

Neutral Citation Number: [2018] UKUT 284 (AAC)

Appeal No. T/2018/29

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

**IN AN APPEAL FROM THE DECISION OF  
Nick Denton, Traffic Commissioner for  
the West Midlands dated 10 May 2018**

**Before:**

**Her Hon. Judge J Beech, Judge of the Upper Tribunal  
Stuart James, Specialist Member of the Upper Tribunal  
George Inch, Specialist Member of the Upper Tribunal**

**Appellant:**

**ADAM HAYES**

**In attendance:** Adam Hayes

**Heard at:** Field House, 15-25 Bream's Buildings, London, EC4A 1DZ

**Date of hearing:** 21 August 2018

**Date of decision:** 28 August 2018

**DECISION OF THE UPPER TRIBUNAL**

IT IS HEREBY ORDERED that the appeal be DISMISSED

**SUBJECT MATTER:-** Good repute of transport manager. Whether finding of loss of good repute as Transport Manager was proportionate and whether disqualification for period of five years was proportionate.

**CASES REFERRED TO:-** Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport (2010) EWCA Civ. 695.

## REASONS FOR DECISION

1. This is an appeal from the decision of the Traffic Commissioner for the West Midlands (“the TC”) made on 10 May 2018 when he found that the Appellant (“Mr Hayes”) had lost his good repute as a transport manager and ordered that he be disqualified from acting as such for a period of five years under paragraphs 1 and 16(2) of Schedule 3 of the Goods Vehicles (Licensing of Operators) Act 1995 (“the 1995 Act”).

### The Background

2. In July 2013, Hayes Freight Limited (“HFL”) was granted a standard international goods vehicle operator’s licence for 21 vehicles and 32 trailers. At the time when the DVSA investigation commenced, there were 12 vehicles in possession and the sole director of the company was Dean Blake (“Mr Blake”). Mr Hayes was the transport manager.
3. HFL entered creditors’ voluntary liquidation on 20 October 2016. On 29 March 2017, the Central Licensing Office (“the CLO”) wrote to HFL’s liquidators asking if they wished to apply to continue operating under the licence under Regulation 31 of the Goods Vehicles (Licensing of Operators) Regulations 1995. The letter informed the liquidators that failure to respond would lead to the licence being revoked. No response was received although the licence remained active with vehicles being regularly added to and taken off the list of vehicles in possession.
4. The liquidators were written to again on 30 November 2017 and were advised that unless they requested a public inquiry by 21 December 2017, the licence would be revoked. No response was received; the licence was not revoked.
5. In the interim, on 18 October 2017, an “S” marked prohibition was issued to a semi-trailer being operated by HFL for an insecure load, an inoperative trailer parking brake and low service brake efficiency. The prohibition was “S” marked because the insecurity of the load and the defect in the parking brake should have been identified during a daily driver walk round check, which had not been undertaken by the driver.
6. On 22 November 2017, Traffic Examiner (“TE”) Phillips stopped a vehicle (FX55 BPU) which was being driven by Nelson Smith. The vehicle was displaying an operator’s licence disc issued to HFL. Mr Smith stated that he had been employed by Rima Freight Limited (“Rima”) for about eighteen months and that he had not received any training in drivers’ hours and records from Rima. Investigations revealed that the sole director of Rima was Mr Blake and that the company did not hold an operator’s licence. An examination of Mr Smith’s tachographs revealed that the operator was not collecting Mr Smith’s tachographs from him within the 42 day deadline and that Mr Smith had committed numerous centre field and mode switch offences as well as a number of break offences.

7. On 9 January 2018, TE Love and VE Jones made an unannounced visit to the operating centre of HFL. TE Love spoke to Alan Hayes (father of Mr Hayes) who stated that HFL no longer existed having been acquired by Rima about two years previously although the HFL name had been retained for goodwill purposes. Rima and Mr Blake were based in Essex. VE Jones conducted a maintenance investigation which was marked as unsatisfactory because of the “S” marked prohibition, a roadside prohibition rate for trailers of 50%, an annual final test failure rate for vehicles of 15% and ad hoc use of the drivers’ defect reporting system.
8. On 23 January 2018, Mr Hayes attended an appointment with VE Jones as HFL’s transport manager. He stated that following the “S” marked prohibition, the driver had been dismissed. Alan Hayes was his “eyes and ears on the ground” and he passed all relevant information to Mr Hayes. His father, who was paid through APH UK Ltd (one of Mr Hayes other business interests), was also responsible for MOT testing. He himself was paid by Rima as a self-employed transport manager. Mr Hayes followed up the meeting with a detailed letter responding to VE Jones’ maintenance investigation findings. Mr Hayes gave assurances in relation to maintenance and systems, giving the clear impression that he was fully in charge of the transport operation. The letter concluded:

*“We’re committed and dedicated to ensure our fleet of vehicles are maintained to the best standard possible, and not just a minimum standard, and we will continue to strive to never send a vehicle out that would compromise road safety in any way at all. Problems do occur from time to time, however I can assure you we will do everything we can to keep improving our systems and to minimise wherever possible human errors that are sometimes the cause of failures and prohibitions. We will also give you our commitment that we will continue to invest in our fleet which will help also to improve our OCRS score overall ..”*

The letter was signed by Mr Hayes as *“Transport Manager Hayes Freight Ltd part of the RIMA group of companies”*.

9. Mr Hayes also attended an interview with TE Love on 25 February 2018 and at the same time, spoke with TE Phillips. He stated that he had sold HFL to Mr Blake in December 2015 and that as part of the deal, he was required to remain the nominated transport manager for HFL for four or five years. As he was also a director of two other companies, his father was his “eyes and ears” on the ground at HFL. Mr Hayes had no responsibility for checking tachographs or disciplining drivers, such duties being the responsibility of Steve Winston, the office manager. Mr Hayes was not aware that HFL had gone into liquidation. He was paid £1,000 per week to remain as transport manager but was unsure as to whether he invoiced HFL or Rima. He did not know Nelson Smith and denied that the company employed him.

10. Mr Hayes was asked to provide a copy of HFL's vehicle insurance. He produced an insurance certificate in the name of "Rima Freight Services Ltd trading as Hayes Freight".
11. Having concluded his investigation, TE Phillips had concerns that Mr Hayes did not have continuous and effective control of the transport operation due to Mr Hayes working remotely; he was unsure as to who he invoiced for his services; he was the director of APH (UK) Ltd which hired "exotic cars" and a director of SCDD Ltd which organised Supercar Drive Days yet the vehicle authorisation on the operator's licence required a full time transport manager; he was not responsible for disciplining drivers; Mr Smith's tachographs had not been collected from him; Mr Hayes denied any knowledge of Mr Smith; he continued to allow vehicles to be operated on HFL's operator's licence when the tachograph analysis that was done was in the name of Rima and the insurance was in the name of Rima.
12. The matter was referred to the TC. He determined that as HFL had been in liquidation for more than a year and that as a consequence, could not show financial standing, the operator's licence of HFL should be suspended with immediate effect under Article 13.3 of Regulation EC 1071/2009, pending a public inquiry. The decision was communicated to Mr Blake and the liquidators on 13 March 2018. On 14 March 2018, Mr Blake requested that the suspension be lifted as it would cause severe hardship to Rima, stating that he could arrange a cross-company guarantee as evidence of financial standing. On 16 March 2018, Mr Blake sent another email informing the TC that Rima owned HFL and the two companies had always operated as one and the same company. However, a check of Companies House records revealed that it was not Rima but Mr Blake who was the sole shareholder in HFL.
13. By call up letters dated 4 April 2018, HFL and Mr Hayes were called to a public inquiry under the provisions of ss.26 and 27 of the 1995 Act, the hearing being listed for 9 May 2018. Mr Smith was called to a parallel driver conduct hearing.
14. On 7 May 2018, Mr Hayes emailed the OTC stating that he would not be attending the hearing as "*I am no longer involved with either Hayes Freight or Rima Freight in any capacity*". He had sold HFL to Mr Blake in December 2015 and ceased to act as transport manager in December 2016 although he accepted that as his name remained on the licence, he remained the nominated transport manager "*technically*" when in early 2018 he was interviewed by the DVSA examiners. He described his situation as "*awkward*" as he was not aware that he had continued on the licence (he did not explain why he had not notified the Traffic Commissioner of his resignation or why he had, in January 2018, given the DVSA examiners the impression that he was still acting as transport manager or why he had signed a letter to VE Jones as "*transport manager*").
15. On 8 May 2018, Mr Blake emailed the OTC stating that he would not be attending the public inquiry. The suspension of the licence had had a severe

effect upon his business and it was closing down that day. He further stated that Mr Hayes had not had any involvement with the business since December 2016. Owing to a period of ill-health, Mr Blake had failed to remove Mr Hayes as transport manager from the licence. As the TC observed in his written decision, Mr Blake did not explain why he had also failed to nominate a new transport manager in Mr Hayes' place.

16. Mr Smith did attend the public inquiry. He told the TC that no one from Rima had ever asked him for his tachographs. After a week "*tramping*", he would return to the operating centre to find the office closed. The drivers were expected to deposit their tachographs and paperwork in a bin outside the office which was open to the elements. He had never been warned or spoken to about drivers' hours or records infringements, he had last seen Mr Hayes approximately eighteen months before the hearing and he had never heard of Mr Blake. He had continued to drive for Rima on a daily basis up to and including 8 May 2018 when the business closed. He (and another Rima driver who accompanied Mr Smith) were unaware that the operator's licence had been suspended on 13 March 2018.
17. In a written decision dated 10 May 2018, the TC found that HFL lacked financial standing, having entered liquidation with debts, according to the liquidators' report, of around £350,000. There had been no functioning and qualified transport manager since December 2016. Vehicles had continued to operate during a period of suspension and the licence had been lent to Rima. The company's vehicles and trailers had attracted 33 prohibitions (40% infringement rate for vehicles and 38% for trailers) in the previous 5 years along with two fixed penalties. There had been a breach of the operator's undertaking with regard to ensuring that the rules on drivers' hours and tachographs would be observed. The licence was revoked and Mr Blake was disqualified from holding an operator's licence for a period of five years.
18. As for Mr Hayes, the TC conducted the required balancing exercise and in doing so, he took into account the following negative features: Mr Hayes had failed to inform the TC that he had ceased to act as transport manager in December 2016 which meant that HFL had been able to continue in business with the outward appearance of being professionally competent; he must have been aware that Rima was in fact the de facto operator and that HFL had gone into liquidation; despite having ceased to act as transport manager in December 2016, he told TE Love that he was HFL's transport manager and wrote a letter to VE Jones signing himself as the transport manager for HFL. It followed that Mr Hayes was attempting to give the DVSA officers the impression that he was still the functioning transport manager. The TC was unable to find any positive features to put into the balance as Mr Hayes had failed to attend the public inquiry to put any forward. The TC described Mr Hayes conduct as "*devious*" and concluded that his failures had allowed a licence to continue in force when it should have been terminated in December 2016. The TC concluded that Mr Hayes' good reputation was lost and that it was proportionate to disqualify him for a period of five years.

## The Appeal

19. In his letter containing his grounds of appeal, Mr Hayes asserted that he did not attend the public inquiry because Mr Blake had informed him that the hearing would not be going ahead because "*the company*" had folded. He repeated the contents of the email he had sent to the OTC on 7 May 2018. He maintained that he did not know that Steve Winston (the office manager) had not been nominated as transport manager in his place. It was an "*oversight*" on his part in not informing the TC of the position. He further maintained that he was unaware that HFL had entered liquidation. The only change as a result of the company buy out was that the company invoices stated at the bottom that HFL was the trading name of Rima Freight. He maintained that Mr Blake had changed the name on the operator's licence to Hayes Freight trading as Rima Freight (although there was no evidence of that within the appeal bundle). The reason for holding himself out as the transport manager in early 2018 was that his father had contacted him and told him that he remained on the licence as transport manager and had asked him as a favour to meet with the DVSA officers. He would not have done this if his father had not been working for Rima at the time. Mr Hayes described Mr Blake as a "*professional con man*" who had duped Mr Hayes. He had taken £500k out of the business and had done the same to Rima. He still owed over £50,000 to Mr Hayes and his father for the sale of HFL. He accepted that he should have attended the public inquiry; he had let himself down by failing to inform the TC that he was no longer the operator's transport manager and had been acting under "*duress*" in lying to the DVSA officers. All of these matters were "*errors*" on his part and he had not intended to deceive the TC or to allow Hayes/Rima Freight to continue to trade illegally.
  
20. At the hearing of his appeal, Mr Hayes attended and represented himself. He repeated the substance of his appeal letter. He said that he had been in transport since he had left school and HFL had been his grandfather's business. After a period of ill health caused by stress, Mr Hayes had decided to sell the business to Rima in December 2015. Part of the agreement was that the purchase price would be paid by staged, monthly payments over two years with 50% up front. It was agreed that Mr Hayes and his father would continue to work within the company for twelve months. Mr Hayes would visit the operating centre once a week, mainly at weekends whilst his father worked full time. In December 2016, he asked to be replaced as transport manager and as he was aware that Steve Winston had a CPC qualification, Mr Hayes understood that Mr Winston would take over the transport manager role. Mr Blake was a "*likeable*" person and as his father had continued to work within the company, Mr Hayes assumed that the TC had been informed of all relevant changes. Mr Hayes accepted that the TC had not been informed of the purchase of the company, the change of directors and his resignation as transport manager. The DVSA investigation came like a "*bolt out of the blue*". He attended the interview with VE Jones and wrote the letter addressed to VE Jones because his father had asked him to and had put Mr Hayes in a "*really bad position*". He then denied that he had in fact attended a meeting on 23 January 2018 with VE Jones even though that was the

evidence of VE Jones and that is what his own letter refers to. He asserted that he had only attended one interview and that was on 25 February 2018.

21. As for his financial involvement with the company after it had been sold, he said that as at January 2018, he and his father were still owed £30,000 (c/f the figure of £50,000 in Mr Hayes' appeal letter). The purchase price should have been paid over two years but Mr Blake had asked for a six month payment holiday to purchase new vehicles. Mr Hayes gave inconsistent accounts as to the weekly payments of £1,000. He told the Tribunal that they had continued, although he also said that they had in fact stopped. In any event, the payments were split between himself and his father and these were in addition to the staged payments for company.
22. Mr Hayes accepted that the absence of a transport manager had allowed Rima/Blake to operate vehicles under HFL's licence whilst building up debts, particularly to HMRC and further accepted that it was a fatal error in failing to attend the public inquiry. He had no answer to the question posed to him: why should he escape the consequences of lying to DVSA officers? He did however consider himself to be in a unique position in that he had acted as a result of "*complete loyalty*" to his father, being motivated by a desire to ensure that his father could continue working in the transport industry.

### Discussion

23. During the course of the hearing, the Tribunal made clear to Mr Hayes that we do not take account of evidence which should have been before the TC but was not. Whilst Mr Hayes was keen to persuade us that the reason why he did not attend the public inquiry was because of misrepresentations made by Mr Blake, we do not accept his account. His letter of 7 May 2018 made it clear that it was his decision not to attend the hearing because he no longer had any connection with the business. We are in any event satisfied that had Mr Hayes attended before the TC on 9 May 2018, the TC's decision would not have been any different, either in relation to loss of repute or the period of disqualification as the matters now raised by Mr Hayes cannot be categorised as positive features which might have caused the TC to come to a different decision. The undisputed evidence before the TC was that Mr Hayes had remained as the nominated transport manager on the licence having failed in his duty to inform the TC of his resignation or indeed about the other material changes in the ownership of the business and the use to which the licence was being put. He had then held himself out to be HFL's transport manager to VE Jones, TE Phillips and TE Love and had lied about the extent of his involvement with the company to all three DVSA officers and in particular, in the letter following up Mr Hayes' meeting with VE Jones. It was inevitable that the TC would conclude that Mr Hayes had lost his good repute and that he could not be trusted in the immediate or foreseeable future as a transport manager. We do not consider that a disqualification period of five years is disproportionate upon the facts of this case. Indeed, a longer period would have been difficult to question bearing in mind the misconduct of Mr Hayes.

24. It follows that we are satisfied that the TC's approach to the issues of good repute and disqualification was neither plainly wrong nor disproportionate. Further, we are not satisfied that this is a case where either the law or the facts impel us to interfere with the TC's decision as per the Court of Appeal decision in Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport (2010) EWCA Civ. 695. The appeal is dismissed.

Jagah Beech,

**Her Honour Judge Beech**  
**28 August 2018**