



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

**Appeal No. UA-2023-000088-T
[2024] UKUT 130 (AAC)**

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

Before: Mr E Mitchell, Judge of the Upper Tribunal
Mr S James, Specialist Member of the Upper Tribunal
Dr P Mann, Specialist Member of the Upper Tribunal

Appellant: Armstrong Freight Logistics Ltd

Commissioner's ref: OB2055249

Date of decision: 13 January 2023

Representation: Mr Maddock, lay representative

Heard at: Leeds Employment Tribunal, 4th Floor, City Exchange, 11
Albion Street, Leeds, on 5 October 2023

DECISION OF THE UPPER TRIBUNAL

This appeal is dismissed.

Subject matter: Designated transport manager.

REASONS FOR DECISION

Traffic Commissioner's decision

1. On 8 April 2022, the Appellant operator applied to the Traffic Commissioner for a standard international operator's licence and was granted an interim licence on 5 July 2022. The operator's designated transport manager, Andrew Jackson, resigned on 9 November 2022.

2. On 25 November 2022, the Office of the Traffic Commissioner (OTC) wrote to the operator as follows:

"...the Traffic Commissioner has been made aware that the nominated Transport Manager, Andrew Jackson, was removed from the application on 9 November 2022 following his request.

I write now to advise that in view of the resignation the Traffic Commissioner remains to be satisfied that the company meets the requirement to hold a goods vehicle operator licence. The Traffic Commissioner is therefore proposing to refuse the application under Section 13 of the Goods Vehicles (Licensing of Operators) Act 1995 as the Traffic Commissioner remains to be satisfied that the company:

(a) has a designated transport manager who is a resident of the United Kingdom, of good repute, professionally competent and can effectively and continuously manage your transport service

...the traffic commissioner is serving notice on you that he is considering making a direction to refuse the application...on the grounds detailed above, and to offer you the opportunity to nominate a replacement transport manager and make written representations for the Traffic Commissioner's consideration. A **TM1** application and any representations must be made in writing and be received in this office by **Friday 16 December 2022.**"

3. On 15 December 2022, 'Luke' (email address: sales@armstronglogistics.co.uk) emailed the OTC requesting that the OTC re-send an email which he understood to have been originally sent in November of that year. On the same day, the OTC informed 'Luke' that, in the absence of written authority to act on the operator's behalf, they could not discuss the operator's application with him.

4. On 19 December 2022, the OTC wrote to the operator again, in essentially the same terms as the letter of 25 November 2022 save that the deadline given for making a TM1 (designated transport manager) application, and providing written representations, was moved back to 9 January 2023. This letter followed a conversation between an OTC official and Mr Brian Armstrong (sole director of Armstrong Freight Logistics Ltd) on 16 December 2022 which persuaded the OTC that their letter of 25 November 2022 had not been received.

5. In the absence of any written representations on behalf of the operator, or receipt of a fresh TM1 application, on 13 January 2023 the Traffic Commissioner refused the operator's application for a standard international licence on the ground envisaged in the letter of 25 November 2022.

The operator's appeal to the Upper Tribunal

6. The operator's notice of appeal to the Upper Tribunal, drafted by its director, Mr Brian Armstrong, argues:

(1) the operator had the misfortune to engage the services of an incompetent transport consultancy firm who put forward a transport manager without conducting the necessary due diligence checks. Once it became clear that this manager's competence would be considered at a public inquiry, he withdrew his interest and the consultancy failed to provide further assistance;

(2) the operator subsequently engaged a reliable consultancy which put forward a new transport manager with a high level of professionalism but, unfortunately, this happened two days after the deadline set by the Traffic Commissioner;

(3) it had not been possible to identify a replacement transport manager within the three-week time frame set by the Commissioner;

(4) the operator's notice of appeal ends with the following words:

"I would like to make you aware that at no time have I operated or yet purchased a goods vehicle and did not take advantage of the interim licence I was granted. I had no intention of doing so until I was confident that I would be operating professionally and competently as set out by the Traffic Commissioner Code of Conduct."

The hearing

7. The operator's director, Mr Brian Armstrong, attended the hearing with Mr Maddock, who informed us that he was not a legally qualified representative but was a professional transport manager. We authorised Mr Maddock to represent the operator at the hearing.

8. Mr Maddock recounted the difficulties faced by the operator during 2022 in sourcing a competent transport manager. When we asked Mr Maddock what the Traffic Commissioner did wrong, we were told only that it was difficult to obtain information from the OTC.

Legal framework

9. Section 13(1)(a) of the Goods Vehicles (Licensing of Operators) Act 1995 ("1995 Act") provides that, on an application for a standard operator's licence, the traffic commissioner must consider whether the requirements of sections 13A and 13C are satisfied. Insofar as relevant, section 13A of the 1995 Act provides as follows:

"(1) The requirements of this section are set out in subsections (2) and (3).

... (3) The second requirement is that the traffic commissioner is satisfied that the applicant —

...(b) if the applicant is not an individual, or is an individual who is not professionally competent, has designated a suitable number of individuals who satisfy the requirements set out in paragraph 14A(1) and (3) of Schedule 3...

...(5) In this Act, "transport manager" means an individual designated under subsection (3)(a)(ii) or (b)."

10 Section 13(5) of the 1995 Act provides as follow:

"(5) If the traffic commissioner determines that any of the requirements that the commissioner has taken into consideration in accordance with subsection (1) or (2) are not satisfied, the commissioner must refuse the application."

Conclusion

11. The operator is a company and, hence, not an individual. Accordingly, in the absence of a designated transport manager, the Traffic Commissioner was required by section 13(5) of the 1995 Act to refuse the operator's application for a licence.

12. The operator's case before the Upper Tribunal is, for the most part, that it has now secured a competent transport manager. However, that says nothing about the correctness of the Traffic Commissioner's decision. The Commissioner was faced with an operator without a designated transport manager and, unless the Commissioner acted unfairly, his decision was unimpeachable.

13. The operator argues that it was given insufficient time – three weeks – in which to source a replacement transport manager. However, the designated transport manager on the operator's interim licence resigned on 9 November 2022. The requirement for a designated transport manager is imposed by the 1995 Act, rather than by Traffic Commissioners. In other words, an operator cannot wait to be told by a Traffic Commissioner that a transport manager is required. Accordingly, this operator had over two months, rather than three weeks, to source a replacement transport manager. We cannot accept that the Traffic Commissioner, on 19 December 2022, imposed an unreasonable (unrealistic) deadline of three weeks for the operator to locate a transport manager. At that point, the operator had already been without a transport manager for nearly six weeks. The Traffic Commissioner did not act unfairly and we dismiss this appeal.

14. Finally, we note that Mr Armstrong told us at the hearing that, in retrospect, it may have been preferable for him to have simply made a fresh application for an operator's licence rather than pursuing this appeal to the Upper Tribunal. We feel that this observation is not without merit.

15. Finally, we apologise for the delay in giving this decision. Initially, due to an administrative oversight this case was not marked on the Upper Tribunal's case management system as ready for decision. And, subsequently, the judge was absent from duties while recovering from injuries sustained in an accident.

**Authorised for issue by the
Upper Tribunal panel on 8
May 2024**

Section 37(1), Goods Vehicles
(Licensing of Operators) Act
1995.