



**IN THE UPPER TRIBUNAL
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ADMINISTRATIVE APPEALS CHAMBER**

Appeal No. UA-2022-001500-

On appeal from the Decision of Richard Turfitt, Traffic Commissioner for the East of England 28th October 2022

DFL Transport Limited

Appellant

Before: Her Honour Judge Beech Upper Tribunal Judge
Specialist Member of the Upper Tribunal David Rawsthorn
Specialist Member of the Upper Tribunal Richard Fry

Hearing date: 7th March 2023

Representation:

Appellant: The Appellant did not attend and requested that we determine the appeal in their absence

DECISION

The appeal is DISMISSED

Subject Matter: Revocation; failure to respond to a propose to revoke letters; change of all relevant addresses without notifying the Office of the Traffic Commissioner; revocation of a linked licence

Cases referred to: Bradley Fold Travel & 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the Traffic Commissioner for the East of England (“TC”) dated 28th October 2022 when the Appellant’s operator’s licence was revoked under s.26(1)(h) of the Goods Vehicles (Licensing of Operators) Act 1995 (“the Act”) with immediate effect.

Background

2. The background to this appeal can be found in the appeal bundle and is as follows. The Appellant (“DFL”) held two operator’s licences which have both been revoked. The directors of the company were Michal Frasunski and Pawel Domanski (“Mr Domanski”). The first to have action taken against it was OF1137627 (“627”), a standard international licence authorising 4 vehicles with 3 in possession and 4 trailers with 4 in possession. Its operating centre was in Hemel Hempstead at P J Brown Car Breakers and the nominated transport manager was Mr Domanski.
3. On 25th June 2021, an unsubmitted and incomplete application was commenced on VOL to add Dominik Predygier as a Transport Manager on the licence. On 28th June 2021, Mr Domanski removed himself as Transport Manager using the VOL on-line facility. Propose to Revoke letters were then emailed to both directors (which were not responded to) and sent by registered post to 2 Newfield Lane, Hemel Hempstead, which was the registered office address and the correspondence address. There was no response to the emails and the registered letters were returned marked “Return to sender. No longer at this address”. The same letter was also sent by registered post to the operating centre which resulted in a response from James Brown, owner of the operating centre informing the Office of the Traffic Commissioner (“OTC”) that he had asked DFL to vacate his premises at the end of February 2020, which it did.
4. As a result of the above matters and that there had been no response from the directors, a second Propose to Revoke letter was sent to all known addresses on 22nd December 2021 with a deadline of 19th January 2022. On 28th December 2021, the OTC received an email from Karol Frasunski (who was not a director of the company and without stating what his link to the company was) stating that Mr Predygier had now filled out the TM1 form. He was informed that the TM1 form on the VOL system was incomplete and moreover, the licence did not have a nominated operating centre. Karol Frasunski then emailed a completed TM1 form duly signed by Mr Predygier and Mr Domanski as director but without the hours that Mr Predygier intended to devote to the licence. Karol Frasunski was advised to resubmit the TM1 form onto the VOL system and to up-date the information about the operating centre. A completed TM1 form was then received although by email rather than it having been submitted on VOL (Mr Predygier’s working hours for a two vehicle operation were said to be 44 hours). No information was forthcoming about the operating centre despite reminders being sent to Karol Frasunski. As at 19th January 2022, a new transport manager had not been nominated via the VOL system as required, there was no application to add an operating centre

and as such, the licence remained without both. It was noted that correspondence was being conducted by Karol Frasnuski who was not a director of the company. On 25th January 2022, that licence was revoked under sections 26(1)(h) and 27(1)(a) of the Act.

5. The OTC for the East of England, as the lead Traffic Area for DFL's licences, then turned its attention to the licence which is the subject of this appeal ("289"). This standard international licence was held in the North Eastern Traffic Area with an operating centre at 32 Midland Road, Scunthorpe; its correspondence and establishment address was the same as that for 627: 2 Newfield Lane, Hemel Hempstead. The licence authorised 10 vehicles and 10 trailers. Unfortunately, there appears to have been an administrative error within the OTC which resulted in a Propose to Revoke letter being sent to DFL for licence 289 in precisely the same terms as that sent on 627: no transport manager and no recorded operating centre. No response was received from the operator. The error was identified in August 2022 and a further Propose to Revoke letter was sent out referencing material change namely that the 627 licence had been revoked as a result of lack of professional competence and the absence of an operating centre and that no one in authority within the company had responded to the correspondence sent resulting in concerns whether the directors were contactable. The letter was sent out on 7th September 2022 to the operating centre, 2 Newfield Lane and 23 Eastcott Close (Karol Frasnuski's home address). There was no response from the operator or its directors. On 1st October 2022, Michal Frasnuski and Mr Domanski resigned as directors of DFL and were replaced by Karol Frasnuski. This was not communicated to the OTC.
6. On 28th October 2022, the licence was revoked under s.26(1)(h) of the Act, on the grounds of material change namely:
 - a) The revocation of licence 627 as DFL did not have an operating centre and that no person in a position of authority communicated with the TC;
 - b) No response was received in respect of correspondence sent to DFL under licence 289 on 22nd December 2021 and 7th September 2022 and as a result, DFL no longer appeared to be contactable.
7. On 3rd November 2022 Karol Frasnuski, now describing himself as Managing Director, emailed the OTC asking for advice about how to have both licences reinstated. He was advised of his right to appeal.

The Appeal

8. By a Notice of Appeal received on 8th November 2022, Karol Frasnuski ("Mr Frasnuski") appealed. In section A entitled "*Type of Case*", Mr Frasnuski stated:

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- Company changed Director
 - Company changed address
 - Company changed e-mail address
- No received correspondence on time”

In Section F entitled “*Grounds of Appeal*”, Mr Frasunski advised that he had taken over as director on 1st October 2022 and the documentation had taken “*much time*”. Unfortunately, the company changed correspondence and email address so he could not receive the letters sent by the OTC. At the same time, the operator’s administration was not aware of the letters sent by the OTC as the company had changed address and did not receive post. DFL had held an operator’s licence for more than eight years and the previous director was not aware of his compliance duties. Mr Frasunski would take care to follow procedures in the future. He wished to be able to continue operating over the Christmas period and continue to operate in the United Kingdom.

9. The appeal hearing was listed for 7th March 2023. Mr Frasunski then emailed the Tribunal stating that he would not be attending the hearing. The Tribunal treated that email as a request that we determine the appeal in his absence.

Discussion

10. By virtue of the terms of both operator’s licences, DFL was required under s.22 of the Act to inform the TC of the following:
- a) Events which affect professional competence of the operator and/or transport manager. This was triggered by the resignation of Mr Domanski and required a Propose to Revoke letter before steps were taken in an attempt to regularise the position;
 - b) Any change to the specified address of establishment. As there was no response to correspondence sent to 2 Newfield Lane, the concern that there had been a change of address was well founded. This was confirmed by Mr Frasunski’s third bullet point;
 - c) The proposed use of an alternative operating centre to that specified on the 627 licence. The specified and operating centre had not been available to DFL since February 2020 without any steps taken to regularise the position;
 - d) Any change in the correspondence address. The notes to the licences make clear that failure to inform of such a change may result in the revocation of the licence. In addition, emails sent to directors were not responded to.

The licences made it clear that failure to fulfil an undertaking or condition may result in the licences being revoked.

11. Whilst the order of revocation of licence 627 is not the subject of appeal, the reasons for that order are highly pertinent when considering a linked licence and the reasons for that order are important background information to this appeal on 289. To operate vehicles without a specified operating centre and failing to respond to correspondence are serious regulatory failings. Whilst it was unfortunate that due to an administrative error, the first Propose to Revoke letter on 289 did not set out the correct basis for the TC’s concerns, the second one did. By that stage, DFL had not responded to correspondence for a little over 13 months. Even the Propose to Revoke letter sent to the operating centre in Scunthorpe did not elicit a response. DFL had clearly and obviously failed to comply with the conditions and undertakings on both

licences and the TC's concerns about DFL were amply justified on the evidence.

Conclusion

12. In all the circumstances we are not satisfied that the TC's decision was plainly wrong in any respect and neither the facts nor the law applicable in this case should impel the Tribunal to allow this appeal as per the test in Bradley Fold Travel & Peter Wright v Secretary of State for Transport (2010) EWCA Civ.695. The appeal is dismissed.

A handwritten signature in black ink, appearing to read 'Judge Beech', is written in a cursive style.

**Her Honour Judge Beech
Judge of the Upper Tribunal
9th March 2023**