

**IN THE UPPER TRIBUNAL
ADMINISTRATIVE APPEALS CHAMBER**

T/2016/68

Appellant: Shaun Thomas Britton

On Appeal From: Traffic Commissioner for the West Midlands Traffic Area

Reference: OD1128345

Public Inquiry Dates: 19 July and 24 October 2016

Venue: Birmingham

Decision Date: 24 October 2016

Appeal to Upper Tribunal: 17 November 2016

UT Hearing Date: 17 March 2017

**DECISION OF THE UPPER TRIBUNAL
ON AN APPEAL FROM THE TRAFFIC COMMISSIONER**

**Upper Tribunal Judge M R Hemingway
Upper Tribunal Member D Rawsthorn
Upper Tribunal Member M Farmer**

100.8 Transport Managers

**DECISION OF THE UPPER TRIBUNAL
(ADMINISTRATIVE APPEALS CHAMBER)
ON AN APPEAL FROM A DECISION OF THE TRAFFIC COMMISSIONER FOR
THE WEST MIDLANDS TRAFFIC AREA**

Decision

1. **This appeal does not succeed.** We confirm the decision of the Traffic Commissioner (“The Commissioner”) given on 24 October 2016 in respect of the appellant following a Public Inquiry in Birmingham held on 19 July 2016 and 24 October 2016 (reference OD1128345) to the effect that he has lost his repute as a transport manager.

The proceedings before the Upper Tribunal

2. In accordance with normal practice, the appeal was listed for an oral hearing. It was scheduled to take place at Field House (London) on 17 March 2017. The appellant was notified and was asked to indicate whether he proposed to attend. He indicated in writing that he would not attend and observed;

“The venue is a far greater distance than Birmingham [his underlining] where the last hearing was so I won’t be attending the venue.”

3. He subsequently sent an email on 6 March 2017 in which he said, amongst other things, that he was working and so would not attend whilst, again, making the point that the “previous hearing” (a reference to the Public Inquiry) had been in Birmingham. Neither of those communications contained a request for an adjournment. Accordingly, the hearing proceeded in the absence of the appellant though that meant that the only attendees were ourselves and our clerk. In effect, therefore, we have decided this appeal on the papers.

Background

4. A company called RT Premium Logistics Limited (“the Operator”) was granted a Standard National Heavy Goods Vehicle Operator Licence on 7 May 2014. The appellant was its nominated Transport Manager. On 28 September 2015 one of the Operator’s vehicles was found to be in use with no vehicle disc on display. Further, the load it was carrying was considered to constitute a danger to other road users. All of that came to light as a result of a roadside check. In consequence a Traffic Examiner one Tracy Love conducted an investigation and interviewed the appellant in his capacity as Transport Manager. In a detailed report of 22 December 2015 she highlighted a number of concerns she had regarding the way in which the appellant seemed to have been fulfilling his duties. In particular, according to her report, it appeared that two vehicles had been used by the Operator prior to their being specified on the licence; that no proper checks had been carried out to ensure compliance regarding “driver’s duty time”; that there was a lack of communication between the Transport Manager and the Director who had day to day control of the Operator’s business; and that records including those relating to driver’s hours had gone unchecked. She suggested that the Operator was not complying with undertakings previously given and that the appellant, as Transport Manager, was not effectively and continuously managing the Operator’s transport systems.

5. On 7 June 2016 the Office of the Traffic Commissioner (“OTC”) wrote to the appellant, in his capacity as Transport Manager, calling him to a Public Inquiry. The commendably full and detailed call-up letter informed him that his good repute and professional competence would be in issue. The Operator was also called to the same Inquiry.

6. The first day of the Public Inquiry was 19 July 2016. The appellant attended and, at that time, was represented by Backhouse Jones Solicitors as were a number of other persons associated with the Operator. He gave some oral evidence. That evidence included assertions that he had been undertaking his duties as a Transport Manager for “probably about eight hours a week”; that he did not have a written contract as a Transport Manager; and that although the amount he claimed to be earning as a Transport Manager was not sufficient for him to live on he made ends meet by doing “a bit of gardening, things like that. General house duties.” The Commissioner was clearly concerned that, on the face of it and on the basis of the evidence he had given, he appeared to be paid less per hour than were the Operator’s drivers. The Commissioner thought that to be unusual. Accordingly he asked the appellant if, at some future point, he would be able to produce his most recent tax return. The appellant said that he could. It was also stated on his behalf, by those then representing him that he claimed not to have said a number of things which Tracy Love had recorded him as having said during the course of her enquiries.

7. The Commissioner adjourned the proceedings, in part at least, so that the parties could seek to identify with a degree of specificity the precise areas of disagreement between them including disagreement as to what had or had not been said by the appellant to Tracy Love.

8. Prior to the reconvening of the Public Inquiry, a maintenance investigation was carried out by one Neil Brown, a Vehicle Examiner. He carried out his investigation on 18 August 2016, arriving at the Operator’s premises unannounced. He was informed that the appellant was no longer the Operator’s Transport Manager and that an interim Transport Manager had subsequently been appointed.

9. The Public Inquiry was reconvened on 24 October 2016. On this occasion, though, the appellant did not attend. He had not produced the tax return. It was explained to the Commissioner that although Backhouse Jones continued to act for various other persons who had been called to the Inquiry they no longer acted for the appellant. It was further confirmed that he was, indeed, no longer the Operator’s Transport Manager.

10. It was the position of the Operator that the appellant had not told the truth at the first hearing and that he had, in fact, contracted verbally to fulfil duties as a Transport Manager for the Operator for only four hours per week rather than the eight he had indicated. Pausing there, that, if correct, would mean that he was in fact being paid more than the drivers but it would also mean that he had given incorrect information in his evidence. It was also said on behalf of the Operator that although he had previously indicated he had not been a Transport Manager under a previous licence, in fact, he had been the nominated Transport Manager on a licence belonging to one Peter Randall who was now a driver for the Operator. The rest of the hearing was taken up with matters relating to the Operator which it is not necessary to go into.

The Traffic Commissioner’s decision

11. The Commissioner concluded that the appellant had been dishonest to him but also to Tracy Love. He set out his quite brief reasoning in this way;

“It transpires that on the Operator reading the transcript of the July 2016 hearing and going through the evidence of Shaun Thomas Britton, it was evident that he told untruths to T E Love; he told untruths to me as Traffic Commissioner; and he told untruths and misled his employers. Specific examples are set out in a new transcript that might be requested for today, however they include his being untruthful as to the hours that he worked as a Transport Manager. He also gave false evidence about his history as a Transport Manager...”

And then;

“Shaun Thomas Britton has misled a Traffic Examiner, his employer, and has misled me. His evidence to me was false in a number of material respects. He loses his repute as a Transport Manager. He is disqualified from holding or applying for an Operator’s licence anywhere in the EU for a period of three years...”

12. He went on to point out that his decision did not mean that the appellant would automatically be able to resume his career as a Transport Manager at the end of the three year period and that he would be advised to re-qualify by taking fresh examinations. It is apparent from the above that the Commissioner has incorporated the content of the Public Inquiry transcript into his decision by reference.

The appellant’s grounds of appeal to the Upper Tribunal

13. The appellant’s brief written grounds were to the effect that he had not been dishonest; that he had worked as a Transport Manager for the number of hours he had claimed; and that he had previously served as a police officer. In his subsequent communication of 6 March 2017 he asserted that he had resigned his position as Transport Manager because of the Operator’s lack of co-operation with him and that with respect to the regulatory regime he had had a previously unblemished record.

14. As noted, the appellant did not attend before us so all we have had to go on is what he has put to us in writing.

Our consideration of the appeal

15. The jurisdiction and powers of the Upper Tribunal when hearing an appeal from a Traffic Commissioner are governed by Schedule 4 to the Transport Act 1985 as amended. Paragraph 17(1) provides that the Upper Tribunal has full jurisdiction to hear and determine all matters whether of law or fact. However, it is necessary to bear in mind that such an appeal is not, for example the equivalent of a Crown Court hearing an appeal against a conviction from a Magistrate’s Court, where the case effectively begins all over again and is simply re-heard. Instead, an appeal before the Upper Tribunal takes the form of a review of the material before a Traffic Commissioner. In this context we have taken full account of the valuable guidance to be found in a passage from paragraphs 30-40 of the judgment of the Court of Appeal in *Bradley Fold Travel Ltd and Peter Wright v Secretary of State for Transport* [2012] EWCA Civ 695. We also note that the appellant bears the burden of showing that the decision under appeal is wrong and that in order to succeed he must show that “the process of reasoning and

the application of the relevant law require the tribunal to adopt a different view”. Put another way, it might be said that in order to succeed an appellant has to demonstrate to the Upper Tribunal that a decision of a Traffic Commissioner was “plainly wrong”.

16. The Commissioner relied, for his decision, upon his conclusion that the appellant had lost his good repute as a Transport Manager and his decision is silent regarding professional competence. A Transport Manager is required to be of good repute (paragraph 9 of Schedule 3 to the Goods Vehicles (Licensing of Operators) Act 1995).

17. The Commissioner concluded that the appellant had sought to mislead him and had sought to mislead Tracy Love. The appellant says to us he has not told any untruths at all.

18. The Commissioner was clearly very concerned regarding the veracity of the assertion made by the appellant, at the first day of the Public Inquiry, that he performed duties as a Transport Manager for around eight hours per week. As noted, the Commissioner thought that odd because on the material before him, which has not been disputed, that would have meant he was earning less than the drivers. He had asked the appellant to produce his most recent tax return which, presumably, he thought would demonstrate whether or not the appellant was telling the truth in that regard. As it turns out and as again has been noted above, the appellant never did produce that tax return. Even if he was not minded to attend the second day of the Public Inquiry (and clearly he was not) he could still have produced a copy of the tax return had he wished to. The Operator’s explanation at the second day of the Public Inquiry to the effect that, in fact, the arrangement had been that he would work as a Transport Manager for only four hours per week makes much more sense. That is because, if correct, it means that he would have been earning more than the drivers which is only what one might reasonably expect given the marked difference between the two functions.

19. In the above circumstances we cannot conclude that the Commissioner was plainly wrong when he found that he had been deliberately misled on the point by the appellant at the first day of the Public Inquiry. Whilst we note that the Commissioner was also concerned about what he perceived to be other untruths it seems to us that misleading about any material matter at a Public Inquiry is so serious that this one instance of itself was comfortably sufficient to underpin his findings as to repute.

Conclusion

20. In the above circumstances the appeal is dismissed.

Signed

**M R Hemingway
Judge of the Upper Tribunal**

Dated

25 April 2017