



**IN THE UPPER TRIBUNAL Appeal No. UA-2024-000321-T
ADMINISTRATIVE APPEALS CHAMBER
(TRAFFIC COMMISSIONER APPEALS) [2024] UKUT 353 (AAC)**

ON APPEAL from A DECISION of the TRAFFIC COMMISSIONER for the West Midlands Traffic Area

Before: Zachary Citron: Judge of the Upper Tribunal
Kerry Pepperell: Member of the Upper Tribunal
Sarah Booth: Member of the Upper Tribunal

Appellant: GBM Haulage Limited

Representation

For the appellant: Mr Gurpreet Kumar and Mr Shivdev Singh (directors of the appellant)

Heard: at Birmingham Civil Justice Centre

On: 10 October 2024

Date of decision: 8 November 2024

DECISION OF THE UPPER TRIBUNAL

The appeal is **dismissed**.

Subject matter

Revocation of licence

Cases referred to

Bradley Fold Travel Ltd & anor v Secretary of State for Transport [2010] EWCA Civ 695
KA & Z Leonida t/a ETS T/2014/24
Al Properties (Sunderland) Ltd v Tudor Studios RTM Co Ltd [2024] UKSC 27

REASONS FOR THE DECISION

The decision appealed against

1. The appellant appealed to the Upper Tribunal against a decision of the Traffic Commissioner (the “TC”) in a letter (the “**decision letter**”) dated 1 March 2024 revoking the appellant’s operating licence under the Goods Vehicles (Licensing of Operators) Act 1995 from 14:18 hours on 1 March 2024. (In what follows, (unless the context otherwise indicates) references to “sections” or “s” are to sections of that Act.)

2. The decision letter referred to the TC’s earlier letter to the appellant, of 18 January 2024, notifying the appellant that the TC was considering revoking its licence, and said that in the absence of a response by the appellant to that letter, its licence had been revoked.
3. The TC’s 18 January 2024 letter said that the TC had been informed that the appellant had changed directors with the addition of Shivdev Singh on 13 June 2023; and that the information had not been updated on the vehicle online licencing (“VOL”) system despite a previous letter (of 24 August 2023) and email (of 5 October 2023) to the appellant. The letter said that in view of this, the TC was considering making a direction under s26(1) to revoke the appellant’s licence on the following grounds:
 - (a) that the appellant had contravened a condition attached to the licence (in failing to notify a “change in ownership”) (s26(1)(b))
 - (b) that there had been a material change in any of the circumstances of the appellant that were relevant to issue of the licence (a change of director); (s26(1)(h)).
4. The letter also cited s27 as requiring a TC to direct that a standard licence be revoked if the licence-holder no longer satisfies one of the requirements of s13A (s27(1)(a)); the letter cited s13A(2)(b), requiring the applicant to be of good repute (per paragraphs 1-5 of Schedule 3; paragraph 1 refers to “fitness” to hold a licence as a relevant matter to repute); the letter said that the TC considered this requirement no longer to be satisfied. The letter cited s27(2), which requires that, before giving a s27(1) direction, the TC give the licence-holder written notice that the TC is considering giving such a direction; the letter said that the appellant was permitted to make written representations, by 2 February 2024 (i.e. 15 days after the date of the letter). The letter gave the appellant until the same date to request a public inquiry; it said that the appellant’s licence would be revoked if no such request was received by that date. The letter was marked as requiring “urgent attention”.

The appellant’s case

5. The appellant’s appeal form stated, under “grounds of appeal”, that the appellant had “handed in the changes” to the “transport officer”, but the “transport officer” claimed “it” was never received. It also mentioned a number of other mitigating factors.
6. At the hearing, it became clear that the appellant accepted the factual accuracy of what was said in the TC’s letter of 18 January 2024; in other words, the appellant accepted that
 - (a) the appellant had not updated the VOL system to record the appointment of Mr Singh as a second director of the appellant;
 - (b) the TC had contacted the appellant on a number of occasions prior to 18 January 2024, requesting that it do this; and
 - (c) the appellant did not respond to the TC’s 18 January 2024, or perform the requested updating of the VOL system, prior to the revocation of its licence on 1 March 2024.

7. The appellant's case was, in essence, that all this was the fault of its transport manager, which, the appellant's representatives at the hearing (its directors) said,
 - (a) had been asked by the appellant to respond to the TC's 18 January 2024 letter, and
 - (b) had told the appellant (via its directors) that he had so responded (even though, in actuality, he had not).

Jurisdiction of the Upper Tribunal

8. The holder of an operator's licence may appeal to the Upper Tribunal against a direction given under section 26(1) or (2), or 27(1), in respect of the licence: s37(2).
9. The Upper Tribunal has jurisdiction to hear and determine all matters whether of fact or law for the purpose of the exercise of its functions under an enactment relating to transport. It has the power to make such order as it thinks fit or, in a case where it considers it appropriate, to remit the matter to a TC for rehearing and determination.
10. The Upper Tribunal may not take into consideration any circumstances which did not exist at the time of the determination which is the subject of the appeal.
11. The task for the Upper Tribunal on an appeal is to conclude whether or not, on objective grounds, a different view from that taken by the TC is the right one or (meaning the same thing) whether reason and the law impel the Upper Tribunal to take a different view (*Bradley Fold Travel and anor v Secretary of State for Transport* [2010] EWCA Civ 695 at [40]).

The Upper Tribunal hearing

12. We are grateful to Mr Kumar and Mr Singh for attending the hearing and making the appellant's case clearly, succinctly and courteously.
13. It appeared that a copy of the Upper Tribunal bundle, running to 44 pages, had not been received at the address of the appellant shown in its appeal form. We considered whether it was fair and just to proceed with the hearing. Having established that the only part of the Upper Tribunal bundle that the appellant would not have received by other means was a number of pages of internal communication within the Office of the TC ("**OTC**") prior to the issue of the TC's 18 January 2024 letter; and having heard the request of the appellant's representatives at the hearing that the hearing proceed and not be adjourned; we considered whether the internal OTC communication in question was relevant to the issues in the appeal. It seemed to us that the TC's 18 January 2024 letter, and the subsequent decision letter, were clear in what had been decided, and why; the internal OTC communication did not add anything by way of clarifying or explaining the TC's decision. It therefore seemed to us that this material was of no material relevance to the appeal, and so it would be contrary to fairness and justice to delay the proceedings unnecessarily by adjourning so as to provide a copy of the bundle to the appellant. We accordingly proceeded with the hearing.

The Upper Tribunal's reasoning in this case

14. Even if we were to accept the factual assertions behind the appellant's case, to the effect that the appellant asked its transport manager (in good time) to do what the TC required as regards updating the VOL system to show the new company director, and was then told that the transport manager had done so (whereas, in fact, he had not), this would not put us in position to set aside the TC's decision as wrong. This is because:

- (a) we accept the proposition that the appointment of an additional director was a material change in the appellant's circumstances, given that, when the licence was granted, the appellant had a single owner and director (Mr Kumar); this meant that, under s26(1), the TC had the power to revoke the appellant's licence;
- (b) in addition, we consider it likely that it was a condition of the appellant's licence that it notified the TC of changes to the composition of its board – although the licence was not produced in evidence, this point was not disputed by the appellant, and the panel of the Upper Tribunal hearing this case, through its expertise, is aware that this is a standard undertaking in such licences; we also note that paragraph 97 in the current version of senior TC statutory document 5 (*Legal Entities*) states that changes of directors should be notified to the TC. This amounts to an additional reason why the TC had the power to revoke the appellant's licence under s26(1);
- (c) furthermore, we do not consider it wrong of the TC to take the view that the appellant's repeated failure to respond to the TC's request that it update the VOL system to reflect the change in its board composition, indicated a lack of fitness to hold a licence; the TC was entitled to take the view that someone fit to hold a licence would either have updated the VOL system themselves, or would have actively satisfied themselves that the updating had been performed (rather than passively taking the transport manager's word for it, as the appellant appeared to have done, despite the very serious tone and potential consequences of the TC's 18 January 2024 letter). There is good authority that licence-holders cannot “put the blame on the transport manager” because it is the licence-holder who is required “to have sufficient knowledge of the regulatory regime to ensure compliance in general” (the quotations are from the decision of the Upper Tribunal in T/2014/24 *KA & Z Leonida t/a ETS*, paragraph 4);
- (d) It follows that the TC was not wrong to consider that one of the conditions of s13A was no longer met; and so he was required by s27 to revoke the licence.

15. For completeness, we note the TC's 18 January 2024 letter gave the appellant 15 days in which to make representations as regards the TC's considering revocation of the appellant's licence, whereas, under s27(3)(b), the TC should have given 21 days for receipt of such representations. This point was not raised by the appellant. In our view, this was a legal error on the part of the TC, but it does not render the TC's decision to revoke the appellant's licence wrong, since

- (a) the decision was not made exclusively under s27; it was also made under s26; and that requirement of s27(3)(b) does not apply to decision under s26;

(b) even as regards the TC’s decision under s27, we note that the Supreme Court in *AI Properties (Sunderland) Ltd v Tudor Studios RTM Co Ltd* [2024] UKSC 27 recently held that where there is no express statement of the consequences of a failure to comply with a statutory procedural requirement, the correct approach is to infer what consequences Parliament had intended non-compliance to have by looking at (a) the purpose served by the requirement as assessed in the light of a detailed analysis of the statute and (b) the specific facts of the case, having regard to whether any (and what) prejudice might be caused or whether any injustice might arise if the validity of the statutory process was affirmed notwithstanding non-compliance with the requirement. Here, given the evidence purpose of s27(3)(b) to give a licence-holder a reasonable time to make representations, together with the facts that (a) the appellant never responded to the TC’s 18 January 2024 letter, indicating that it would have made no difference if that letter had given 21 days to make representations (as it should have), rather than 15 days; this point is further reinforced by the fact that the appellant’s directors acknowledged that, even at the time of the hearing, they still did not have knowledge of the “log in details” needed to update the VOL system) and (b) we have been able to hear, and consider, the appellant’s representations, as part of these proceedings, and have found them unpersuasive as regards finding that the TC’s decision to revoke the appellant’s licence was wrong, we are confident that Parliament did not intend non-compliance with s27(3)(b), in the circumstances of this case, to have the consequence of invalidating the TC’s decision under s27.

16. Given our reasoning as just set out, the TC’s decision to revoke the appellant’s licence cannot, in our view, be said to be plainly wrong. It follows that the Upper Tribunal has no power to disturb it.

Zachary Citron
Judge of the Upper Tribunal

Kerry Pepperell
Member of the Upper Tribunal

Sarah Booth
Member of the Upper Tribunal

Authorised for issue on 8 November 2024