



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

**Appeal No. UA-2022-000796-T
NCN: [2022] UKUT 00333 (AAC)**

**ON APPEAL from a DECISION of the TRAFFIC COMMISSIONER for the NORTH
WEST of ENGLAND**

Before: M Hemingway: Judge of the Upper Tribunal
D Rawsthorn: Member of the Upper Tribunal
R Fry: Member of the Upper Tribunal

Appellant: Christopher Dagnall

Reference No: OC2055585

Representation:

For the appellant: in person

Heard at: Manchester

Date of Hearing: 9 December 2022

Date of Decision: 13 December 2022

DECISION OF THE UPPER TRIBUNAL

This appeal is dismissed.

Subject matter:

Financial standing (clarity of evidence)
Transport manager (acquired rights exemption)

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 Christopher Dagnall, (“the appellant”), who is a sole trader. The appeal is directed towards a decision of the Traffic Commissioner (“the TC”) embodied in a letter of 9 June 2022, to refuse his application for a standard international goods vehicle operator’s licence.

2. The application was made on 3 May 2022. The appellant, in making his application, indicated he proposed to utilise two vehicles under the terms of the licence he was seeking. He acknowledged that, in consequence, relevant legislation (see below) required him to demonstrate available finance of £2,400. He indicated an intention that his brother, Jonathan Dagnall, would be his transport manager. He provided some supporting documentation including bank statements covering the period from 15 February 2022 to 23 February 2022. The amount showing in credit during the whole of that short period was in excess of £9,000.

3. On 4 May 2022 the Office of the Traffic Commissioner (“OTC”) wrote to the appellant, pointing out that the application was incomplete. It was said that the evidence of finance covered too short a period and bank statements were sought covering a continuous 28-day period the last date of which was not to be more than two months from the date of receipt of the application. As to the transport manager issue, the appellant was asked to provide “*The nominated transport manager’s original certificate(s) of qualification of professional competence in road haulage or the reference number for an approved temporary acquired rights exemption*”. The former is a reference to the Certificate of Professional Competence for Transport Managers Qualification. The latter is a reference to an exemption which may be obtained in certain circumstances by an individual on application to the Department of Transport and which would permit such an individual to act as transport manager for a period, pursuant to Schedule 6 of the Goods Vehicles (Licensing of Operator’s) Act 1995. Without one or the other, Jonathan Dagnall was not able to be the transport manager on the licence.

4. On 7 May 2022, the appellant responded by sending an e-mail, with some attached documentation, to the OTC. As to finance he wrote: “*I have attached the statements for the whole month as requested*”. As to the transport manager issue, he sent a Driver Qualification Card in the name of Jonathan Dagnall.

5. On 18 May 2022 the OTC wrote to the applicant once again. It pointed out that the bank statement (or statements) sent to it on 7 May 2022 was “*too small to be legible*” and that the Driver Qualification Card did not have relevance to Jonathan Dagnall’s qualifications or competence to be a transport manager. The appellant was informed that if those evidential matters were not rectified by 1 June 2022, the application would be refused. The appellant responded, almost immediately, by e-mail but only to say he was resubmitting the same documents he had sent before. However, on 24 May 2022 the OTC e-mailed the appellant explaining that the documentation produced thus far did not show Jonathan Dagnall to be qualified to operate as a transport manager but pointing out that there was the facility to apply for acquired rights (see above) and providing some information as to how to do so.

6. On 8 and 9 June 2022 there were further e-mail exchanges between the appellant and the OTC but none of that resulted in any new or further evidence being sent. On 8 June 2022 the application and the issues surrounding it were considered by staff members within the OTC and according to internal communications disclosed for the purposes of this appeal, it was recognised that the financial evidence was largely illegible and that the documents relating to the proposed transport manager did not show him to be appropriately qualified. It was for those reasons that, on 9 June 2022, the OTC wrote to the appellant informing him that his application had been refused and explaining his right of appeal to the Upper Tribunal.

8. As to the relevant legal requirements which an applicant for a standard licence must meet, Section 13A(2)(c) of the Act imposes the requirement that such an applicant be of appropriate financial standing as determined in accordance with Article 7 of Regulation (EC) 1071/2009. Schedule 3 to the Act provides that “*Being of appropriate financial standing.....consists in having available sufficient financial resources to ensure the establishment and proper administration of the business carried on, or proposed to be carried on, under the licence*”. In *2011/36 LWB Ltd*, it was explained that evidence showing only a “*snapshot*” of the financial position would usually be insufficient. Section 13A when read with Schedule 3 to the Act imposes a requirement of professional competence which is linked to the competence of an applicant’s transport manager.

9. The appellant lodged his appeal to the Upper Tribunal on 1 July 2022. In his grounds of appeal, the appellant asserted that he had e-mailed financial evidence to the OTC when requested. He did not comment upon the legibility or otherwise of that evidence nor did he say anything in the written grounds about the position concerning a transport manager. However, on 19 June 2022 he wrote to the Upper Tribunal to say, in effect, that Jonathan Dagnall had applied for an acquired rights exemption and that such had been granted. He also said that he had e-mailed financial evidence to the OTC on 7 May 2022. At the hearing Christopher Dagnall (representing himself) told us that he had sent financial evidence to the OTC. When it was pointed out that the evidence appeared not to be legible, he suggested (as we understand him) that he had sent further and more legible copies on 28 June 2022. His brother had been given an acquired rights exemption.

10. As to the approach we must take with respect to an appeal such as this, paragraph 17 of Schedule 4 to the Transport Act 1985 (as amended) provides that the Upper Tribunal “*are to have full jurisdiction to hear and determine all matters whether of law or of fact for the purpose of the exercise of their functions under an enactment relating to transport*”. However, it was explained by the Court of Appeal in *Bradley Fold Travel Ltd & Anor v Secretary of State for Transport* [2010] EWCA Civ 695 that the Transport Tribunal (now the Upper Tribunal) will not be required to rehear all the evidence by conducting what would, in effect, be a new first instance hearing. Rather, it has the duty to hear and determine matters of fact and law on the basis of the material before the TC but without having the benefit of seeing and hearing from witnesses. The appellant assumes the burden of showing that the decision appealed against was wrong. In order to succeed an appellant must show that the process of reasoning and the application of the relevant law requires the adopting of a different view. Further, paragraph 17(3) of the same Schedule provides that in deciding an appeal 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. As to fresh evidence (that is to say evidence not provided to the TC) the approach set out in *Ladd v Marshall* [1954] 1 WLR 1489 applies (see *T/2015/36 W. Martin Oliver Partnership*).

11. As to disposal, the Upper Tribunal has power, if allowing an appeal, to make such order as it thinks fit or to remit the matter back to the TC for rehearing if it considers such a course to be appropriate.

12. The appellant, we accept, did send a bank statement or bank statements to the OTC on 7 May 2022, which we also accept probably covered a lengthier period than had the evidence which had been sent to the OTC with the application. That initial evidence covered a 9-day period only (see above). However, like the OTC staff, we are unable to read the bank statement or statements sent on 7 May 2022. The copies are far too small. It appears to us that the OTC has, in sending a copy of its file of papers to the Upper Tribunal, faithfully reproduced what had been sent to it in the way of financial evidence by the appellant. That being so, we understand why it was unable to attach weight to it in considering whether the financial standing requirement had been met. We would also make the point that the OTC had clearly stated in correspondence that it found the bank statements not to be legible and that there is no evidence of the appellant subsequently sending more legible copies prior to the decision under appeal being taken.

13. The appellant did say he had sent further copies above after the decision date. We have not seen them. But even supposing he had sent copies either to the OTC or to the Upper Tribunal it would not assist him. That is because one of the requirements for the admission of fresh evidence under *Ladd v Marshall*, is that the fresh evidence could not have been produced, with reasonable diligence, for the TC. Clearly the appellant could have converted the statements to a legible format or could have obtained more legible copies for onward transmission to the TC without any real difficulty. He simply did not do it. That means he has only, in terms of legible evidence, provided evidence of finance which amounts to a snapshot. On that basis the TC could not be satisfied the financial standing requirement had been met. We detect no error of law in the approach taken nor are we able to say the TC's decision was plainly wrong. That means, without our yet considering the position concerning the transport manager, this appeal must fail.

14. As to the transport manager issue, the appellant had sent documentation to the OTC (a Driver Qualification Card and then a Driver Certificate of Professional Competence) which did not have relevance to the question of Jonathan Dagnall's competence to be the transport manager on the licence. We accept that the appellant may have found the evidential requirements confusing. He did tell us at the hearing that an acquired rights exemption had been granted and, indeed, it has been evidenced that such was granted by the Department for Transport, in favour of Jonathan Dagnall, on 13 June 2022. However, that was a post decision event which we are not permitted (see above) from taking into account. There was in any event, no clear evidence before the TC that such had even been applied for. This, then, represents a second reason why we must dismiss this appeal.

15. It does occur to us that, had the appellant gone about things differently, and had the acquired rights exemption been granted earlier, he might have succeeded in his application. We did detect a degree of confusion on his part as to what the regulatory regime required of him, but we see no reason to think a fresh application buttressed by proper, clear and legible evidence will not have a realistic prospect of succeeding. Certainly, we would not wish to think that the mere fact this appeal has been dismissed will prejudice his prospects of success if he does choose to make a fresh application. Whether he does, of course, is a matter for him. But for the reasons we have set out, we are unable to allow this appeal.

16. The appeal is dismissed.

M Hemingway
Judge of the Upper Tribunal

R Fry
Member of the Upper Tribunal

D Rawsthorn
Member of the Upper Tribunal

Authorised for issue on 13 December 2022