



ROAD TRANSPORT FORUM

Unloading other operator's vehicles

As the result of the Health and Safety at Work Act 1974 (HSWA), and its dependent regulations, every operator has a legal obligation to ensure that any vehicle that is to be unloaded is safe to unload. The fact that the vehicle belongs to the operator concerned and has just been loaded by his employees does not affect that duty of care.



In the context of day-to-day operations this duty is unlikely to present any major problems but the position changes dramatically if it is a 'foreign' vehicle that is to be unloaded when there may have been different standards of care when the vehicle was loaded or, more commonly, when the load may have moved in the course of the journey.

Under the HSWA the required procedure is well established:

- A competent person should carry out a 'Risk Assessment' on the load that is to be unloaded.
- That 'Risk Assessment' should determine whether the load is safe to be unloaded.

- The Assessor should then decide if mechanical assistance is required. Normally this will be the use of Forklift trucks or possibly a conveyor.
- In the event that manual handling ('Hand Balling') is appropriate, then the assessor should confirm both the number of men required, and the method to be used.

It is important to remember that, in the event of an accident that results in an investigation, the investigator will want to see evidence that this was done. There is no reason why a simple pro-forma 'Risk Assessment' record cannot be prepared by an operator and used in connection with each load. Each assessment will take no more time than a few minutes and will almost certainly prevent minor accidents.

Serious decisions have to be made if the assessor determines that the load is so unsafe that it cannot be unloaded without a real and immediate risk of injury. A situation that frequently arises where the load has moved in the course of the journey. In such a case the operator must firstly make certain that none of his own employees approach the vehicle, and must then contact the operator of the vehicle and advise him that arrangements must be made to unload the vehicle safely.

Like many processes that are now required by the Health and Safety legislation this may all seem to be largely unnecessary, but accidents in the course of loading or unloading vehicles are very common, and a load risk assessment takes very little time. Additionally a completed pro-forma assessment provides evidence that the operator has complied with the law.

Jonathan Lawton

Upper Tribunal require restricted licence holder to have qualified Transport Manager

Slough based Redsky Wholesalers Ltd appealed against the refusal of its application for a restricted licence for five vehicles and two trailers by Deputy Traffic Commissioner for the West of England Tim Hayden. This appeal was allowed, to the extent of granting a three vehicle licence, by the Upper Tribunal but it did place a condition on the licence requiring the company to have a qualified transport manager.

Though many restricted licence holder with large fleets do employ qualified transport managers, there is no legal requirement for them to do so. It is something that the industry and Traffic Commissioners have concerns about. Parliament's intention when drafting the legislation was not to burden trades people, like a local greengrocer who requires a lorry to go to market to collect produce with the requirement to have a qualified transport manager. In some quarters, it is suggested that the solution might be to restrict the number of vehicles authorised on a restricted licence where a qualified transport manager is not required.

In the case before the Tribunal, there was a history of previous non-compliant operation leading to the revocation of the company's previous five vehicle licence, a decision upheld by the Tribunal on appeal.

In the present case, the Tribunal said that the DTC was entitled to be concerned: firstly, by the fact that only nine months had passed since the original revocation of the licence (although in the circumstances of this case, it should not have been fatal to the Appellant's application); secondly, that Director Tejender Singh had asserted that he was to be primarily concerned with transport when, the reality was that, as a sole director of a company with a turnover of £10million, he simply would not have had the time to undertake that role and he was inadequately trained to do so in any event; thirdly, that a Mr Mathur was to continue in the role which he had undertaken so badly in 2012 when the very serious maintenance issues had arisen. He had after all, consciously sent out a vehicle with brake defects.

They considered that this was a case in which further conditions and undertakings should have been considered to allay the DTC's concerns about whether Mr Singh could be trusted and whether Mr Mathur was capable of operating a compliant operation.

The company is a very successful and growing operation and, whilst the licence application was for a restricted licence which did not require the employment of a fully qualified Transport Manager, the employment of a Transport Manager in this case, was in our view, the appropriate condition to impose upon this licence, along with the other proposals made, including a reduced authorisation of three vehicles.

In the end, the Tribunal imposed the following condition on the licence:-

- Within three months of the date of this decision, the Appellant is to employ a fully qualified Transport Manager who will have responsibility for the vehicles to be operated under the licence. The appointment of the Transport Manager is to be approved by the Traffic Commissioner.

They also required undertakings that the Appellant undertakes that all tachograph analysis is to be undertaken by an external, reputable outside contractor on a monthly basis; and that the Appellant's maintenance and compliance systems be fully audited every six months by a trade association for a period of two years, the first audit taking place within six months of this decision; all reports to be served upon the Traffic Commissioner within 14 days of their availability.

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Jared Dunbar of Dyne Solicitors comments

This case highlights a situation which has always made no sense to me: why someone operating 40 trucks, for instance, didn't need a transport manager when they were transporting their own goods but did if they were transporting someone else's. I never understand why ownership of the goods being transported is meant to affect the ability of the operator to operate a vehicle safely! I presume at some point the restricted licence will be removed or alternatively have a vehicle restriction imposed.

We often come across good, honest operators who have restricted licences but who really lack in the knowledge department. If they had a good CPC holder to advise them, then they often wouldn't be in the problems they were in.

That said, some sort of a requirement for refresher training for CPC holders would also improve standards, as some CPC holders understanding of the regime can be a bit rusty."

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