



**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

**NCN: [2022] UKUT 82 (AAC)
Appeal No. UA-2021-000333-T**

Appellant:

S&D HAULAGE LIMITED

DECISION OF THE UPPER TRIBUNAL

**Her Honour Judge Beech, Judge of the Upper Tribunal
Stuart James, Specialist Member
David Rawsthorn, Specialist Member**

Decision date: 14th March 2022

ON APPEAL FROM:

**Tribunal: John Baker, Deputy Traffic Commissioner for the East
of England**
**Appeal Tribunal Venue: Field House, 15-25 Bream's Buildings, London, EC4A
1DZ**
Date: 8th March 2022

This front sheet is for the convenience of the parties and does not form part of the decision



NCN: [2022] UKUT 00082 (AAC)
Appeal No. UA-2021-000333-T

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

On appeal from the Decision of John Baker, Deputy Traffic Commissioner for the East of England dated 10th August 2021

S&D HAULAGE LIMITED

Before: Upper Tribunal Judge Her Honour Judge Beech
Specialist Member of the Upper Tribunal Stuart James
Specialist Member of the Upper Tribunal David Rawsthorn

Hearing date: 8th March 2022

Representation:

Appellant: Alina Caseriu, the sole Director of the Appellant Company

DECISION

The appeal is DISMISSED

Subject Matter: Application for operator's licence; connection with another operator subject to investigation; whether "fronting" operation

Cases referred to: Bradley Fold Travel & Peter Wright v Secretary of State for Transport (2010) EWCA Civ.695.

REASONS FOR DECISION

1. This is an appeal from the decision of the Deputy Traffic Commissioner for the East of England ("DTC") dated 10th August 2021 when he refused the Appellant's application for a standard international operator's licence under

s.13(2)(b) and Schedule 3 of the Goods Vehicles (Licensing of Operators) Act 1995 (“the 1995 Act”).

2. The background to this appeal can be found in the appeal bundle and the written decision and has been helpfully summarised by the DTC in this way:
 - *The company S&D Haulage Limited, which was incorporated on 18 September 2020, made an application for a standard international licence authorising 10 vehicles on the 23 September 2020. The sole director of the company is Alina Ramona Caseriu and at the time of the application the nominated transport manager was Ionut Caseriu. An application to change the nominated transport manager to Elvis-Giani Hudescu was made on the 3 December 2020.*
 - *Ionut Caseriu is the sole director and transport manager of Trans-Chriss Limited. An operator’s licence is in force for that company authorising 10 vehicles and the operating centre is the same as that nominated in the current application.*
 - *While processing the application it was noted that financial standing was established by a bank account held in the company name and deposits through loans into that account had been made by A Caseriu and £20,000 from Trans-Chriss Limited. A request for information in relation to the latter amount was sent, and a reply received from Ionut Caseriu in which he said that the loan had been made on an interest free basis for 48 months.*
 - *It was noted that there was an ongoing investigation by the DVSA in relation to the licence held by Trans-Chriss Limited. A traffic examiner first contacted Mr Caseriu in August 2020 in relation to the investigation.*
 - *Because of the apparent links between the individuals involved in the application and the financial arrangements surrounding the loans it was decided to determine the application at public inquiry.*
3. The public Inquiry took place on 4th August 2021. Alina Caseriu (“Mrs Caseriu”) attended along with her husband, Ionut Caseriu (“Mr Caseriu”). Whilst Mr Hudescu (the nominated transport manager and Mrs Caseriu’s brother) had confirmed that he would be attending the hearing in person, he in fact flew to Romania the day before the hearing and an urgent application was granted to hear his evidence over a video link.
4. Mr Hudescu told the DTC that he was the sole director of LGW Trans Limited which held an operating licence authorising four vehicles, with three in possession. The operating centre was in the same yard as Trans-Chriss Limited which was also the proposed operating centre of the Appellant company. He replaced Mr Caseriu as the nominated transport manager on the Appellant’s licence application because he has more time to devote to the role of transport manager for the Appellant company.
5. Mrs Caseriu informed the DTC that she was employed in Mr Caseriu’s business which mainly undertakes Amazon for work along with some sub-contracting for Tesco and Sainsbury. Over time she had gained knowledge about commercial vehicle operations; she had helped her husband with the maintenance records and she had watched him download the digital cards and she had done her own research. At that time, Trans-Chriss Ltd was operating

ten vehicles and employed fifteen drivers. Four of the vehicles were no longer new enough for Amazon and could not be used on the Amazon contract. It was decided that those vehicles should be used on other work and that four new vehicles would be rented via Amazon. Mr and Mrs Caseriu had discussed their options and it was her suggestion that rather than make an application to extend the vehicle authorisation on the Trans-Chriss licence from ten to fifteen, that Mrs Caseriu should apply for her own licence. She averred that Amazon did not like using large transport operations. During one of the monthly operator audits that Amazon undertakes, Mr Caseriu had asked about opportunities which might be available for Mrs Caseriu. The Amazon representative/Business Coach confirmed that there were business opportunities for females who wished to start their own businesses (something Amazon was keen to promote). She would be granted a contract with different rules to that applicable to Trans-Chriss Limited. She advised that Amazon are in control of all aspects of the operation contracted by them even down to paying for the fuel. The only aspect of the business they did not control was the hire of the drivers. Mrs Caseriu insisted that the establishment of her business and the application for a licence, being approximately one month after Mr Caseriu had been contacted by the DVSA to notify him of an investigation, was an unfortunate coincidence. Her application had been delayed because of the difficulties in opening a business account with HSBC. She accepted that she would work with her husband and described the three companies as a “*big family*”. She told the DTC that she was a trained Forestry Engineer and that her husband had worked hard to maintain the family.

6. Mr Caseriu informed the DTC that a DVSA investigation had begun because his company had encountered difficulties with drivers. One driver did not check his tachographs and then seven drivers left at the same time and returned to Romania. Mr Caseriu was forced to reduce his contracts by half in order to keep going. Moreover, he had had a long association with Gold Star Transport, a container company. The rates were low and then as a result of the pandemic, the rates were cut further forcing Mr Caseriu and Mr Hudescu to turn to Amazon. The contracts were not the best but high standards were maintained. They require operators to use brand new vehicles and no vehicles more than five years old. The vehicles are rented under financial arrangements negotiated on their behalf by Amazon with truck suppliers and pays £80 per month towards the hire charges for each vehicle which is displaying the Amazon livery. He had told Amazon that he did not want to operate more than ten vehicles but had said that his wife would like a business. He agreed with the evidence of his wife.

The DTC's decision

7. The DTC's findings and decision were set out as follows:

“12. .. I am aware that it is likely the operator will be called to public inquiry, and it is possible the outcome could impact on the repute of Mr Caseriu as director and transport manager. It is also the case the (sic) Mr Caseriu and his wife would have been aware that an investigation was underway when this application was made. The operating centre for Trans Chriss Limited and the nominated operating centre is the same as is the number of vehicles authorised and requested. Mr Caseriu was originally nominated as the transport manager on this application, and he was replaced by his brother-in-

law. Trans Chriss Limited have deposited £20000 in the accounts for S&D Haulage Limited as an interest free loan. The remaining funds have been deposited in the name of Mrs Caseriu although no evidence was produced to demonstrate that she had a source of funds separate from her husband. Mrs Caseriu emphasised that her motivation for applying for a licence was a result of encouragement from Amazon and yet she also said that she would be using four vehicles initially which were not suitable for that work. She also said that Amazon wanted operators with a smaller number of vehicles and yet she had applied for the same number as those authorised under her husband's company's licence.

13. Having taken all these factors into account I find that it is more likely than not that Mr Caseriu will be central to the operation of this licence if it is granted. His financial interest and those of his family will be tied into the business and at this stage there is a question mark over his repute, and this will only be resolved once the outcome of the DVSA investigation and whatever follows is known.

14. For these reasons I do not find that the statutory requirement for the applicant to satisfy me that repute to hold a licence is made out and I refuse the application accordingly. Once the result of the investigation into Trans Chriss Limited is known it may be that a renewed application will be appropriate depending of the outcome (sic) of that case.”.

8. On 28th October 2021, Mrs Caseriu sent an email to the OTC asking that the DTC review his decision. By a letter dated 1st November 2021, the DTC responded advising her that it was not possible for him to review his decision; she still had the option (albeit out of time) to pursue an appeal or to resubmit her application, the situation having changed in the case of Trans-Chriss Limited (the public inquiry having taken place) and that was likely to be relevant to her application and finally, that if she did make another application, she may wish to consider the number of authorised vehicles applied for bearing in mind her relative inexperience of operator licensing.
9. Mrs Caseriu chose to pursue an appeal.

The appeal

10. At the hearing of this appeal, Mrs Caseriu attended without representation. Her husband and brother did not attend. Her grounds of appeal were in a narrative form; in essence, they amounted to a repeat of the evidence that she had given at the public inquiry. She amplified as follows:
 - a) HSBC failed to consider the company's application for a business account. Having delayed for three weeks, she was advised that HSBC could not deal with the application because of COVID-19. She then made an application to Barclays and eventually opened an account with TIDE. All of this contributed to the delay in her making the application;
 - b) She and her husband had decided to expand his business and concluded that the best way to do that was for her to apply for a second operator's licence rather than applying to increase the existing authorisation on the Trans-Chriss licence. One of the main reasons for doing this was that the insurance premium paid by Trans-Chriss was

approximately £9,000 per vehicle because of the number of accidents the drivers had been involved in and their insurance broker had advised that the insurance premium payable by a new licence holder would be likely to be in the region of £4,000 per vehicle which represented a considerable saving. The broker had advised them to apply for a new licence;

- c) Because of Amazon's requirement that contractors only use new vehicles, there were four vehicles owned by Trans-Chriss/Mr Caseriu which were surplus to requirements and it was these which were going to be authorised on her licence. When asked why she had stated in emails to the OTC that she had "*a big contract with Amazon*" and that she had "*made a mistake and bought four trucks, thinking that I'll will be ready to start working with, in November when the license supposed to be ready and now I pay finance and I have them parked*" she stated that she was in fact talking about her husband's business. They are a family and she was thinking "*we*" but wrote "*I*";
- d) Mrs Caseriu accepted that her operation would not be independent from that of her husband's. He would help her because they have two children of 16 and 8 years. Her husband has been driving since he was 18 and has more knowledge than she does;
- e) As for financial standing, she obtained a personal loan from HSBC in the sum of £25,000 which she transferred into the company's account along with some savings of her own to make up the £30,000 that was described as a loan to the company on the bank statements. Whilst she was qualified as a Forestry Ranger, she had been looking after the family whilst helping her husband in his business, helping him with the forward planner, MOTs, downloading and checking drivers' cards and checking driving licences. She received an income from her husband's company and she was also a School Assistant.
- f) She did not reapply for a licence as suggested by the DTC in the letter of 1st November 2021 because she thought that it would be easier to appeal. She was not suggesting that the DTC was wrong in refusing the application and she accepted that now Trans-Chriss had attended a public inquiry and had regulatory action taken which did not include findings of loss of repute, the position had changed.

Discussion

- 11. We have set out Mrs Caseriu's oral submissions to the Tribunal in full even though they include evidence which was not put before the DTC during the public inquiry but which was available at the time and could have been put before him. We have done so, so that Mrs Caseriu will be satisfied that we have listened to what she had to say. However, we must review the DTC's decision only upon the basis of the evidence before him at the time.
- 12. The DTC was plainly right (as Mrs Caseriu accepts) to be concerned by the links to Trans-Chriss Limited, a company which had been informed in August 2020 that a DVSA investigation was to take place, which was a month before the Appellant company was incorporated and an application for an operator's licence made. Moreover, the reliance upon a significant capital sum

transferred from Trans-Chriss Limited to the Appellant company in order to meet the financial standing requirements, the nomination of Mr Caseriu initially as transport manager, the sharing of an operating centre and the request for an authorisation of ten vehicles which mirrored the authorisation recorded on the licence of Trans-Chriss Limited all raised reasonable doubts about this application being independent of Mr Caseriu and his company which further raised significant concerns that this application was being made as a safety net in the event that the operator's licence of Trans-Chriss Limited was revoked or other substantial regulatory action taken for example, a reduction in authorisation. In other words, that it was likely to be used as a "front". The concerns and doubts which existed when the call up letter was sent out were only reinforced during the course of the public inquiry. We have no hesitation in finding that the DTC's decision was plainly right.

13. To conclude, all grounds of appeal are rejected as we are not satisfied that there was procedural unfairness in this case or that the TC's decision was plainly wrong in any respect and neither the facts nor the law applicable in this case should impel the Tribunal to allow this appeal as per the test in Bradley Fold Travel & Peter Wright v Secretary of State for Transport (2010) EWCA Civ.695. The appeal is dismissed.



Her Honour Judge Beech

Judge of the Upper Tribunal

14th March 2022