



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

**Appeal No. UA-2024-000592-T
[2024] UKUT 365 (AAC)**

ON APPEAL from a DECISION of a TRAFFIC COMMISSIONER taken on 2 May 2024

Before: E Mitchell, Judge of the Upper Tribunal
D Rawsthorn, Specialist Member of the Upper Tribunal
S Booth, Specialist Member of the Upper Tribunal

Appellant: Ocean King Ltd

Commissioner's ref: OF1118241

Heard at: The appeal was decided on the papers without holding a hearing.

Date of decision: 14 November 2024

DECISION OF THE UPPER TRIBUNAL

This appeal is ALLOWED. The decision taken by the Deputy Traffic Commissioner on 2 May 2024 to direct revocation of the Appellant's operator's licence involved an error of law. The Commissioner's decision is SET ASIDE.

Subject matter: *revocation of operator's licence*

REASONS FOR DECISION

Background

1. On 2 May 2024, a Deputy Traffic Commissioner revoked the goods vehicle operator's licence held by the Appellant (the operator). The Commissioner was satisfied that a number of the statutory grounds for revocation, set out in section 26 of the Goods Vehicles (Licensing of Operators) Act 1995 (1995 Act), were made out. For present purposes, however, the significant part of the decision letter read as follows:

"I refer to our letter dated 3 April 2024 notifying you that the Traffic Commissioner was considering revoking your goods vehicle operator's licence.

In the absence of a response to this letter or a request for a public inquiry to be held, the Traffic Commissioner has revoked your operator's licence with effect from **2 May 2024...**"

2. The Deputy Traffic Commissioner granted a stay on his revocation direction coming into effect pending the operator's appeal to the Upper Tribunal. The Commissioner's reasons for granting a stay included the following:

"From the Upper Tribunal bundle papers which I received earlier this week I note that, according to the Royal Mail records, the recorded delivery "propose to revoke" letter was not actually delivered despite three attempts to do so. I also note that, according to the operator, he had an out of office email message on at the time, which said that the director was out of the country and would not be dealing with emails.

The material before me when I made my decision to revoke the licence did not include the information that the operator had not actually received the letter or that the email message would not have been read. Looking at the whole picture, revealed to me now for the first time, I conclude that I would in fact not have revoked this licence but would have allowed some extra time for reply.

As this was a decision to revoke, it cannot be reviewed under Section 36 of the Goods Vehicles (Licensing of Operators) Act 1995. In the circumstances I am satisfied that it is just to stay this decision pursuant to section 29(2), pending

consideration by the Upper Tribunal. I also invite the Upper Tribunal to remit the matter for redetermination.”

Proceedings before the Upper Tribunal

3. In the light of the Deputy Traffic Commissioner’s views, the Upper Tribunal gave case management directions which invited the Appellant to request that its appeal be determined on the papers. The directions informed the Appellant that its appeal would not be dismissed on the papers and that, if the Upper Tribunal panel convened to consider the appeal on the papers was minded to dismiss it, a hearing would be arranged. The Appellant requested that its appeal be determined on the papers.

4. Most regrettably, due to an administrative mistake neither the Deputy Traffic Commissioner’s observations nor the Upper Tribunal’s case management directions were included in the bundles prepared for the panel convened to decide the Appellant’s appeal on the papers. That panel dismissed the appeal which clearly came as something of a shock to an Appellant who had been informed that its appeal would not be dismissed on the papers.

5. Once the administrative mistake mentioned above came to light, the Upper Tribunal, acting under rule 43 of the Tribunal Procedure (Upper Tribunal) Rules 2008, set aside its decision dismissing the appeal on the ground that the proceedings involved a procedural irregularity, and it was in the interests of justice to set aside the decision. The Upper Tribunal’s set aside determination apologised to the Appellant for the worry caused by the original decision dismissing this appeal.

6. Arrangements were then made for this appeal to be decided on the papers before a differently constituted panel.

Conclusion

7. We decide that the Deputy Traffic Commissioner’s decision of 2 May 2024 to revoke the operator’s licence involved an error of law albeit not one of the Commissioner’s making. The Commissioner failed to take into account relevant evidence (because it was not drawn to his attention). That was an error of law.

8. We set aside the decision to revoke the operator's restricted licence. We see no need to make any further order. If the Traffic Commissioner wishes to recommence regulatory action against this operator, nothing in our decision is intended to limit the Commissioner's freedom to do so.

Authorised for issue by the Upper Tribunal panel on 15 November 2024.

Given under section 37(2) of the Goods Vehicles (Licensing of Operators) Act 1995.