



NCN: [2021] UKUT 0229 (AAC)
Appeal No. T/2021/20

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

**ON APPEAL from the DECISION of the DEPUTY TRAFFIC COMMISSIONER FOR
THE SOUTH EASTERN AND METROPOLITAN TRAFFIC AREA**

Dated: 17 February 2021

Before:

C.G.Ward	Judge of the Upper Tribunal
Mr.S.James	Member of the Upper Tribunal
Mr.D.Rawsthorn	Member of the Upper Tribunal

Appellant: Liliana Elena Manole

Attendance:

For the Appellant: Mr Simon Clarke, Smith Bowyer Clarke

Date of Hearing: 26 August 2021
Date of Decision: 8 September 2021

DECISION OF THE UPPER TRIBUNAL

The appeal is allowed. To the extent only that it relates to the loss of repute of the Appellant and/or to her disqualification from acting as a transport manager, the decision dated 17 February 2021 by the Deputy Traffic Commissioner is quashed and the matter (to that extent) is remitted to the same Deputy Traffic Commissioner to be considered afresh in the light of this decision. In the event that that Deputy Traffic Commissioner is unable to consider the matter afresh within a reasonable time, the fresh consideration shall be undertaken by such Traffic Commissioner or Deputy Traffic Commissioner as the Senior Traffic Commissioner may appoint.

Subject Matter

Transport manager; loss of repute; fronting; proportionality; adequacy of reasons.

Cases referred to:

2002/1 Bryan Haulage Ltd (No.1)
K Jaggard 2005/367

*Shaun Andrew Taylor and Mark Taylor [2010] UKUT 397 (AAC)
Silvertree Transport Limited T/2012/71
Ian Lambert t/a IKL Transport T/2016/03*

REASONS FOR DECISION

Introduction

1. On 9 February 2021 the Deputy Traffic Commissioner (“DTC”) held a public inquiry in relation to Negru Trans Limited (“the operator”). At that time, the sole director of that company was one Paul Smith and its transport manager the present appellant, Liliana Manole.
2. By his decision of 17 February 2021, the DTC found that the operator had lost repute and its licence was revoked. He disqualified Mr Smith from holding or obtaining an operator’s licence for a two year period and made a direction under section 28(4) of the Goods Vehicles (Licensing of Operators) Act 1995 (“the 1995 Act”) that would render vulnerable any licence held by a company or partnership in which Mr Smith had a sufficient interest during the period of his disqualification. He further found that Ms Manole had lost repute and was to be disqualified from holding the role of transport manager for an indefinite period.
3. In barest summary, the DTC found that Mr Smith was a director in name only and was a front for someone else. The DTC did not specify for whom, but identified three possible candidates, including Ms Manole. He held that his findings went to the core of the relationship of trust that needs to exist between operators and the Traffic Commissioners, and that the operator deserved to be put out of business. He took into account in making a disqualification order and s.28(4) direction against Mr Smith the actions of the latter when previously a director of another company, Berkshire Recycling Limited, as well as his findings in this case.
4. There has been no appeal by the operator or by Mr Smith.
5. It is also relevant to record that Ms Manole had previously been refused a licence as director and traffic manager for J & K Environmental Services Limited following a public inquiry held on 21 March 2017. The refusal was subsequently upheld by the Upper Tribunal. The concern was that there had been fronting because of links found to exist between Ms Manole and one John Kennedy who had been disqualified from holding an operator’s licence as a director and a transport manager for an indefinite period in 2014.
6. On 1 November 2017 a public inquiry was held (by the present DTC), approving the appointment of Ms Manole as transport manager of the operator. At that time the director of the company was a Neluviorel Negru. The DTC had concluded that there was no evidence to suggest that Mr Negru was other than a bona fide independent director of the operator. Subsequently, Mr Negru resigned on 24 April 2018. One

Dragos Aron was appointed on 24 April 2018 and resigned on 1 March 2020. Mr Smith was appointed on 1 November 2019.

7. Mr Kennedy (see [5]) was at the time of the public inquiry a director of Kingdom Workshops Limited, whose address is the operating centre for the operator. Another director of Kingdom Workshops Limited is a Mr Vasile Gariliuc. Between 23 June and 8 December 2020 Ms Manole was the named Company Secretary of Kingdom Workshops Limited. Her evidence to the public inquiry was that she had not been aware of this at the time.

The decision in relation to Ms Manole

8. Only one of the 26 paragraphs of the DTC's decision was devoted to his reasons in respect of Ms Manole. It read:

“In relation to Ms Manole I find that whilst she seems to have carried out her transport manager role to an acceptable level in respect of compliance I am bound to conclude that she was party to the situation pertaining to Mr Smith and either colluded with others in what occurred or did nothing to prevent it. In either case this is unacceptable and consequently I order the loss of her repute as a transport manager. Once repute is lost, I am obliged to order a disqualification from acting as a transport manager and so order for an indefinite period.”

Grounds of appeal

9. Ms Manole appeals on the following grounds:

Ground A: the DTC gave inadequate reasons for the decision to remove repute and to disqualify for an indefinite period; and

Ground B: the disqualification imposed on Ms Manole is both disproportionate to that imposed on Mr Smith and “externally” disproportionate (by which we understand “to the circumstances of the case”).

The Relevant Legislative Provisions

10. Paragraph 1 of schedule 3 to the 1995 Act provides:

- “(1) In determining whether an individual is of good repute, a traffic commissioner may have regard to any matter but shall, in particular, have regard to—
- (a) any relevant convictions of the individual or of his servants or agents; and
 - (b) any other information in his possession which appears to him to relate to the individual's fitness to hold a licence.
- (2) In determining whether a company is of good repute, a traffic commissioner shall have regard to all the material evidence including, in particular—

- (a) any relevant convictions of the company or of any of its officers, servants or agents; and
- (b) any other information in his possession as to the previous conduct of—
 - (i) any of the company's officers, servants or agents, or
 - (ii) any of its directors, in whatever capacity, if that conduct appears to him to relate to the company's fitness to hold a licence.

(3) [not relevant].”

11. Para 16 provides:

“(1) In proceedings under this Act or the 2009 Regulation for determining whether a person who is a transport manager is of good repute or professionally competent, a traffic commissioner must consider whether a finding that the person was no longer of good repute or (as the case may be) professionally competent would constitute a disproportionate response.

(2) If the commissioner determines that the person is no longer of good repute or (as the case may be) professionally competent, the commissioner must order the person to be disqualified (either indefinitely or for such period as the commissioner thinks fit) from acting as a transport manager.

(3)-(6): [not relevant].”

12. Para 17 provides:

“(1) A traffic commissioner may, subject to sub-paragraph (2), at any time cancel a disqualification order made under paragraph 16(2) or, with the consent of the disqualified person, vary the order.

(2) The traffic commissioner by whom a disqualification order is made under paragraph 16(2) may specify measures with which the disqualified person must comply before the order can be cancelled or varied.

(3)-(7): [not relevant].”

Consideration of submissions

13. Mr Clarke invited us to approach Ground A in the light of the principles helpfully drawn together by the Upper Tribunal in T/2016/03 *Ian Lambert t/a IKL Transport*. By analogy with para 7(ii) of *Ian Lambert*, the DTC had not identified the issues properly raised, had not indicated which of those issues, if any, were made out and which were not, and had failed to identify any matters which weighed upon his decision. As in *Ian Lambert* (at para 7(iv), in the absence of an adequate fact-finding exercise it was almost impossible to determine whether the DTC had correctly applied the law. He invites us to conclude that, as in 2002/1 *Bryan Haulage Ltd* (No.1) (cited in *Ian Lambert* at [15]) it was incumbent on the DTC to make an assessment of whether there was any evidence of instruction, encouragement or acquiescence on the part of Ms Manole in relation to the DTC’s unchallenged findings concerning Mr Smith’s

actions and inactions and that he failed to do so. Similarly, he ought to have considered the weight to be given to Ms Manole's general record, performance, reputation and enforcement history, but there is no indication that he did so.

14. As was pithily summarised in *Shaun Andrew Taylor and Mark Taylor* [2010] UKUT 397 (AAC)

“Not only is the operator entitled to see what the Traffic Commissioner had in mind when reaching a decision, it is also important for the Upper Tribunal to be able to do so, if the decision is appealed. There is, clearly, no need to set out those trivial factors that could have no influence on the decision either on their own or in combination with other matters. And, as the tribunal has repeatedly recognised, a Traffic Commissioner cannot be expected to balance one factor against another with the precision of a set of scales. But the Traffic Commissioner should set out the basis on which the decision has been reached with sufficient clarity and detail to enable others to see the rationale and justification for the decision. In short, reasons have to be adequate and intelligible.”

15. Mr Clarke speaks of there being no challenge to Ms Manole's evidence on various matters. The public inquiry is not a court hearing. While the TC must act fairly, he receives the evidence and then reaches his conclusions, without there necessarily being another party to challenge a particular piece of evidence.

16. Nonetheless, we agree that this ground succeeds. We can well understand that the DTC found aspects of the background concerning, in that both Mr Smith and Ms Manole had previously been involved in fronting. Despite that, Ms Manole had been permitted to become the transport manager when Mr Negru was the director and appears then to have functioned in that role until Mr Negru resigned and subsequently when Mr Aron was the director without any recorded concerns. Further, as the DTC's reasons acknowledged, when Mr Smith was named as the director, Ms Manole was handling the compliance aspect of the role apparently competently. So what was it that made a loss of repute proportionate (as, under para 16 of schedule 3, it has to be)? What had Ms Manole done (or not done)? What did the DTC make of her record, performance, reputation and enforcement history? The lack of findings of fact and reasoning means that the reader of the decision, even when para 26 is read together with the previous paragraphs which largely focus on Mr Smith, is left with nothing more than the DTC's feeling that she must, somehow, have been involved.

17. Mr Clarke submits that it was not good enough that the DTC could not specify for whom the operation was being fronted. We can see that it might have made the giving of reasons easier had he been able to do so. However, we do not think that that is essential: without limitation, the nature and extent of Ms Manole's duties for the operator, whether as transport manager or otherwise, the quality of her relationships with others involved and her own material circumstances might also be relevant in that regard.

18. Turning to Ground B, although expressed in the terms at [9], it turned into a second challenge based on a lack of any, or any adequate, reasons on the basis

that, given that lack, the proportionate nature of an indefinite period of disqualification could not be demonstrated. The Senior Traffic Commissioner's Statutory Document No.10, while pointing out that every case must be considered on its merits, suggests for the consideration of Traffic Commissioners that:

“Serious cases, where, for example, the operator deliberately puts life at risk and/or knowingly operates unsafe vehicles or allows drivers to falsify records, may merit disqualification of between 5 to 10 years or in certain cases for an indefinite period.”

19. The same document advises at [104] that “in all cases, the Traffic Commissioner should provide cogent reasons for the length of disqualification imposed or varied.”

20. Mr Clarke notes that in T/2012/71 *Silvertree Transport Ltd* [2013] UKUT 117(AAC), the power to disqualify was described as “Draconian” and we note that the same para 104 of the Statutory Document suggests that disqualification for an indefinite period will not normally be reviewed until 5 years of the disqualification have elapsed.

21. Mr Clarke accepts that fronting may be “serious” but submits there are no findings of fact and no balancing of considerations to support the imposition of the sanction.

22. As to the disproportionality in comparison with the sanction imposed on Mr Smith, Mr Clarke submits that the situation is analogous to that in T/2015/367 *K Jaggard*, where one partner was disqualified for 5 years whilst his business partner was disqualified for only 2. At [4], HHJ Brodrick characterised as “obviously unsatisfactory” the failure by the Traffic Commissioner to give reasons for his orders of disqualification and in particular for the distinction made between the partners. To the point that Mr Smith as director of the operator and Ms Manole as transport manager were not in a similar role, he submits that the distinction is not a material one, in that loss of repute (and so, by extension, disqualification) as a transport manager would additionally affect Ms Manole's ability to apply for an operator's licence in her own right, were she to wish to do so.

23. We accept Mr Clarke's submissions on Ground B also and cannot usefully add to what is said above.

Remedy

24. On remedy, Mr Clarke would prefer us to quash the decision to remove repute and the disqualification would fall with that. He submits that Ms Manole has already had to bear having been disqualified from acting as transport manager since February 2021, albeit, in response to our questioning, it became clear that she has retained employment with the operator, as a secretary, on furlough. As a fall-back position, he submits that we should quash the relevant parts of the DTC's decision and remit it to the same DTC, recognising the difficulty in a different Traffic Commissioner obtaining evidence afresh when Mr Smith is no longer active in proceedings.

25. We prefer the latter course. As we indicated at [16], we can understand that from the history of the matter the DTC may have had some concerns. Implementing our decision to quash the relevant parts of the decision essentially for inadequacy of reasoning will require the DTC adequately to articulate and justify such concerns, if any, as he may have and to show how the legislation and caselaw is applied to them.

C.G. Ward
Judge of the Upper Tribunal

Mr S. James
Member of the Upper Tribunal

Mr D. Rawsthorn
Member of the Upper Tribunal

(Signed on original) Date: 8 September 2021