



NCN: [2021] UKUT 254 (AAC)
Appeal No. T/2021/30

**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
A Guest: Member of the Upper Tribunal
S James: Member of the Upper Tribunal

Appellant: Raymond Leonard Sheaf

Heard at: Birmingham Civil Justice Centre

On: 27 August 2021

Date of Decision: 11 October 2021

DECISION OF THE UPPER TRIBUNAL

The appeal is dismissed.

SUBJECT MATTER

Loss of repute (Transport Manager).
Disqualification (Transport Manager).

CASES REFERRED TO

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

H. Sivyver (Transport) Ltd and Simon Sivyver [2014] UKUT 0404 (AAC).



REASONS FOR DECISION

1. This is an appeal to the Upper Tribunal brought by Raymond Leonard Sheaf (the appellant) from a decision of the Traffic Commissioner for the West Midlands Traffic Area (the TC), made on 13 January 2021 following a Public Inquiry (PI) of 12 January 2021. The TC decided that the appellant had lost his good repute as a transport manager, pursuant to Schedule 3, Paragraph 1 of the Goods Vehicles (Licensing of Operators) Act 1995 (the 1995 Act) and that he be disqualified, with immediate effect and for an indefinite period, from acting as a transport manager on any operators' licence pursuant to Schedule 3, Paragraph 16(2).

2. The appeal had been listed for a hearing at Birmingham, on 27 August 2021. It had been listed alongside the hearing of appeals brought by MGT Logistics Ltd (MGT), an Operator which had employed the appellant as its transport manager, and its director, one Marian Mihai Manole. But the appellant elected not to attend the hearing. Accordingly, we have decided his appeal on the basis of the written material which is before us.

3. MGT was granted a standard international goods vehicle operator's licence in October 2018. Authorisation was given for the operation of two vehicles and two trailers though the number of vehicles permitted to be operated under the licence was subsequently increased. The appellant was MGT's nominated transport manager on the licence and, at the time it was applied for, he had declared that he would work 4 hours per week in that capacity. In September 2019 MGT applied for an increase in authorisation to 4 vehicles and 4 trailers and that application was granted in November 2019.

4. In May 2020, MGT applied for a further increase in the vehicles it was authorised to operate under the terms of the licence, on this occasion to 10. It similarly sought authorisation for 10 trailers. Documentation was submitted in support of the application including a letter of 1 June 2020 from the appellant in which he had given an indication that he had been or would be working 12 hours per week in his capacity as MGT's transport manager but in which he also said "*I would also confirm to the Traffic Commissioner that I am giving a month's notice to the Operator to resign as Transport Manager from the Operator Licence. This is due to a change in circumstances. My understanding is that the Operator is currently looking for a replacement*". So, that was, in some respects, a rather contradictory letter. In any event, the scale of the requested increase in the number of authorised vehicles triggered a "*desk-based assessment*" which was carried out by the Driver and Vehicle Standards Agency (DVSA). The DVSA

assessed the Operator's performance as being "*unsatisfactory*" with respect to vehicle maintenance because it failed to provide documentation requested of it relating to driver defect reporting, it failed to provide information which had been sought with respect to brake testing, and it provided only one preventative maintenance inspection report relating to the six-month period over which the DVSA was evaluating matters. That led to the DVSA's vehicle examiner concluding that he could not be satisfied that the required compliance systems were in place (see paragraph 4 of the TC's written reasons of 13 January 2021). Those concerns led the TC to call both the operator and the appellant to a PI. That PI took place remotely (via MS Teams) on 12 January 2021. The appellant was in attendance as was Mr Manole and his newly appointed transport manager Mr J Singh. The appellant gave evidence to the TC as recorded in a written transcript which we have read. The TC made reference to what the appellant had had to say to him, in his written reasons, as follows:

"7. Previous transport manager Raymond Sheaf stated that until May 2019 he had met Marian Manole approximately every three weeks in a Costa Coffee café to go through maintenance and tachograph records. At that point Mr Manole had gone on holiday to Thailand and had never contacted him again: Mr Sheaf had thought the company had become dormant. He had not realised that, far from being dormant it had actually increased its authority from two vehicles to four in Autumn 2019.

8. I noted that Mr Sheaf had submitted a letter on 1 June 2020 in support of the application for an increase to 10 vehicles. That letter had given the impression that he was still very much involved with the licence and would continue to be so until 1 July 2020 when his resignation would take effect. Mr Sheaf accepted that his letter was disingenuous."

5. So, whilst the letter had given the impression that the appellant had continued to perform his duties as a transport manager throughout the period from the grant of the licence to 1 June 2020 (the date of the resignation letter) and that he would so continue until 1 July 2020, it had been acknowledged by the appellant at the PI, that such was not the case.

6. We do not need to refer, in any detail, to the TC's findings concerning MGT or Mr Manole. Those matters are addressed in a separate decision of the Upper Tribunal. But it was concluded that MGT had been effectively operating without a transport manager from a time even earlier than May 2019 when the limited (but unsatisfactory in the view of the TC) meetings at Costa Coffee had ceased. Turning then to the TC's conclusions as to the appellant, he said this:

"15. Mr Sheaf's conduct has fallen far below that of a reputable transport manager. His level of involvement with this licence was always inadequate but vanished entirely more than a year before he got round to resigning from the licence and informing my office of the resignation. In so informing me, he gave the distinct impression that he had been continuously involved with the licence and indeed would be increasing his commitment to 12 hours per week. By remaining on the licence as transport manager after May 2019 despite the fact that he was not carrying out the transport manager's functions and was not being paid Mr Sheaf gave the

operator the outward sign of professional competence and compliance when this was very far from the case. A transport manager's repute cannot survive such conduct and I therefore conclude that Mr Sheaf's good repute is lost (Section 27(1)(b) and paragraph 1 of schedule 3 to 1995 Act refer)".

7. And then as to disqualification:

"23. Having concluded that Raymond Sheaf's good repute is lost I must also disqualify him under paragraph 16 of schedule 3 to the 1995 Act from being a transport manager on any licence. The disqualification takes immediate effect. Mr Sheaf has, through his negligence, enabled a company to operate and expand its HGV operations which should never have been able to do so. I am disqualifying him from acting as a transport manager for an indefinite period of time. If he wishes to act as a transport manager again in the future, he may begin to re-establish his repute by taking and passing the Transport Manager CPC examination".

8. In appealing the decision Mr Sheaf asserted, in effect, that he had been the victim of "*widespread deception by the Operator*"; that it had been unfair of the TC to conclude that he had lost his good repute and should be disqualified, that he had told the truth at the PI, that he is well qualified as a transport manager, that he has a previous "*perfect record*" as a transport manager, that he had not been kept informed as to developments by the operator, that he had been horrified to discover that an application had been made to "*upgrade to 10 vehicles*" behind his back, that he had been foolish in subsequently providing written support for the application to increase the number of vehicles and trailers to 10, that he regretted his involvement with the operator, and that any failings of the operator should not be visited on him.

9. 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".

10. Paragraph 17(3) of that Schedule provides that the Upper Tribunal may not take into consideration any circumstances that 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 therein 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 which had been 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 take a different view to that taken by the TC.

11. As was explained by the Upper Tribunal in *T/2014/25/26 H. Sivyver (Transport) Ltd. and Simon Sivyver* [2014] UKUT 0404 (AAC), where a transport manager has substantially failed in his or her duty to maintain continuous and

effective control of an operators fleet of vehicles the remedy is to consider and where appropriate find loss of good repute as a transport manager. Once good repute has been lost, disqualification from acting as a transport manager is a mandatory consequence (see paragraph 16(2) of Schedule 3 to the 1995 Act. There is no opportunity, after a finding of loss of good repute, to consider whether or not disqualification is a proportionate response. Instead, proportionality is to be considered when deciding whether or not to make a finding of loss of repute. To justify a finding of loss of repute the matters proved must be such that disqualification represents a proportionate response.

12. The key paragraph in the TC's written reasons with respect to this appellant is paragraph 15 which we have set out, in full, above. We are satisfied the TC was not plainly wrong or wrong at all in concluding that, even prior to May 2019, his involvement with the licence, and hence his performance of his duties as a transport manager, was inadequate. The relatively infrequent meetings at Costa Coffee did nothing to support the proposition that he was, even at the time those meetings were taking place, maintaining continuous and effective control of the operator's fleet of vehicles, notwithstanding that it was a small fleet. Further, we are not able to find that the TC was plainly wrong, or wrong at all, in concluding that, once those meetings had ceased, the transport manager had virtually no involvement with the licence. That is the appellant's own position on the matter. Whilst he seeks to suggest that his lack of involvement was the fault of the operator for not actively involving him, he has not evidenced any steps which he had taken to inform the TC that his involvement on a licence where he was recorded as being the transport manager, had effectively ceased. We accept the TC was right in saying that his inaction "*gave the operator the outward sign of professional competence and compliance*". We also note the TC's recording of the appellant's acknowledgement that he had been disingenuous in subsequently providing the letter of 1 June 2020, which lent support for the application the operator had made in May 2020 for the increase in authorisation to 10 vehicles and 10 trailers and which gave the impression of a much greater level of involvement with the licence than the applicant now says he has had. Both the version given by him in the letter and the version given at the PI cannot be true.

13. We do nevertheless have a concern. There is nothing in the TC's written reasons which specifically indicates that consideration was given as to whether, in all the circumstances, a finding of loss of repute was a proportionate response. The TC's written reasons are succinct. Succinctness, of itself, is not to be criticised. But it must not come at the price of excluding an important aspect of the necessary reasoning underpinning a decision. The omission of a specific consideration as to proportionality has troubled us to a degree. But, whilst we would not question the appellant's contentions as to his previous good record as a transport manager or as to the level of his qualifications, the TC's findings as to his failure with respect to this licence were comprehensive and identified conduct surrounding the provision of a letter to the relevant regulatory organisation in support of an application, which was, in terms of its conduct, misleading. In those circumstances we conclude that, given the findings, the outcome with respect to repute was inevitable. That means any failure on the part of the TC to specifically consider the proportionality aspect was not material.

14. Given the identified failings we see nothing plainly wrong or wrong at all in the decision to disqualify for an indefinite period. Although it does not impact upon

our decision, we note that the appellant has, apparently, taken a decision to retire from work as a transport manager in any event.

15. In the circumstances, this appeal to the Upper Tribunal is dismissed.

M R Hemingway
Judge of the Upper Tribunal
Signed: 11 October 2021

A Guest
Member of the Upper Tribunal

S James
Member of the Upper Tribunal