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ROAD TRANSPORT FORUM

Upper Tribunal specify when they can substitute their decision for a TC's decision

The Upper Tribunal has made it plain that it should not venture too readily into findings of fact made by Traffic Commissioners and substitute its decision for that of the Commissioner.

The comments came when they dismissed an appeal by Wincanton based Sarah Boyes, trading as Boyes Transport, against the decision of the Western Traffic Commissioner, Sarah Bell, revoking her O-licence. The O-Licence authorised 14 vehicles and 14 trailers. The decision disqualified her from holding or obtaining an O-licence and from acting as a Transport Manager, until she was able to demonstrate that she was trustworthy and would have a robust approach to compliance; this, in any event, would be for a period of not less than two years.

Both in her grounds of appeal, and at the hearing, Mrs Boyes wished to challenge and re-visit the Traffic Commissioner's findings of fact.

The Tribunal said that it did not see how the Traffic Commissioner could reasonably have reached any other conclusions but, even if it was minded to take a marginally different view, it would have found no grounds to interfere.

The Tribunal referred to the case of Regina (Jones) v First-tier Tribunal (Social Entitlement Chamber) and Another – The Times 31/5/2013. In that case, the Supreme Court found that an appellate body should not venture too readily into findings of fact made by specialist first-instance decision makers. The case was a criminal injuries compensation case where a man had run into traffic, apparently with the intention of committing suicide, and this then caused a road traffic accident that had led to Mr Jones (who was driving a vehicle) sustaining injury. To the surprise of the Court of Appeal, the First-tier Tribunal had found that they were not satisfied that the deceased had been reckless as to whether harm might also be caused to other persons by his actions. Such a finding would have been necessary to establish violent criminal behaviour such as to give rise to a right for Mr Jones to claim compensation under the scheme. The Court of Appeal disagreed with the First-tier Tribunal's analysis (with which the Upper Tribunal had not interfered) allowing itself to be influenced by its own view of what a person would probably foresee if they ran straight into traffic. The Supreme Court held that the First-tier Tribunal was a specialist tribunal and had made a rational finding of fact that was open to it, even if others may reasonably take a different view - and it was not open to factual review by the Upper Tribunal (which had respected the First-tier Tribunal's finding) or by the Court of Appeal.

In the case of Bradley Fold Travel Ltd & Peter Wright v Secretary of State for Transport [2010] EWCA Civ 695, the Court of Appeal's judgement was to the effect that, even where an appellate tribunal has full jurisdiction over law and fact, as the Upper Tribunal does, there is a distinction to be drawn between the case where the appellate tribunal might take a different view from that of the specialist first-instance decision-maker, and the case where it concludes that the process of reasoning, and the application of the relevant law, require it to adopt a different view from the Traffic Commissioner (our emphasis). Only in the latter case would it be appropriate to interfere.

The Upper Tribunal is, of course, a specialist tribunal as well but, in considering the process of reasoning and the application of the relevant law, the Upper Tribunal find found no reason to criticise the approach, or the conclusions, of the Traffic Commissioner. There was nothing to be gained by considering alternatives to revocation once the Traffic Commissioner had concluded that the appellant could not be trusted to comply in the future, and that the appellant deserved to be put out of business. Repute was lost and the consequence of this finding did not produce a disproportionate result.

Jared Dunbar, of Dyne Solicitors, comments: This case highlights the importance of getting things right first time round at the Public Inquiry. Specialist advice should be sought and sought earlier. Public Inquiries are really about the work put in beforehand and so preparation time is key to this.

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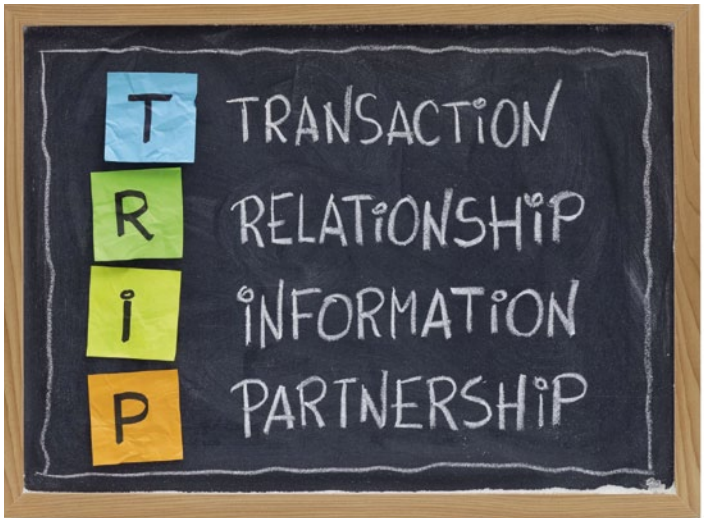
Customer Relations



The days when operators considered customers to be no more than a necessary evil have long since passed. Today most, if not all, operators realise the need to have a good working relationship with their customers and, in practice, that relationship will derive from the need to discuss the mechanics of the process of delivery and collection of loads with, of course, a constant concern about rates.

An operator who holds out his company as providing 'logistics' services will be expected to offer advice as to the best and most effective way of moving the customer's products and, increasingly, will expect the operator to provide ongoing advice in order to achieve greater efficiency. New loading techniques, new methods of load security, and the better use of the available space are some of the areas in which an operator might be expected to offer advice.

It is important not to forget that this relationship with the customer should be a two way relationship. In other words, in order for this relationship to be effective the operator must ensure that the customer understands the regulatory pressures that affect the whole of the operator's business. Health and Safety legislation should be familiar to the customer, but such things as 'O' licensing, roadside checks, and Driver's Hours legislation may well be outside the customer's experience.

It should be remembered that, once the vehicle leaves the operator's premises, it will be the customer's employees or agents who are most likely to have any contact with the vehicle or the driver. The customer may see the opportunity to put rather more weight on the vehicle, or in a container, than the weight declared to the haulier as being no more than a realistic, if dishonest, commercial opportunity, without realising what may happen to the operator if the resulting overload is discovered.

The customer may also be in a position to encourage a driver to continue his journey to the point of delivery even if that will result in the driver's legally permitted hours being exceeded.

On occasions, it may be that the driver will advise a customer of a vehicle defect that might impact on the intended collection or delivery time. Again, it is not unknown for a customer to put pressure either on the driver, or on the operator, or both, to ignore the defect and to complete the journey thereby choosing to ignore the possibility of a roadside check. More seriously, of course, would be the situation if the defect was to result in a serious accident and evidence of the prior knowledge became available.

For all these reasons, an operator should aim to establish a very open relationship with the customer so that the customer will understand why it may be necessary to refuse to do something, however urgent the request. The customer needs to understand that, in the worst case scenario, his actions could lead to the operator's loss of the 'O' Licence.

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