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ROAD TRANSPORT FORUM

Traffic commissioners need to look at the reality behind corporate complexities

Artificial distinctions between someone as an individual trader and as a director and owner of a company are unhelpful. The effectiveness of the operator licensing system should not be derailed or undermined by an over-technical analysis of corporate complexities that takes the decision-maker away from a proper and careful consideration of the reality.

This was made plain by the Upper Tribunal when they dismissed an appeal against a decision of Deputy Traffic Commissioner Fiona Harrington refusing to return an impounded vehicle to Alan Knight. The Deputy Commissioner found that Mr Knight had not discharged the burden of proving, on the balance of probability, that he did not know that at the time of its detention, the vehicle was being or had been operated in contravention of Section 2 of the Goods Vehicles (Licensing of Operators) Act 1995

The facts were that on 3 July 2012 a Dutch-registered vehicle was impounded by VOSA on the A34 in Berkshire. The vehicle, originally registered in the UK and then exported, belonged to Mr Knight, and it was on hire to Alan Knight Transport BV, a Dutch company owned by Mr Knight. Alan Knight Transport BV was not the current holder of a UK goods vehicle operator's licence.

Since 14 May 2010 the company had been issued with 29 prohibitions for improper use of goods vehicles on the UK roads involving numerous breaches of EC cabotage regulations. Because of that history of unlawful use VOSA had sent a warning letter to Alan Knight Transport BV stating that, if they carried on operating in breach of the cabotage legislation, then VOSA would consider impounding. That letter had been sent a few months before the impounding took place. When the vehicle was stopped, it was established that it was on a journey from Poole in Dorset to Hinckley and was carrying food for delivery to Tesco Supermarket. The Traffic Examiner made further enquiries of the UK Seaport Database. The result showed that the last time the vehicle had actually left the UK was 23 June 2012. Consequently, under the cabotage rules, the vehicle could not be lawfully used for the commercial haulage of goods on UK roads more than a week later, on 3 July.

The company holding the haulage contract for that UK journey was Alan Knight Transport Ltd, another of Mr Knight's companies, but that company had then subcontracted the work to Alan Knight Transport BV – which was expected to use its lawful cabotage allowance to carry out the journey.

It emerged that Mr Knight also owned the agency employing the drivers of the Dutch vehicles in the UK. That meant there were four entities to be considered: Mr Knight as a sole trader, the UK Ltd company, the Dutch company (BV), and the drivers' agency. All were Mr Knight's businesses.

continues overleaf

In relation to the current impounding, Mr Knight as an individual owned the vehicle, which he leased to the Dutch company. Alan Knight Transport Ltd, a UK company, obtained the contract to carry goods in the UK but then subcontracted this to the Dutch company. The UK drivers were provided via Mr Knight's drivers' agency and the Dutch company would rely on cabotage arrangements to cover that commercial work in the UK.

There were five categories of knowledge that needed to be considered:-

a) actual knowledge;
b) knowledge that the person would have acquired if he had not wilfully shut his eyes to the obvious;
c) knowledge that the person would have acquired if he had not wilfully and recklessly failed to make such inquiries as an honest and reasonable person would make;
d) knowledge of circumstances that would indicate the facts to an honest and reasonable person;
e) knowledge of circumstances that would put an honest and reasonable person on inquiry.

The Deputy Commissioner found that Mr Knight had not demonstrated on balance that he was not deliberately and wilfully – and with a high degree of fault - using the various delegations and company arrangements as a device to distance himself personally from the unlawful activities of the BV company, thereby wilfully shutting his eyes to the obvious - particularly once he had become aware of prohibitions issued, repeated transgressions, and the VOSA warning. She also found that Mr Knight had failed to demonstrate on balance that he had not wilfully and recklessly failed to make the sort of enquiries that an honest and reasonable person would make in order to ensure that proper arrangements were in place to prevent breaches of the regulations.

The Tribunal said that the answer to this appeal lies in the fact that the onus was upon Mr Knight to demonstrate that he did not have any of the categories of knowledge. The case therefore is essentially one of fact and credibility.
The Deputy Commissioner considered the reality and decided that despite the corporate complexities, Mr Knight had not demonstrated on balance that he could evade responsibility for what he actually knew, should have known, and can be taken to have known.

We consider that the appalling history of repeated and clearly calculated and systemic abuse of the cabotage regulations was a highly relevant consideration, and the Deputy Commissioner was perfectly entitled to have regard to it when deciding whether or not Mr Knight had discharged the burden of demonstrating lack of knowledge.

Given the history and the complexity of his business arrangements (which Mr Knight had devised and in which he remains a central figure) the duty was clearly upon him to address each of the five categories of knowledge and demonstrate, with persuasive evidence, that none of the categories applied in his case. Mr Knight's evidence was not persuasive and he produced no compelling corroboration.

It was of course unnecessary for the Deputy Commissioner to make adverse findings in relation to all five categories – an adverse finding in relation to any one of the categories would be fatal to Mr Knight's application.

Jared Dunbar of Dyne Solicitors comments:

This case highlights an area which has cropped up in a number of cases we have dealt with recently. That being how the Traffic Commissioners deal with a situation when a sole trader incorporates but doesn't submit a new application for the limited company. Strictly speaking the limited company will be operating vehicles without a licence (unless of course they are subcontracting the work). Should this be treated as a serious offence or should it be treated as a minor paperwork issue (assuming that it was a misunderstanding)? A simple application ahead of time would resolve the issue but many people change entities on accountant's advice without any appreciation of the impact on the Operator's Licence.

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