



RON DARCH & SONS CO LTD

OH1135048

TRANSPORT MANAGER NIGEL DARCH

PUBLIC INQUIRY IN BRISTOL

28 MARCH 2018

DECISION

The Goods Vehicles (Licensing of Operators) Act 1995 (the “Act”)

Pursuant to findings under Sections 26(1)(c)(ii) and 26(1)(f), the licence is curtailed to 24 vehicles and 2 trailers immediately and indefinitely, but for a period not less than 6 months. The operator can apply to have the curtailment lifted by supplying an independent audit report of all compliance systems showing strong and effective processes in place.

On a finding of a loss of good repute as a transport manager, Nigel Darch is disqualified from acting as such in any member state until the appropriate rehabilitative measures have taken place. Those measures are

1. Attendance on a two-day transport manager refresher course other than the one attended in 2016, and
2. Achievement of certification to the “European Computer Driving Licence” standard.

The operator has a period of grace of 2 months to appoint a new transport manager.

BACKGROUND

1. Ron Darch & Sons Co Ltd is the holder of a Standard National operator's licence granted on 5 August 1991 authorising the use of twenty-nine vehicles and two trailers. The statutory directors at Companies House are

Andrew Tony Ronald Darch
Jamie Darch
Jeremy Paul Darch
Nigel Darch
Simon Lee George Darch

The director records on the operator licence appear to be out-of-date.

2. The operator lost a pair of near side rear wheels on the M5 at 09:00 on 6 January 2016. The vehicle, a fuel delivery tanker, rolled severely, some contents were leaked and the motorway shut for several hours. No-one was seriously injured. The incident led to a follow-up maintenance investigation by Vehicle Examiner Richard Hollinshead on 20 & 21 January 2016 and 29 November 2017. Driver systems were investigated in January 2016 by Traffic Examiner Amy Comer and reviewed on 20 December 2017 by Traffic Examiner Charles Lambert accompanied by Senior Traffic Examiner Andrew Ball.
3. Vehicle Examiner Hollinshead identified sixteen shortcomings in January 2016. His follow-up investigation identified thirteen shortcomings. The follow-up traffic examiner report identified eleven shortcomings.
4. The DVSA reports, in particular, the lack of progress, caused me to call the licence to public inquiry on the following grounds:

Section 26(1)(c)(iii) of the Act, that vehicles or drivers had been issued with prohibition notices;

Section 26(1)(f) of the Act, that any undertaking recorded in the licence had not been fulfilled relating to keeping vehicles fit and serviceable;

under Section 26(1)(h) of the Act, that there had been a material change in the circumstances of the licence holder;

under Section 27(1)(a) of the Act, that the operator may not be of good repute, of the appropriate financial standing or meet the requirements of professional competence;

under Article 4.1(a) of EU Regulation 1071/2009, that the transport manager is not exercising continuous and effective control; and

Section 27(1)(b) of the Act, that the transport manager is not of good repute or not professionally competent.

5. Mr Nigel Darch was called separately to consider his repute as Transport Managers under Schedule 3 of the Act.

THE EVIDENCE

6. Mr Andrew Darch, Mr Nigel Darch, Mr Ivan Steel and Mr Kevin Levy attended the public inquiry for the company represented by Chris Over, solicitor. Mr Over provided statements in advance along with a series of questions for the DVSA examiners for which I was grateful. DVSA was represented by Vehicle Examiner Richard Hollinshead and Traffic Examiner Charles Lambert.
7. Proceedings were recorded and a transcript can be produced as required. I do not repeat the evidence here apart from in support of my findings. I would normally have dealt with this case with an oral decision. I am producing this written decision only because the inquiry ran out of time on the day.
8. Finances were satisfied as a preliminary matter.
9. Closing submissions were submitted in writing following the hearing and I have had regard to them in making my findings.

FINDINGS OF FACT

10. The PG13 F&G form was emailed by Vehicle Examiner Hollinshead to the company in January 2016. There appears to have been a communication failure within the company and I accept that none of the company representatives who attended had seen it.
11. There is no evidence to support an allegation that Mr Ivan Steel removed any items from the vehicle at the crash scene.
12. The business is run in two distinct parts, coal and oil. Nigel Darch, transport manager, is almost entirely devoted to the coal business. Management of the oil vehicles lies with Ivan Steel and Kevin Levy. Nigel Darch has spent a significant proportion of his time driving and on other non-transport manager duties.
13. The company took action following the prohibitions for insecure loads. It may have been quicker, but it was appropriate and thorough and I am told that intermediate measures were taken following the second prohibition. There is nothing in the company's response to those prohibitions that would cause me to take regulatory action. My criticism is that they should have been avoided in the first place had the transport manager kept up to date with developments in DVSA's and HSE's enforcement of load security. This was a matter covered heavily in the commercial vehicle in 2013 culminating in DVSA producing detailed further guidance and a Youtube video in March 2015.
14. I was unconvinced by Mr Steel's description of the problems he had with accessing PMI reports. The whole point of systems such as R2C is that documents can be seen immediately as they are web-based and accessible from anywhere. The transport managers statement to the effect that he is not computer illiterate is entirely unacceptable in 2018 and all the more so in a business which has adopted, in part at least, an electronic maintenance system.

15. The management team is stretched. Ivan Steel appears competent in his role but I accept the view of Vehicle Examiner Hollinshead that “he has a lot to do”. The suggestion of adding Mr Levy as a transport manager does not address the lean management team. The lack of action on reported defects is symptomatic of this lack of resource. For example, the PMI for FN59MLU reports, on 8 September 2017, “emissions light on dash”. No rectification is noted. This is not followed up until 18 October 2017 when the action is “booked vehicle in at Martock Commercials 20/10/17”. 20 October, Martock Commercials identify “AdBlue injector nut corroded off exhaust”. 24 October, the defect is repaired. 19 February 2018, PMI states AdBlue fault on dash” and “engine warning on dash”. No rectification noted.
16. A similar scenario arises on the same vehicle in relation to rear brake pads: “getting low” on 20 October 17, “near limit” on 24 November, “rear pads low” on 5 January 2018, “2nd axle brake pads low near limit” on 19 February. No brake performance figures are recorded. One might ask whether the pads were really low over that 4 month period or whether the earlier inspections were incorrect. One might also ask whether, if the PMIs are to be believed, and given the lack of brake performance testing, there may be a more fundamental defect with the rear brakes such that they are not apparently wearing. This all points to poor maintenance systems and a transport manager who fails to act on the information before him.
17. I find that Sections 26(1)(c)(ii) and 26(1)(f) are made out. There are significant failures in the maintenance system leading to vehicles not being kept fit and serviceable and to prohibitions being issued.
18. I also find that the transport manager is not exercising continuous and effective control over the transport operation to the extent that a finding of loss of good repute as transport manager is justified. It follows that Section 27(1) is made out in relation to professional competence.
19. Having made that finding, I also put Nigel Darch on notice that it would appear from his evidence that he is breaking the drivers hours rules in that he drives in scope of the EU rules but also works in the evening on management duties. It is likely that he is failing to keep full records and likely also that he is failing to take adequate daily rest. This plays no part in my decision; I merely bring the matter to his attention.

CONSIDERATION

20. I refer to the guidance to which I must have regard¹. Annex 3 sets out starting points for consideration of regulatory action. In terms of positive features, there are management systems, and they have a degree of effectiveness. There is a genuine desire within the business to improve and steps were taken ahead of the public inquiry. The traffic examiner matters are largely resolved.

¹ Senior Traffic Commissioner Statutory Document No. 10 “The principles of decision making and the concept of proportionality”, December 2016

21. In the negative, the maintenance systems have failed and have not been properly managed. The transport manager is not exerting continuous and effective control.
22. From these indicators, I find that the conduct was moderate to serious. It is therefore not necessary for me to interfere with the operator's transport operation. Removal of the margin is appropriate, with that curtailment staying in place until the operator can evidence strong and effective management systems. It is my view that this will require an increase in overall management resource but I will not set any arbitrary figure. Instead, I will rely on the outcome of an independent full systems compliance audit by a reputable supplier and take an outcome based approach based on the effectiveness of the systems in place.

DECISION

23. Pursuant to findings under Sections 26(1)(c)(ii) and 26(1)(f), the licence is curtailed to 24 vehicles and 2 trailers immediately and indefinitely, but for a period not less than 6 months. The operator can apply to have the curtailment lifted by supplying an independent audit report of all compliance systems showing strong and effective processes in place.
24. On a finding of a loss of good repute as a transport manager, Nigel Darch is disqualified from acting as such in any member state until the appropriate rehabilitative measures have taken place. Those measures are
- Attendance on a two-day transport manager refresher course other than the one attended in 2016, and
 - Achievement of certification to the "European Computer Driving Licence" standard.
25. The operator has a period of grace of 2 months to appoint a new transport manager.



Kevin Rooney
Traffic Commissioner

10 May 2018