

15 March 2023
Our Reference: 5370

Michel Saada



Dear Mr Saada

Heavy Vehicle National Law

Part 10.1 – Enforceable Undertakings

REASONS FOR DECISION

Introduction

1. In accordance with section 590A (7) of the Heavy Vehicle National Law (HVNL), I provide written notice and reasons for my decision to accept the Enforceable Undertaking proposed by Mr Saada (the EU proposal)¹ pursuant to Part 10.1A of the HVNL.
2. I have considered the EU proposal and assessed it against the National Heavy Vehicle Regulator's (NHVR) *Prosecution Policy* (the policy), *Enforceable Undertakings Policy* (the EU policy) and the *Guidelines on Proposing an Enforceable Undertaking* (the EU Guidelines). For the reasons set out below, I am of the opinion that the EU proposal, in the circumstances, is an appropriate enforcement option for the particular contravention alleged in this case.

The Alleged Facts

3. It is alleged that on 22 April 2022 you made a false or misleading entry in your work diary, namely that you were resting at Kilburn, South Australia (SA) from 12:45pm. It is alleged that the entry was false or misleading as your vehicle was sighted by Safe-T-Camera at Willaston, SA at 1:26pm and at Globe Derby, SA at 1:50pm during the period you recorded you were resting.
4. The NHVR commenced a prosecution against you alleging the offence. The maximum penalty available for the offence is \$11,820.

¹ Enforceable Undertaking proposed by Michel Saada pursuant to Chapter 10.1A of the HVNL dated 28/01/2023.

The Proposed Enforceable Undertaking

5. The EU proposal comprises four (4) initiatives to be completed within twelve (12) months from the date of the NHVR's acceptance of the EU and amounts to a total estimated cost of \$1,425.
6. The four initiatives can be summarised as follows. You undertake to:
 - a. complete a Fatigue for Schedulers course;
 - b. distribute informative material to motorists via a local newspaper, which is to be approved by the NHVR prior to publication;
 - c. donate to the Road Trauma Support Team – South Australia;
 - d. register for and implement an Electronic Work Diary for a period of 12 months. If after 12 months you intend to go back to a paper-based National Work Diary you are to advise the NHVR.

Criteria to be applied

7. In arriving at my decision, I have evaluated the EU proposal against the 11 evaluation criteria in Section 4 of the EU Guidelines namely: (1) the nature and extent of the omission alleged; (2) the Promisor's compliance history; (3) whether the EU proposal delivers benefits to the public beyond the Promisor's compliance with the law; (4) the quality of the strategies proposed and the extent to which they are likely to achieve measurable improvement in heavy vehicle transport safety; (5) the likely improvements in safety within the Promisor's business or operations; (6) the Promisor's ability, including financial ability, to meet the terms of the EU proposal; (7) the significance of the commitment compared to the capability of the Promisor; (8) the support the Promisor has provided and has committed to providing into the future to an injured or affected person(s); (9) input from injured and affected persons; (10) the likely outcome should the matter be dealt with through legal proceedings; and (11) reports or assessments of investigating or prosecuting agencies who have conduct of the matter.
8. With regards to criteria (1) and (2), I have considered the nature and extent of the conduct alleged and your compliance history. I acknowledge that prior to these allegations, I am not aware of any convictions, any breaches of the HVNL or any breaches of related safety duties by you.
9. With regards to criteria (3) and (4), I have considered that the EU proposal initiatives do benefit the public beyond the compliance of the law, are of good strategic quality, and have potential to make noticeable positive change in the transport industry in terms of implementation of safety measures.

10. With regard to criteria (5), I acknowledge the proposal initiatives are likely to improve your transport operations.
11. With regards to criteria (6), I acknowledge that you have the ability to meet the terms of the EU proposal.
12. With regards to criteria (7), I have considered that you have taken into account the significance of the EU commitment, compared to its capability.
13. With regards to criteria (8) and (9), concerning the EU proposal's support of injured or affected person(s) and input from injured and affected persons, I have found these factors are not a relevant consideration bearing in mind the specific facts of this matter.
14. With regards to criteria (10) and (11), concerning the likely outcome should this matter be dealt with through legal proceedings and the views of investigating and prosecuting agencies, I have similarly taken these matters into account.

Conclusion

15. Considering all of these criteria, I am of the opinion that it is appropriate to accept the EU proposal as an alternative to prosecution.
16. Consequently, I have decided to accept the proposed EU and advise that the legal proceedings against you will not continue.

Yours sincerely



Sal Petrocchio

Chief Executive Officer