



Appeal No.: T/2018/78
NCN: [2019] UKUT 418 (AAC)

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

**IN AN APPEAL FROM THE DECISION OF:
NICK JONES, TRAFFIC COMMISSIONER FOR WALES
DATED 15th OCTOBER 2018**

Before:

**Elizabeth Ovey, Judge of the Upper Tribunal
Stuart James, Specialist Member of the Upper Tribunal
David Rawsthorn, Specialist Member of the Upper Tribunal**

Appellant: PETER JONES

Attendance: The Appellant appeared in person.

Heard at: Field House, 15-25 Breems Buildings, London EC4A 1DZ

Date of hearing: 12th February 2019

Date of decision: 4th April 2019

DECISION OF THE UPPER TRIBUNAL

IT IS HEREBY ORDERED that the appeal be DISMISSED.

SUBJECT MATTER: Transport manager; never carried out any duties as such; failure so to inform the traffic commissioner when resigning; loss of repute; disqualification

CASES REFERRED TO: *Bradley Fold Travel Limited and Peter Wright v. Secretary of State for Transport* [2010] EWCA Civ 695, [2011] R.T.R. 13

REASONS FOR DECISION

1. This is an appeal by Mr. Peter Jones (“Mr. Jones”) against the decision of the

Traffic Commissioner for Wales (“the TC”) given on 15th October 2018 by which the TC decided that Mr. Jones had lost his repute as a transport manager and was disqualified from holding or applying for any transport manager position anywhere in the European Union for an indefinite period.

2. The TC’s decision followed a public inquiry held on 2nd August 2018 to which Mr. Jones was called by a call-up letter dated 28th June 2018. The letter explained that the inquiry would consider whether Mr. Jones continued to meet the requirements to be of good repute and professionally competent having regard to his former role as transport manager of C I T European Limited (“CIT”). The basis of the inquiry was a public inquiry statement dated 23rd March 2018 made by a traffic examiner, Mrs. Marianne Hyde, which alleged, in relation to Mr. Jones, that he had never had any involvement with CIT’s operator’s licence from the time it was granted. The letter further stated that CIT and Mr. Craig Isaac (“Mr. Isaac”) had also been called to the inquiry.

3. The background to the inquiry, which is set out in further detail in the TC’s decision, is as follows. CIT applied for an operator’s licence by an application dated 2nd February 2015 signed by Mr. Philip Lindup, who was named as the contact person and stated to be the director of CIT. Mr. Jones was named as the prospective transport manager. He completed an application to add himself to the licence as transport manager, stating that he would spend four hours a week on his duties. He was already the transport manager for another business, in which capacity he worked for six hours a week. That application was also dated 2nd February 2015 and was duly signed by Mr. Lindup as well as Mr. Jones.

4. The Companies House records show that CIT was incorporated on 6th January 2015 and Mr. Lindup was appointed its sole director. The licence was granted on 30th April 2015 and at some point thereafter CIT began operations. Mrs. Hyde said in her statement that in October 2017 she received a request to conduct an investigation into the activities of CIT on the ground that the vehicles were possibly being operated by Mr. Isaac. If so, they were potentially being operated illegally, because in July 2012 Mr. Isaac was disqualified for five years from holding or applying for an operator’s licence as an individual, partner, director or person with a controlling interest in a company.

5. Mrs. Hyde’s investigation produced a considerable amount of material which suggested that:

- (1) Mr. Lindup, who is Mr. Isaac’s stepfather, had very little knowledge of either the road transport business generally or the operations of CIT specifically;
- (2) Mr. Isaac, whose name appeared on the specified vehicles, was regarded as the owner by others and was substantially involved in the business.

6. In the course of her investigation Mrs. Hyde interviewed Mr. Jones on 12th February 2018. A statement dated 22nd March 2018 setting out what was recorded in the interview notes is at pp. 102 to 104 in the bundle and it is further stated that Mr. Jones signed a copy of the notes. The copy of the interview records that Mr. Jones said

that Mr. Isaac visited him to get him to sign the application to become transport manager for CIT. He knew Mr. Isaac because Mr. Isaac's father had worked for him for a long time and Mr. Isaac had also worked for him for about a year. Mr. Isaac said he needed a transport manager for a new company he was doing, but also said it was not his business because he had had bother. Mr. Jones could not remember whose business Mr. Isaac said it was. He had met Mr. Lindup on occasion, most recently at the funeral of Mr. Isaac's late father probably about five years earlier, but had not seen or spoken to him since he agreed to be the transport manager. He knew at the beginning that he was the nominated transport manager but it never came to anything; in fact they never spoke about it again. He received no payment. In summary, he did not think further about CIT until he saw an article in the publication *Commercial Motor* about Mr. Isaac and his trucking business in January 2018. He then looked Mr. Isaac up on line, found CIT and found that he was shown as the transport manager. He wrote a letter addressed to "To whom it concerns" stating that he wished to remove himself from the licence and rang Mr. Isaac to ask why he was still on it.

7. Mr. Jones' letter is at p.178 of the bundle. It stated that he wished to remove himself as transport manager from 19th January 2018. It is date-stamped as sent by recorded delivery and received on 19th January 2018. It is not clear where the letter was sent, but a letter to Mr. Lindup at p.179 shows that the Office of the Traffic Commissioner ("the OTC") had received it and acted upon it by 22nd January 2018.

8. The outcome of the public inquiry as respects CIT and Mr. Isaac was that CIT's operator's licence was revoked, a formal finding was made that Mr. Isaac had been a shadow director, Mr. Isaac was disqualified from holding or applying for an operator's licence for ten years and Mr. Lindup was disqualified from holding or applying for an operator's licence for five years. The TC made express findings of fact that Mrs. Hyde's evidence was correct, that Mr. Isaac and Mr. Lindup were dishonest liars, that at all times it was Mr. Isaac who controlled the operator's licence and that CIT was set up with the sole intention of circumventing the disqualification order to which he was subject. An appeal against that part of the TC's decision was withdrawn with the consent of the Upper Tribunal shortly before Mr. Jones' appeal was heard.

9. As to Mr. Jones, the TC said:

"81. I accept that Peter Jones was truthful in telling the DVSA that he never did any work for C I T European Ltd. However I am wholly unimpressed with his letter of resignation to my office. He could and should have indicated that he had not undertaken any transport manager role. The fact that he has not been co-operative in attending the hearing is sufficient for me to consider that he should also be out of the operator licensing system for some time.

82. Peter Jones loses his repute as a transport manager and as a result it is compulsory for him to face a disqualification. I order his disqualification from applying for or holding a transport manager position anywhere within the EU for an indefinite period of time. For the avoidance of doubt in this case I do not envisage Peter Jones being a transport manager being in any position as a transport manager (*sic*) for a number of years, in all probability any future traffic commissioner is likely to want him to have re-qualified. I note that he was born in 1944 and would be surprised if he sought any future transport manager role."

10. Mr. Jones appealed against the TC's decision in relation to him by an appeal form dated 5th November 2018 sent on his behalf by his accountants. The grounds of appeal are as follows:

“The appeal against the loss of repute is because the notice I had to attend the hearing was 24 hours when I had advised Mrs. Hyde in my interview that I would be abroad in France in the summer. Had I been able to attend the hearing I would have been able to explain the matters in Mrs. Hyde's evidence.

As has been accepted I did no work for CIT European Limited. I received no payment.

I was under the impression that Mr. Lindup was the operator. I know that is now incorrect and I therefore resigned from the company.

I saw the article in Commercial Motor and was annoyed because as well as it being obvious that Craig Isaac was the operator, the article was incorrect in its portrayal of Craig's late father.

I feel that I acted properly and as soon as I was aware of the actual position I resigned. I did not specify the reasons in my resignation letter as I had stated them to Mr. Craig Isaac verbally.”

11. In considering Mr. Jones' grounds of appeal, we remind ourselves that the task of the Upper Tribunal, on hearing an appeal from a traffic commissioner, is to review the material before the traffic commissioner, and 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”, as explained in *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. This is sometimes summarised as requiring the Upper Tribunal to conclude that the traffic commissioner was plainly wrong.

12. We turn first to the question of the notice of the hearing which was given to Mr. Jones. The call-up letter dated 28th June 2018 is marked as having been sent by first class post and recorded delivery. It is addressed to Mr. Jones at 2 South View, Oswestry SY11 1PF. That is the address given in Mr. Jones' application to be added as transport manager.

13. Mrs. Hyde's statement explains at p.58 that on 25th January 2018 she wrote to Mr. Jones asking him to attend a follow-up visit on 5th February 2018. This was about a week after Mr. Jones had resigned as transport manager of CIT, a fact of which Mrs. Hyde had been informed on 22nd January 2018 by a person identifying himself as Mr. Lindup. The letter itself appears at p.96 and is addressed to 2 South View. The statement then goes on to explain that on 29th January 2018 Mr. Jones telephoned Mrs. Hyde and said he was unable to meet on 5th February because he was moving house but would meet her at a later date. The statement by Mrs. Hyde at p.102 records Mr. Jones' address as 23 Grey Friars, Oswestry, Shropshire SY11 2DY and Mr. Jones told us at the hearing that that is his current address in the United Kingdom. The notes do not

themselves record that Mr. Jones told Mrs. Hyde that he would be in France in the summer.

14. Mr. Jones' principal difficulty on this aspect, however, is not what he may have said to Mrs. Hyde about his absence in France, but the fact that it seems that he did not notify the OTC of his new address. That was his responsibility, not the responsibility of Mrs. Hyde. There is a copy file note dated 18th July 2018 at p.192 which records that the brief for the hearing was returned to the office on 13th July 2018 although it was sent to the address given on the resignation letter. The case worker had tried to telephone the contact number given on the letter but had got a message saying that the number was not currently available. Eventually, having obtained an e-mail address for Mr. Jones from Mrs. Hyde, on 1st August 2018 the case worker sent him a message timed at 12.20 notifying him of the public hearing.

15. Although these details are not set out in the TC's decision, he was made aware of them by the clerk at the hearing, as appears from the transcript at p.218. Mr. Jones did in fact respond by an e-mail sent on 2nd August timed at 10.12, but it simply stated "I was interviewed by Marian Hide early part of the year" in the subject line and contained nothing of substance in the main body of the message, as the TC was also informed. The TC's reaction was that it was the responsibility of a transport manager to notify his office of all addresses. Mr. Jones explained at the hearing before us that he received the message on his mobile phone and had difficulty in replying. The TC was, of course, unaware of that explanation. It appears from a subsequent exchange of e-mails at pp.222-223 that Mr. Jones also telephoned someone called Manjit at the TC's office on 2nd August 2018 and said that he was in France, but there is no record of the call in the papers.

16. It is to be borne in mind in considering Mr. Jones' failure to notify the TC of his new address that as far as the papers before the TC showed, Mr. Jones remained the transport manager of another business. Although it might be said that he was not obliged as the former transport manager of CIT to keep the TC informed of his address after he ceased to hold that office, he remained under such an obligation in his capacity as transport manager of the other business.

17. We accept that as a matter of fact Mr. Jones was in France at the time of the public inquiry, of which, again as a matter of fact, he received very short notice, and which he was therefore unable to attend. (It is to be noted that under paragraph 15(3) of Schedule 3 to the Goods Vehicles (Licensing of Operators) Act 1995 notice of a public inquiry is deemed to have been given on the date on which it would have been delivered in the ordinary course of post if sent to the transport manager's last known address, notwithstanding that it was returned as undelivered.) Nevertheless, in our view, the TC is not to be criticised for having proceeded on the footing that it was Mr. Jones' responsibility to keep the OTC informed of his current address and that therefore (by implication) it was not unfair to Mr. Jones to proceed with the inquiry in his absence. That is particularly so given that some reply had been received from Mr. Jones but it was not one of substance.

18. Leaving aside for the moment the TC's description of Mr. Jones as having "not been co-operative in attending the hearing" and its possible effect, we add that it does not appear to us that Mr. Jones' attendance and evidence would have had a material

effect. The TC comprehensively rejected the evidence of Mr. Lindup and Mr. Isaac, which was the only evidence that Mr. Jones did any work as transport manager for CIT and was paid anything. He expressly accepted that Mr. Jones was truthful in saying that he did not do any work. Mr. Jones was called to the inquiry for the very reason that Mrs. Hyde's statement said that he had never had any involvement with CIT and that is what he himself has said throughout.

19. The point, other than non-attendance at the inquiry, which troubled the TC was that Mr. Jones' letter of resignation as transport manager of CIT did not explain that he had never carried out any duties as transport manager. The difficulty for Mr. Jones is that, even if it is accepted that as soon as he realised that Mr. Isaac was operating a business in respect of which he was the nominated transport manager he resigned and notified the OTC, he did nothing to dispel the impression which the OTC inevitably had at that point that he had been acting as transport manager throughout the period for which the business had operated, which was potentially nearly three years. Telling Mr. Isaac of his reasons for resigning was a very different matter from telling the OTC that it had been under a misapprehension about his position for several years.

20. Section 58 of the Goods Vehicles (Licensing of Operators) Act 1995 applies the definition of "transport manager" found in article 2 of Regulation (EC) No. 1071/2009, which states that a transport manager is a person who "effectively and continuously manages the transport activities" of the company employing him. In our view Mr. Jones, having signed the application form, was not as alert as he ought to have been to the possibility that an operator's licence had been granted to the business about which Mr. Isaac had approached him and that he was being shown as the nominated transport manager. He ought to have made inquiries of Mr. Isaac about what was happening. His failure to do so contributed to enabling Mr. Isaac to operate the CIT business for some years without challenge. When the true position became clear to him, he ought also to have made it clear to the OTC.

21. In those circumstances, we further take the view that the TC is not to be criticised for having found that Mr. Jones ought to have explained the position in his letter of resignation to the OTC. In saying that, we bear in mind that the chronology shows that Mr. Jones did indeed resign promptly when he became aware of the facts and that he was not pushed into resigning by becoming aware of Mrs. Hyde's investigation. Nevertheless, for the reasons already explained, we conclude that he was at fault in the manner found by the TC.

22. This brings us back to the TC's description of Mr. Jones as having not been co-operative, which he clearly regarded as a relevant factor in his decision to disqualify Mr. Jones. The TC has not elsewhere expressly addressed the issue of proportionality in relation to a finding of loss of repute which he was required to consider under paragraph 16(1) of Schedule 3 to the 1995 Act. It may therefore be that this passage is to be understood as his reference to proportionality. As we have said, we agree that the responsibility for the late notification of the inquiry and his consequent inability to attend must be borne by Mr. Jones. To that extent he was not co-operative in attending the hearing. It is not clear to us if the TC intended to make a finding that Mr. Jones was actively unco-operative, but if so, it does not appear to us that that is borne out by the evidence before him.

23. Our final conclusion, however, is that even if the TC was somewhat harsh in his assessment of Mr. Jones' failure to attend the inquiry, that does not mean that we are required to take a different view on the issues of loss of repute and, in consequence, disqualification. Although we accept that Mr. Jones did not intend to facilitate the circumvention by Mr. Isaac of his original disqualification, Mr. Jones was willing to allow himself to be put forward as a transport manager in relation to a company which he believed was called Craig Isaac Transport while also believing that it was not Mr. Isaac's business "because he'd had bother". He did that without taking any steps to establish that the business was being operated by someone competent to do so (see p.103). His actions had the unfortunate practical consequence of allowing the circumvention to take place, which was a serious breach of the regulatory system. We can understand that Mr. Jones may have wished to assist the son of his old friend, but that could not justify his lack of interest in what was actually happening. Without realising it, Mr. Jones became a transport manager in name only in relation to a business operated by someone who was disqualified from doing so.

24. This was compounded by his failure to explain to the OTC what had happened when sending his letter of resignation. If Mrs. Hyde's investigation had not already been under way, the outcome might well have been that Mr. Isaac found another transport manager or, having obtained his own professional qualification, himself became the transport manager, and that the TC was left wholly unaware that he had ever acted as a shadow director of CIT.

25. These matters seem to us to show a serious failure by Mr. Jones to appreciate the wide-ranging responsibilities of a transport manager. His failure to keep the OTC informed of his current address is a further example of this. These are matters which are capable of making a finding of loss of repute a proportionate response.

26. We therefore conclude that the TC was not plainly wrong to decide that Mr. Jones had lost his repute as a transport manager. That being so, an order of disqualification became mandatory under paragraph 16(2) of Schedule 3. The disqualification was for an indefinite period and we see nothing wrong in that.

27. Mr. Jones submitted to us at the hearing that his age ought to have nothing to do with it. We think it is understandable that the TC referred to his having been born in 1944 and said he would be surprised if Mr. Jones sought any future transport manager role. We do not regard that comment as having contributed to the TC's decision on loss of repute and disqualification. It seems to have been connected with the TC's expectation that any future traffic commissioner would want Mr. Jones to have requalified before cancelling the disqualification order. We think that was a reasonable expectation, bearing in mind that Mr. Jones had acquired rights and had not obtained a certificate of professional competence. The history of the present case points to the need for him to refresh and perhaps to update his knowledge before being appointed to another position as transport manager if he wishes to undertake such a task.

28. In this connection we add that Mr. Jones explained to us that although in February 2015 he was actively running his other business, for which he acted as transport manager, he ceased actively to run it before Christmas 2016 and since that date he and his wife have been spending extended periods in France, as they were doing at the date of the inquiry. His sons, however, may wish to start running the business

again and he wishes to be in a position to help them out as transport manager. Although we understand this, it is not evidence which was before the TC (as it could have been if Mr. Jones put himself in a position to receive notice of the inquiry) and in any event would not, in our view, have had a material effect on the TC's decision as to proportionality or disqualification. If anything, it would have supported the decision on proportionality because it would have removed any concern about the effect of a finding of loss of repute on Mr. Jones' other business. It also reinforces the likely desirability of requiring Mr. Jones to re-qualify, since he has now had a substantial break from acting as a transport manager.

29. We understand that Mr. Jones may feel that he has in a sense been the victim of Mr. Isaac. We have made clear that we do not regard him as having been an active party to the circumvention of Mr. Isaac's disqualification and that we accept he acted promptly when he became aware of the true position. Nevertheless, for the reasons we have given, Mr. Jones has not shown that the TC's decision is wrong and accordingly we dismiss the appeal.

(signed on the original)

E. Ovey
Judge of the Upper Tribunal
4th April 2019