

Case learnings – July 2023

A civil engineering and contracting company breached its primary safety duty after 8 of the company's heavy vehicle drivers committed a total of 193 fatigue-regulated breaches between 1 July 2020 and 6 August 2020. It was alleged that:

- Drivers sought to maximise their income by working excess hours and not having regard for their work/rest times. In addition, the drivers would falsify their work records to indicate they had taken rest breaks when in fact, they did not.
- The company was aware that its drivers were exceeding their standard hours. The issue of the drivers' work hours was only discussed in the context of how expensive it was and the possibility that some drivers were attempting to inflate their hours.
- The company had no policies, procedures, or safety management systems.
- The company did not provide its drivers with any toolbox talks or training relating to the technical aspects of its plant and equipment, site inductions, training on compliance with the HVNL or general fatigue management training.



The offence

The company pleaded guilty to thirty seven offences contrary to section 26H (Category 3) of the *Heavy Vehicle National Law*. The offending for each of the offences can be summarised as:

- The company breached its primary safety duty by failing to ensure its drivers did not work in excess of their maximum standard work time.
- This failure created a safety risk to members of the public.



Penalty

A total fine of \$1,200,000 was imposed on the company.

When imposing the penalty, the Court said that the company had a moral and legal obligation to ensure its transport activities were properly managed.

It also stated that the company had the capacity and obligation to step in and take action against the drivers when their conduct became known to them. The risk to road users and the public generally was unacceptably high.

In finding that the company had a high degree of culpability, the Court found that the need for general deterrence and denunciation was more important than the company's preference to keep trading in its present state.

Key takeaways

Considering the potentially significant consequences of non-compliance with your primary duty, it is important that you review your safety systems and ensure you are doing everything reasonably practicable to eliminate or minimise the risks in your transport activities.

Below are some takeaways from this case:

- Where there may be financial benefits or other incentives for drivers to work longer hours, extra scrutiny must be given to the work and rest times recorded by those drivers to ensure they are still complying with their maximum work hours under the HVNL.
- Once you become aware of breaches of the HVNL by drivers, immediate steps must be taken to address those breaches.

- The Heavy Vehicle National Law is concerned with potential harm, not actual harm. **An accident or fatality does not have to occur for charges to be brought.**

Guidance for operators

The case provides some reasonably practicable measures employers of drivers can take to reduce or minimise the risks associated with fatigue management, including:

- Ensure that any arrangements with drivers do not encourage them to drive while impaired by fatigue or breach their work and rest hours.
- Confirm with drivers that they have worked the hours that they have recorded in their work record.
- Implement a process to monitor and compare the driver's work records with available GPS data and other sources.
- Where fatigue breaches are detected, discuss the breaches with the driver and issue written warnings or non-conformance reports in relation to the breach.
- Provide appropriate training to drivers, schedulers and other parties in the chain of responsibility on fatigue management.
- Implement regular performance reviews.

These reasonably practicable measures are just examples of potential controls that you can implement and should be read in conjunction with those outlined in the registered industry [Master Code](#).



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