



NCN: [2021] UKUT 72 (AAC)
Appeal No. T/2020/34

**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: Eluwumi Elusade t/a Wumibus Express

Reference: PF2030575

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

Lost repute.

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 Mr Eluwumi Elusade (“the appellant”) trading as Wumibus Express, from a decision of the Traffic Commissioner for the East of England (“the TC”) embodied in a letter of 16 June 2020, refusing to grant his application for a restricted public service vehicle operator’s licence.

2. We held an oral hearing of the appeal via BT Meet Me. Mr Elusade 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. Prior to the making of the application which has led to this appeal, the appellant had been the holder of a previous licence which had been revoked on 5 October 2016 following a Public Inquiry (“PI”) which he had not attended. The documentation concerning that adjudication process which is now before us is somewhat limited but, importantly, it is said that the loss of repute was indefinite. It also appears that part of the reason as to why repute had been lost related to a failure to notify the Office of the Traffic Commissioner (“OTC”) of a conviction for an offence of driving whilst disqualified. The appellant has not contended that, prior to the decision of 16 June 2020, he had sought to have his repute restored. Whilst we are dealing with potentially relevant historical matters it is also worth noting that the appellant was, it seems on 21 January 2020, convicted of an offence or offences involving the use of vehicles without a livery or without an operator’s licence being in place.

4. The appellant made his current application for a restricted licence on 12 March 2020. To his credit he disclosed the fact that he had held a licence which had been revoked but he did not disclose any conviction despite there being a specific question on the licence application form asking about convictions. He provided some financial information and some information concerning his employment. On 18 March 2020 the Office of the Traffic Commissioner (“OTC”) wrote to him seeking further evidence and information to be provided by 1 April 2020. Included was a request for more comprehensive evidence of the availability of the sum of £4,800 which it was said was necessary given the number of vehicles to be operated and the type of the licence being sought. Also included was a request for further detail and evidence concerning the proposed operating centre. The appellant was also informed that according to OTC records he had a “*driving conviction*” and he was invited, in effect, to declare it. The appellant responded by e-mail of 30 March 2020. He did provide certain of the information requested but not sufficient to satisfy the OTC with respect to all of the matters it had raised. As to the conviction/convictions, the appellant said he had wrongly answered the relevant question because he believed information he had disclosed about the revocation of the previous licence had been sufficient to cover it. As to the detail of any conviction he said “...*and to correct this, information for a conviction at a Public Hearing on 21st January 2020 at Birmingham REF: OTC UPK2029222 for use of vehicles without Livery and no Operator’s Licence being in place, due to my taking incorrect advice on “Not for Profit” basis work not requiring an “O” licence for local work, which concluded in vehicles being detained, removed and not returned to me. I would like to point out that I have not tried to withhold or mislead in any way*”.

5. On 2 April 2020 the OTC wrote to the appellant once again, seeking detail which it was clearly felt the appellant should have provided but still had not. It was said that if the information was not provided by 16 April 2020 the application would be refused. More information was provided and there were further e-mail exchanges. It is apparent that when the matter was then placed before a TC, the view was taken that repute remained lost such that, absent variation being successfully sought, the granting of a licence could not be contemplated. That view translated into the letter of 16 June 2020 which informed the appellant that his application had been refused. The point was made in the letter that his repute had been lost indefinitely, that he had not subsequently sought to have his repute restored, that the TC could not, therefore, consider any licence applications from him, and

that he would now need to write to the OTC to seek to have his repute reinstated. It occurs to us that some individuals faced with such a letter would, rather than seeking to appeal the decision to the Upper Tribunal, have simply sought to apply for restoration of repute as (if successful) a prelude to the making of a fresh application. But that was not the route this appellant chose to take. Instead, he appealed to the Upper Tribunal whilst also writing to the OTC, on 30 June 2020, asking for his repute to be restored. The appellant considers the content of his letter of 30 June 2020 to be important with respect to the issues we have to decide in determining his appeal. He was concerned that a page of it was missing and he sent a copy of the missing page (which was safely received) in advance of the hearing. The content of the letter has not, in fact, had relevance to our decision for reasons which are set out below. But in summary, the appellant in that letter referred to some very difficult family circumstances by way of explanation as to why he did not attend the PI which had resulted in the loss of his repute. He acknowledges he has made errors but points out he has subsequently undertaken training which will equip him to be a better licence holder in the future. He says he will be happy to attend further training.

6. In his written grounds of appeal to the Upper Tribunal the appellant asserts that he had provided sufficient information during the application process to justify the granting of his licence application. He says he has now “*forwarded an explanation*” for his failure to attend the PI which led to his loss of repute (that is a reference to his letter of 30 June 2020). He says the OTC had not previously told him that he could not succeed in his current application until his “*repute status*” had been reinstated. He refers to the various courses he has attended. His oral submissions ploughed a similar furrow.

7. 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”.

8. 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.

9. This appeal cannot succeed. Section 14ZB(a) of the Public Passenger Vehicles Act 1981 requires a successful applicant for a restricted licence to be of good repute. At the date of the TC’s decision to refuse the licence application, the appellant was not of good repute because his repute had been lost indefinitely as a result of the previous proceedings. The Upper Tribunal is not permitted, in deciding an appeal to it in this jurisdiction, permitted to consider any circumstances which did not exist at the time the TC made his decision. We have not been told whether or not the appellant has subsequently been able to regain his repute though we strongly suspect if he had already done so he would have told us. But even if he has regained his repute and indeed even if he had done so on the date he wrote to the OTC, we would still have had to dismiss his appeal for the reasons given above. In our

judgement the TC correctly applied the law and reached a decision which was, in truth, inevitable. Accordingly, we dismiss this appeal.

10. Having said the above, we recognise that the applicant has frankly acknowledged previous mistakes, has embarked upon a number of courses, and is enthusiastic about resuming activities as an operator under a restricted licence. We do not necessarily think, on the material before us, that his situation is entirely hopeless. But perhaps he may benefit from the taking of professional advice, if he has not already sought such advice, as to how best to seek restoration of repute and how best to approach any attempt he might make to obtain a licence. But, of course, that is a matter for him.

M R Hemingway
Judge of the Upper Tribunal
Dated: 19 March 2021