ceased working for it. It was not correct that he had told it he had resigned as transport manager. He confirmed when questioned that Reegan's email address had been given by the Operator to the OTC, for the purposes of communications between them, at an earlier date. But Reegan had left the Operator's employ in 2017. The Operator did not, though, at that time, inform the OTC. Mr Campion, in closing, said that the Operator has a contract with the National Health Service, that it transports medical supplies into London and that the lack of a licence was adversely impacting its business.

8. Paragraph 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”.

9. 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 & Anor 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 different view to that taken by a TC.

10. We have had to conclude that there is no merit in this appeal. With respect to contentions that correspondence has gone astray, we note that the letter of 2 March 2020 as already touched upon is marked as having been sent by recorded delivery and email. Mr Campion told us that there was no record of such a recorded delivery letter having been received but, in the circumstances, we are not able to accept that a letter said to have been sent by recorded delivery would not have been nor that a letter correctly addressed and sent by way of recorded delivery would not have been received. We would accept that the copy of the 2 March 2020 letter and the 23 March 2020 letter were sent by email (the latter having been sent by email only) to what we might refer to as “the Reegan email address”. But it was perfectly legitimate for the OTC to send communications by email to that address given that it was an email address which had been provided to it in the past for its use and given that it had not subsequently been told to no longer use it despite Reegan having left the Operator's employ. Had the Operator checked that email address it would have found those e-mails. As to the situation concerning the transport manager we have no reason, on the material before us, to doubt that the Operator had been informed, as the transport manager himself had indicated in his communication to the OTC, that he was having himself removed from the licence.

11. The Operator was required to have a transport manager. At the time its licence was revoked it did not have one. Communications issued by the OTC had been properly sent to it. Since there was no transport manager in place and since the Operator had not subsequently communicated with the OTC having been sent the warning letter of 2 March

2020, we cannot see that the TC had any other option than to revoke the licence. We are certainly a very considerable distance indeed away from saying that the TC was plainly wrong in doing so.

12. In the circumstances we dismiss this appeal to the Upper Tribunal.

M R Hemingway
Judge of the Upper Tribunal
21 January 2021