



NCN: [2022] UKUT 00194 (AAC)
Appeal No. UA-2021-000561- T

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

ON APPEAL from the DECISION of the TRAFFIC COMMISSIONER for the East of England Traffic Area

Before: L J Clough: Judge of the Upper Tribunal
A Guest: Member of the Upper Tribunal
G Roantree: Member of the Upper Tribunal

Appellant: Pawel Damian Kaptur and KPD Haulage Ltd

Reference No: OF2048597

Heard at: Field House, London

On: 8 June 2022

Date of Decision: 9 June 2022

DECISION OF THE UPPER TRIBUNAL

THE APPEAL IS DISMISSED.

Subject matter:

Good repute, Transport Manager, Previous Transport Manager outside the UK

Cases referred to

Bradley Fold Travel Ltd & Anor v Secretary of State for Transport [2010] EWCA Civ 695.
Clarke v Edinburgh & District Tramways Co Ltd [1919] UKHL 303; (1919) SC (HL) 35; 56 SLR 303

REASONS FOR DECISION

1. This is an appeal to the Upper Tribunal brought by Mr Pawel Damian Kaptur and KPD Haulage Ltd (hereinafter “the appellant”), from a decision of a Traffic Commissioner (“TC”) refusing an application for a Goods Vehicle Operator’s Licence, and which was embodied in a letter to the appellant dated 23 November 2021,

2. The appeal was considered at a traditional face-to-face hearing, in London, on 8 June 2022. The appellant attended and was accompanied by a friend to support him. He was not legally represented. He had the assistance of a Polish interpreter, Ms Anderson, to aid communication at the hearing. The Respondent, as is standard practice in these cases, was neither present nor represented at the hearing.

The facts

3. The appellant applied for a Goods Vehicle Operator’s Licence on the standard form with an application declaration signed and dated on 26 August 2021. The application was to authorise the appellant to run one vehicle and one trailer at a named and identifiable operating centre with Mr Pawel Kaptur acting in the capacity as Transport Manager. Mr Kaptur had been a transport manager for a previous transport company in Poland and thus had a Certificate of Professional Competence (“CPC”), or its equivalent, issued in Poland for the purposes of that position. The application was acknowledged by the Office of the Traffic Commissioner (“OTC”) in a letter dated 31 August 2021, with an annexed list of additional information and documentation that was required to support the application before it was presented to the TC for determination. Amongst other matters, it was noted that the appellant had obtained his CPC over ten years prior and had not been listed as a transport manager on an operator’s licence in the UK within the previous five years. Consequently, the Appellant was asked to provide details of refresher training that had been undertaken during this period, or alternatively, to undertake to attend a two-day transport manager refresher course upon issue of an operator’s licence. It was also noted that the Appellant’s CPC had been issued by the competent authority in Poland and therefore, he was asked, in accordance with Article 19 of EC 1071, to provide a certificate of good repute or equivalent document, issued by the competent judicial or administrative authority in Poland. This was either to be provided, or at least requested, within a seven-day period and it was stated in the letter that the licence application could not be granted without this document.

4. In a further letter from the OTC dated 14 September 2021, these same documents were requested again. The Appellant responded on 27 September 2021 to say that all requested information had been uploaded to the application portal and he confirmed he would attend a refresher training course as required. In respect of the certificate of good repute, he had provided the OTC with a reference from Karolina Kaptur dated 12 August 2021. The reference took the form of a letter entitled “Testimonial” and which stated that the Appellant had been an international transport manager for Ms Kaptur’s company. She provided the number of Mr Kaptur’s CPC, and went on to confirm his good performance and professional reputation.

5. In a letter from the OTC dated 23 November 2021, the Appellant was informed that his application had been refused by the TC for the following reasons:

“The traffic commissioner is not satisfied that your nominated Transport Manager meets the requirement of good repute as set out in Section 13A(3)(a) of the above Act.

This is due to the Director/TM Pawel Kaptur holds a Polish CPC issued in 2008. He was asked to provide a certificate of good repute or equivalent document issued by the competent judicial or administrative authority in Poland. In response we received a letter of recommendation from a previous employer. As such the traffic commissioner remains to be satisfied as to section 13A(3)(a) or as to the nominee's ability to meet the statutory duty."

6. For clarity, s.13A of the Goods Vehicle (Licensing of Operators) Act 1995 ("the Act") provides for the requirements to be met before issue of a standard goods vehicle operator's licence. Section 13A(3)(a) sets out the requirement for the proposed Transport Manager to be of good repute, which was the ultimate issue in this case:

"13A. Requirements for standard licences

...

(3) The second requirement is that the traffic commissioner is satisfied that the applicant has designated a transport manager in accordance with Article 4 of the 2009 Regulations who—

(a) is of good repute (as determined in accordance with paragraphs 1 to 5 of Schedule 3), ...

The appeal

7. The appellant lodged an appeal with the Upper Tribunal on an official appeal form signed and dated on 20/12/2021. In his grounds of appeal, the appellant said

"I justify this appeal because I misunderstood what documents were required of me. I was asked to attach to the license application a document of unblemished opinion from an office in Poland. Because in Poland it is not possible to obtain such a document from any office. I decided that it would be appropriate to provide references (in other words confirmation of a good reputation from my previous employer). Unfortunately, in the fail [sic] decision, he writes that I did not obtain the license due to failing to provide the above mentioned document from the court. As I have already mentioned, such a document cannot be obtained in Poland. The only document you can get is a document that says I have no criminal record. I obtained such a document from a court in Poland and attached it to the appeal. Unfortunately to obtain a certificate of good conduct, you must be in the country (in Poland). Otherwise you can only get a certificate received online and this is also attached to the appeal. I attached all the other documents necessary to obtain the license in the previous stage. In addition, as an argument in favor [sic] of considering my appeal positively and granted me license for which I am applying, I would like to mention that for 5 years he [sic] has been working in the UK as a professional driver, so I am up to date with the regulations prevailing here. In my spare time, I read a lot of articles related to transport on the Internet in order to be even better prepared for the situation which would be obtaining this license. In addition, I am open to any courses that will be necessary to obtain a licence. Please consider my appeal positively."

8. The appellant had also lodged, with his appeal form, a document written in Polish, purporting to evidence a clean criminal record.

9. The appeal was heard face to face in Field House, London on 8 June 2022. Prior to the start of the hearing, the Appellant provided a translated version of the same document attached to his grounds of appeal, evidencing the fact that he had no criminal record. This was much more useful than the document in Polish as it could be read and understood by the Panel.

10. During the hearing, and with the assistance of Ms Anderson, the Appellant explained that he had been a transport manager for a company he ran together with his then wife, for a period of one year in/around 2010/2011. That company was a transport business with two vehicles. He had obtained his operator's licence in Poland by attending the Town Hall in the location where the business was operating from, providing certificates and insurances and thereafter receiving his licence to operate and manage the vehicles. He and his then wife separated around 2011 and the business ceased trading. The Appellant worked as a driver since the business ended and continued this employment after he moved to the UK approximately five years ago. The appellant explained that he now wished to set up his own transport company in the UK with one vehicle so that he could continue his driving work but under his own business identity and hence he had applied for an operator's licence. He acknowledged receipt of the request for the certificate of good repute from a competent authority in Poland and stated that he believed the reference from his ex-wife, for whom he had previously worked as a transport manager in Poland, would have been sufficient. When he realised this was not enough, he explained that he had tried to obtain a certificate of good repute from his local Town Hall in Poland, while he was there for a visit, but this attempt was unsuccessful. For that reason, he had obtained the official document evidencing that he had no previous convictions, in the hope that this would be enough; again, this was not sufficient.

11. During the hearing, the Appellant was informed of the existence of the GITD in Poland, known in Polish as GŁÓWNY INSPEKTOR TRANSPORTU DROGOWEGO, and roughly translated into English as the General Inspector of Road Transport. This appears to be the government administrative body that assumes responsibility for safety and compliance with regulations relating to road transport matters in Poland. The Appellant was aware of this body and stated that he had not approached this body to provide a certificate of good repute, acknowledging in the hearing, that this was likely to be the competent authority in Poland who were able to provide him with the document that had been requested for the purposes of his operator's licence. He confirmed that his Polish CPC was unblemished. He also confirmed once again that he was happy to attend a transport manager refresher course and the requirements of such a course were pointed out to him, as contained in the letter of the OTC dated 14 September 2021 [page 054 of the papers].

The appeal decision

12. As to the approach which the Upper Tribunal must take on an appeal such as this, 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 related to transport”.

13. The task of the Upper Tribunal, when considering an appeal from a decision of a Traffic Commissioner is to review the material which was before the Traffic Commissioner; the Upper Tribunal will only allow an appeal if the appellant has shown that “the process of reasoning and the application of the relevant law require the tribunal to take a different view” (*Bradley Fold Travel Limited and Peter Wright v. Secretary of State for Transport* [2010] EWCA Civ 695, [2011] R.T.R. 13, at paragraphs 30-40). In essence therefore the approach of the Upper Tribunal is as stated by Lord Shaw of Dunfermline in *Clarke v Edinburgh & District Tramways Co Ltd* 1919 SC (HL) 35, 36-37, that an appellate court should only intervene if it is satisfied that the judge (in this case, the decision of the Traffic Commissioner) was “plainly wrong”.

14. Section 13A(3)(a) of the Act clearly imposes a requirement that a proposed transport manager must be of good repute, and it is within the powers of the TC to make enquiries and seek documentation which confirms that this requirement is satisfied before issuing an operator’s licence. The appellant provided a reference from a previous employer and at the point of appeal, also provided an official document confirming that the appellant is of good character, with no previous convictions. These documents were not, however, what the TC had requested to satisfy the requirement of good repute as he sought a “certificate of good repute or equivalent document issued by the competent judicial or administrative authority in Poland”. The appellant had therefore failed to provide the requested certificate of good repute from a competent Polish authority and thus failed to meet that requirement for the grant of an operator’s licence. The TC was bound to apply the relevant legislation when making his decision with respect to the appellant’s licence application and given the failure of the Appellant to provide the evidence requested, the outcome of the application was therefore an inevitable refusal. The panel are unable to identify any error of law or error of fact on the part of the TC and are therefore unable to conclude that the application of the relevant law and the consequential decision of the TC was “plainly wrong”. We are therefore obliged to dismiss this appeal.

15. Whilst it is entirely a matter for the appellant, in the knowledge of what is required of him to satisfy the requirement of good repute to obtain a Goods Vehicle Operator’s Licence in the UK, he may wish to pursue a fresh application once he has obtained the appropriate documentation from Poland.

L J Clough
Judge of the Upper Tribunal

A Guest
Member of the Upper Tribunal

G Roantree
Member of the Upper Tribunal

Authorised for issue on 18 July 2022