



NCN: [2021] UKUT 71 (AAC)
Appeal No. T/2020/60

**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
L Milliken: Member of the Upper Tribunal
A Guest: Member of the Upper Tribunal

Appellant: Mann UK Limited

Reference: OB1139997

Date of Hearing: 11 March 2021 (remote hearing via BT Meet Me)

DECISION OF THE UPPER TRIBUNAL

This appeal to the Upper Tribunal is dismissed.

SUBJECT MATTER

Transport managers.
Periods of grace.

CASES REFERRED TO

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

REASONS FOR DECISION

1. This appeal to the Upper Tribunal has been brought by Mann UK Ltd (the Operator), through its director Mr Inderjit Mann, from a decision of the Traffic Commissioner for the North East of England (the TC) embodied in a letter of 13 October 2020, to revoke its goods vehicle operator's licence.

2. We held an oral hearing of the appeal via BT MeetMe. Mr Mann had consented to such a hearing and he participated in it. We are satisfied that he was able to make the same points at the remote hearing as he would have done had there been a traditional face-to-face hearing. We are grateful to him for his contribution.

3. It is not a matter of dispute that the Operator was, at all material times for the purposes of this appeal, required as a matter of law to have in place a transport manager (see section 13A(3) of the Goods Vehicles (Licensing of Operators) Act 1995 hereafter “the Act”). The Operator did, indeed, have in place a transport manager called Simon James Willets but, seemingly in February or very early March 2020, he resigned. Mr Mann says that the resignation came as a surprise. On 9 March 2020 the Office of the Traffic Commissioner (OTC) wrote to the Operator stating that there was now no transport manager specified on the licence such that the requirement upon the Operator to be professionally competent (see section 13A(2)(d) of the Act) might no longer be met. The Operator was told that it was required to add an appropriately qualified transport manager to the licence by 30 March 2020 but that, if it was unable to do that, it could ask for a period of grace. The letter also stated that, on the material available, the TC considered that the requirement of professional competence was no longer met (that being a consequence of there no longer being a transport manager on the licence); that the TC was considering revoking the licence on those grounds; and that the Operator could ask for a public inquiry (PI) at which the matter of revocation could be considered. The warning of the prospect of revocation was given under section 27(2) of the Act and the entitlement to seek a PI stems from section 29(1). No PI was ever sought.

4. In a prompt e-mail response of 10 March 2020, followed up by letter of 13 March 2020, the Operator asked for a period of grace. By letter of 25 March 2020 that request was granted. The Operator was told that a failure to meet the requirement of professional competence via the appointment of a transport manager had to be remedied by 24 September 2020 otherwise revocation of the licence would follow.

5. It is, at this stage, appropriate to say something about the concept of a period of grace. Section 27(3A) of the Act provides for the exercise of discretion by a TC to grant such a period in certain circumstances where, otherwise, revocation would be mandatory. It has never been disputed that, in this case, the lack of a transport manager and the consequent lack of professional competence (see section 13A(2), section 27 of, and paragraph 13 Schedule 3 to the Act) meant that the requirements for mandatory revocation had arisen. The giving of a period of grace must be accompanied by a notice setting out a time limit in which the situation must be rectified and the letter of 25 March 2020 did that. So, what was contemplated was the appointment of a new transport manager prior to 24 September 2020.

6. No appointment of a new transport manager was made prior to 24 September 2020 and, indeed, the Operator did not contact the OTC prior to that date. That being so, the TC decided to revoke the licence and, on 13 October 2020, the OTC wrote to the Operator informing it of that decision. The licence was revoked with effect from the date of that letter. Shortly prior to that letter being sent, in fact on 10 October 2020 and it seems to us entirely coincidentally, the OTC sent the Operator what appears to be a standard periodic request for information concerning the licence and various matters linked to it and asking for payment of a periodic licence fee. The Operator was told to respond to that request and to pay the fee by 31 October 2020.

7. Mr Mann, on behalf of the Operator, having received the letter of revocation, sent an e-mail of 18 October 2020 to the OTC requesting a change of mind. He explained that he had misunderstood the position, that he had thought he could have submitted “*my new transport manager details*” with his response to the above request for information, that he had booked himself on a Certificate of Professional Competence transport manager course (notwithstanding that he had provided evidence of one Jaspreet Moore having been appointed as the Operator’s transport manager with a commencing date of 20 October 2020) and that he had mistakenly missed “*the TM update deadline*”. But he was informed that since the decision to revoke had been made and had taken effect, he would have to appeal to the Upper Tribunal if he wished to challenge the revocation.

8. The Operator, through Mr Mann, did indeed appeal to the Upper Tribunal. In his grounds he repeated, in effect, what he had said to the OTC in the above e-mail, he explained that he “*didn’t log into my account*” until he had received the OTC’s communication of 13 October 2020, and that he was not currently operating any vehicles under the licence such that there could be no road safety risk.

9. At the hearing, Mr Mann, having been invited to address us and then having been asked questions, said he had misunderstood what was required of him but reiterated that there had been no risk to public safety. He acknowledged that the period of grace had expired before he had been sent the request for information and payment of a fee by the OTC..

10. 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 relating to transport”.

11. Paragraph 17(3) of that Schedule provides that the Upper Tribunal may not take into consideration any circumstances which 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 & Anor v Secretary of State for Transport* [2010] EWCA Civ 695. It was stated 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 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 adopt different view to that taken by a TC.

12. We have had to conclude that there is no merit in this appeal. We understand and accept that people do make mistakes. Mr Mann made a mistake, it seems to us, through not initially prioritising or at least not sufficiently prioritising the need to appoint a suitably qualified new transport manager within the period of grace given. He says he made a mistake through thinking that the standard period request, which as we say had required a response by 30 October 2020, had effectively extended the period of grace to that date. But the difficulty with that contention is that the period of grace had expired prior to the periodic request for information and for the payment of the fee being sent out to him. Further, insofar as it might be thought to be relevant, there was no indication in the request that it did amount to an extension of the period of grace. But the real point is simply that, although we accept that the Operator appointed a new transport manger with effect from 20

October 2020 and although we accept that he has now passed the Certificate of Professional Competence test himself (he forwarded confirmation of this by e-mail prior to the hearing), professional competence had been lost by operation of law through the loss of his previous transport manager, it was required to be rectified within the period of grace given, it was not so rectified and no extension of the period of grace had been sought or given.

13. As already stated, in deciding this appeal we are not able to take into account circumstances which did not exist at the time of the determination which is the subject of the appeal. On the material available and in light of the circumstances as they then were, the TC could not rationally have done anything other than revoke the licence. That being so, whilst Mr Mann is to be congratulated on passing his Certificate of Professional Competence test (something which is not easy), we have to dismiss the Operator's appeal.

14. Perhaps the Operator might wish to consider making a fresh application for a licence. Any such application will, we are sure, receive fair and balanced consideration. But it is a matter for the Operator as to whether to make such a request or not and we express no view as to whether such an application, if made, should or should not succeed.

15. The appeal is dismissed.

(Signed on the original)
M R Hemingway
Judge of the Upper Tribunal
Dated: 19 March 2021