

Legal Torque

ROAD USER CHARGES INQUIRY

A CASE AT LAST

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Most of you will have heard murmurs about the T D Haulage case (*The Director of Land Transport Safety v T D Haulage Limited, Regal Investments Limited and Waho Transport*).

This was the case where the Director of Land Transport Safety ("LTS") (as it was then called) commenced a road user charges inquiry through the District Court into the purchasing of road user licences by T D Haulage, Regal and Mr Waho's operations, it having been alleged that they had not purchased sufficient road user licences to cover the weights they had been carrying.

The case is important, there being only one previous case on this quite remarkable section of the Road User Charges Act which gives jurisdiction to the District Court to commence an inquiry into road user charges purchasing of a transport operator.

The judge in this case takes the opportunity to give some very helpful guidelines as to the methodology for and manner of assessing alleged shortfalls in the purchasing of road user licences, particularly in regard to the "5% tolerance".

There appears to be a misconception in the industry as to what the 5% tolerance is and how it applies. The 5% tolerance appears in the second schedule of the Transport Act 1962. The 5% tolerance is for the purpose of calculating the amount for an infringement ticket for an offence of being overweight on your road user distance licence. When an operator is stopped and their vehicle weighed, the police will take 5% of the weight displayed on the licence off the weight of the vehicle in calculating the infringement ticket.

All three operators in this case were knowingly overloading their trucks to include the 5% tolerance. The issue in this case was whether they were entitled to do this and whether the 5% tolerance should be deducted when assessing road user charges.

The Court determined that it was not able to interpret the Road User Charges Act so as to include a tolerance, as there was no mention of it in that Act. His decision was that, although the tolerance applies to infringement notices, the 5% tolerance will not be applied where an inquiry is held by LTS.



In dealing with each of the defendants, the Court held first, that T D Haulage had a purchasing practice which led to more than 60% of its loads being overweight. The Court held that this was a deliberate practice as it used the 5% tolerance as a safety net. As a result, they did not purchase supplementary licences when they were overweight but within the 5% tolerance. T D Haulage admitted that the information before the Court was representative of the nature of the way they conducted their business.

The LTS assessment of what had been short-paid in road user licences was based on a 15,000 km road user licence method, that is, they had calculated the shortfall in the weight of the road user distance licence on the basis that a 15,000 km licence should have been bought at the correct weight. Calculating the amount over 15,000km distance licences resulted in \$3,035,508 owing by T D Haulage. However the Court did not accept this and instead used the minimum 1,000 km notional purchase of road user licences, in other words the Court did not accept that where operators habitually purchase 15,000 km licences, then the unpaid amount of road user licences should be calculated over the entire 15,000 km of the licence. Instead he applied the information available to the shortest available distance licence. He therefore lowered the figure to \$1,350,099. Thereafter, he deducted a further 10% to allow for possible error, reaching a final figure of \$1,215,000.

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The Judge accepted that Regal Haulage had operated on a similar basis to T D Haulage of regularly loading to the maximum weight. Although this was accepted, Regal Haulage had limited records and argued that LTS could not draw inferences based on the limited records available.

Although the Judge was minded to adjourn the case to allow for further financial information to be brought in, he eventually decided, based on oral evidence by representatives of the company, that an assessment was possible. Again, using the same methodology with T D Haulage, he found the LTS assessment of \$285,536 inflated and reduced the figure to \$112,000.

Finally, in respect of Mr Waho, the Court accepted that his situation was minor compared to the other two companies. The Court accepted that he was an honest working man who had misunderstood his legal obligations. The Court noted that once he became aware of the LTS view of the way he should be buying his road user licences, he immediately began to buy them that way.

The Court was not impressed with the LTS methodology of calculating road user charges owed by Mr Waho, which it said totalled \$24,820. The Court considered that LTS had been "unduly generous" in their assessment and reduced that figure to \$8,000.

The Court stated that the decision to use the 1,000 km notional purchase of road user licences was because this was the first case of its kind and was consistent with the method used to settle all cases that had been settled up until then. However the Court said that in the future if operators habitually purchased 15,000 km licences and loaded in such a way that they were regularly over the road user licence weights without purchasing the appropriate supplementary licence, it would be at their own peril. The Court concluded by

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saying that operators may find that now that the situation with respect to the 5% tolerance had been clarified, future inquiries may be more inclined to accept LTS's position that the 15,000 km licence should be used as the basis for the assessment.

The Court provided an explanatory note which is a useful summary of the case and which we have set out below. This serves as a clear guide of where the Court now stands in relation to its assessment of road user licences.

The position of the Court now is that:

1. The Court has jurisdiction to undertake an inquiry if it is satisfied that a transport operator has been buying road user licences that are less than the actual weight carried on the operator's journeys (in other words, loading up to include the 5% tolerance).
2. There is no 5% tolerance to be applied to the operator's weights when calculating the amount of road user charges due;
3. Any 5% tolerance applied to the weight in excess of road user licences applies only to an infringement notice;
4. The law requires the operator to carry the same weight or less weight than permitted by the road user licence being carried;
5. The carriage of excess weight on a road user licence can and will result in an assessment of the charges payable. Notwithstanding that, in some cases there may be a limited amount of records kept to enable this to be done. It is in the operator's interests to keep such records, even if this is not required as a matter of law.

If any operator is unsure as to their obligations, feel free to contact Catherine Bormans at Fortune Manning on 915-2412.

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