



WEST MIDLANDS TRAFFIC AREA

DECISION OF THE TRAFFIC COMMISSIONER

PUBLIC INQUIRY HELD IN BIRMINGHAM ON 24 APRIL 2018

OPERATOR: RAI & SONS LTD

LICENCE OD1089072

Decision

1. The standard national goods vehicle operator's licence held by Rai & Sons Ltd is suspended for ten days with effect from 0001 hours on 19 May 2018 until 0001 hours on 29 May 2018, pursuant to Section 26(1)(c)(iii), (e) and (f) of the Goods Vehicles (Licensing of Operators) Act 1995 ("the 1995 Act").
2. Under Section 26(6) of the 1995 Act, I direct that the operator's specified vehicles may not be used under any other operator's licence during the period of suspension.
3. The licence is also curtailed from five vehicles to two, with immediate effect and for an indefinite period of time, pursuant to Section 26(1)(h) and 27(1)(a) of the 1995 Act.
4. Amit Rai has lost his good repute as a transport manager, pursuant to schedule 3 paragraph 1 of the 1995 Act. I have already disqualified him from acting as a transport manager for two years in a separate decision relating to the licence held by K & B Transport Ltd which I considered at the same inquiry.
5. The operator has a period of grace until 1 June 2018 to nominate a new transport manager.
6. The following undertaking has been added to the licence:
 - i) the operator will arrange for a review of compliance with drivers' hours and maintenance requirements to be carried out by a suitably qualified independent auditor by 30 November 2018. The audit must cover at least the points in the attached annex. A copy of the auditor's report, together with the operator's response to any recommendations it makes, will be sent to the traffic area office in Birmingham within 10 days of the operator receiving the report from the auditor.

Background

Operator details

1. Rai & Sons Ltd holds a standard national goods vehicle operator's licence (OD1089072) for five vehicles and five trailers. There are two vehicles in possession. The licence was granted in August 2009. The authorised operating centre is in Pool Road, Smethwick, B66 3DB. The directors of the company are Aruna Rai and her son Amit Rai. Amit Rai is also the nominated transport manager on the licence.

DVSA investigation

2. In March 2018 I received reports on the operator from DVSA traffic examiner Tracy Love and vehicle examiner Paul Matthews. The main area of concern identified was that the transport manager Amit Rai was a full time accountant who was not devoting sufficient attention to the licence. The problem had become particularly acute since the death in August 2017 of Amit Rai's father Yashpal Rai, who had been the founder and mainstay of the business. TE Love reported that:
 - i) the operator had failed to provide the requested tachograph data for two of the four vehicles for which data had been requested;
 - ii) checks of driving entitlement were insufficient;
 - iii) the transport manager was not looking at the RHA analysis of drivers' hours data, relying on his brother (and driver) Summit Rai to tell him if there was a problem;
 - iv) the data showed that Summit Rai had committed a number of drivers' hours offences, including failure to take the minimum daily rest and driving without a tachograph card on several occasions. Other drivers had committed offences, undetected and undealt with by the company.
3. VE Matthews reported that there were excessive intervals between safety inspections; safety inspection sheets were not always completed correctly; the driver defect reporting system was inadequate; and the MOT failure rate was above the national average.

Public inquiry

4. In the light of this information I decided to call the operator to a public inquiry. The call-up letter was sent on 26 March 2018, citing Sections 26(1)(c)(iii), (e) and (f) and 27(1)(a) and (b) of the 1995 Act as well as Article 4.1(a) of Regulation EC 1071/2009. By letter of the same date Amit Rai was also called in his capacity as transport manager to consider his repute. Drivers Summit Rai, Sukhjit Singh and Anthony Howl were invited to attend parallel driver conduct hearings.

Holding of public inquiry

5. The inquiry was held in Birmingham on 24 April 2018. The company and Amit Rai as transport manager were represented by David Glover of Fielden Marshall Glover Strutt, Solicitors.
6. Director and transport manager Amit Rai accepted that there had been shortcomings in the way in which the licence was operated since his father's death in August 2017. In the family's grief, the business had not been the first priority. Although he had been transport manager since the licence was granted in 2009, much of the day to day detail had been managed by his father. Since DVSA's visit he had realised he needed to do much more and had increased the hours he devoted to the transport manager side. Driving entitlement was now being checked properly; vehicles were being given regular roller brake tests; regular tachograph downloads were being performed; the driver defect reporting system had been improved.
7. VE Matthews confirmed that the maintenance shortcomings he had observed were not at the more serious end of the scale.
8. On behalf of the operator, Mr Glover accepted that financial standing was insufficient to support five vehicles. It was acknowledged that Amit Rai had not come up to the standards expected of a professionally competent transport manager, although he had suddenly found himself on his own, had been open about his failings, and had now taken action to improve compliance. Amit Rai's sister Bandna Rai had recently qualified as a transport manager and could take over if Amit Rai lost his good repute. The company had shown in the measures it had taken following DVSA's visit that it could be trusted to comply in the future. He offered the operator's undertaking that it would arrange an independent compliance audit in some six months' time as further assurance of this.

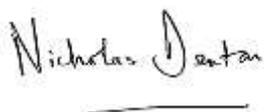
Findings

9. After considering the evidence I have made the following findings:
 - i) the operator has failed to fulfil its undertaking to keep vehicles fit and serviceable (Section 26(1)(f) of the 1995 Act refers). The MOT initial failure rate over the past two years is 50%, well above the national average of 16%.
 - ii) the operator has failed to fulfil its undertaking to ensure the observance of rules relating to drivers' hours and tachographs. The transport manager took the word of his brother and driver Summit Rai that everything was in order, without ever troubling to check in sufficient detail himself. The result of this neglect was that serious infringements went unidentified and therefore unaddressed;
 - iii) the operator's vehicle incurred a prohibition in July 2016 for an insufficiently secured container (Section 26(1)(c)(iii) refers);
 - iv) the operator has failed to abide by its promise that vehicles and trailers would be given a safety inspection every eight weeks (Section 26(1)(e) refers). VE Matthews' report identifies several instances where the intervals between inspections were greater;

- v) the transport manager Amit Rai failed to exercise the required continuous and effective management of the licence (Sections 26(1)(h) and 27(1)(a) and (b) refer). Prior to August 2017 this neglect was disguised by the fact that Yashpal Rai was in effect acting as transport manager but after the latter's demise Amit Rai's detached involvement was thrown into sharper relief;
 - vi) the operator lacks the required financial standing to support five vehicles, although does have sufficient funds to support two vehicles (Sections 26(1)(h) and 27(1)(a) refer).
10. I have already concluded that transport manager Amit Rai has lost his good repute because of his neglect of his responsibilities as transport manager on licence OD 1067700 held by K & B Transport Ltd (see separate decision). Rai & Sons therefore lack professional competence (Section 27(1)(a) refers).

Decisions

11. Before coming to a decision on what to do about this licence I carried out a balancing act. On the negative side were the findings above. On the positive (or mitigating) side was the corrective action the operator has taken to improve compliance in recent weeks, and the clearly devastating effect on the Rai family that Yashpal Rai's death has had. I accept Mr Glover's contention that revocation of the licence would be disproportionate in the circumstances.
12. However, in view of the fact that the transport manager has not been exercising effective management and in view of the compliance failures which this neglect has permitted to occur, I conclude that the level of non-compliance falls into the "moderate to serious" category set out in the Senior Traffic Commissioner's Statutory Guidance Document 10. I consider that a ten day suspension of the licence would be a proportionate outcome and in line with the STC's suggested outcomes for this category. I am giving a short time before the suspension comes into effect, to allow the operator to make alternative arrangements.
13. I also conclude that the company needs to prove that it can operate compliantly at its current level of two vehicles for at least six months before being permitted to operate more. In any case it lacks the necessary finances for five vehicles. I am therefore also curtailing the licence to two vehicles for an indefinite period of time. If the audit in November reports a good level of compliance, I would be favourably disposed towards any request for a relaxing or lifting of the curtailment.
14. I am allowing a period of grace until 1 June 2018 for the operator to nominate a new transport manager in place of Amit Rai.



Nicholas Denton
Traffic Commissioner
25 April 2018