

Case Learnings – November 2023

The company was engaged in local and interstate haulage, employing 40 staff and operating 32 prime movers.

An investigation found that 4 drivers committed a total of 543 contraventions of the HVNL during two periods between 28 August 2020 and 22 September 2020 and between 28 March 2022 and 6 April 2022. The contraventions included:

- 44 work/rest hour offences (18 critical, 3 severe, 3 substantial and 20 minor)¹
- 93 offences for making false or misleading in work diaries
- 406 speeding offences (highest speed was 118km/hr)

While the company had systems, policies and procedures in place, they were not effective or adequate in monitoring and enforcing driver hours, ensuring scheduling did not cause drivers to breach their work and rest hours, managing speed compliance and there was not adequate implementation of corrective action for breaches of the HVNL.

The Offence

The company was charged with one offence contrary to section 26H (Category 3) of the *Heavy Vehicle National Law*.

The company breached its primary safety duty by failing to implement effective systems and procedures to ensure that:

- Drivers were not working longer and resting less than their permitted work and rest hours;
- Work diaries were correctly recorded and did not contain false or misleading information; and
- Drivers did not exceed the speed limit.

The Outcome

The company pleaded guilty to the offence and was convicted and fined \$65,000. In addition, the company entered into a Supervisory Intervention Order to develop a speed management policy, ensure drivers and staff undertake fatigue management training, ensure all drivers transition to Basic Fatigue Management working conditions, undertake regular drug and alcohol testing and require all drivers to use Electronic Work Diaries.

The maximum available penalty was \$574,620.00. The court discounted the penalty due to the significant efforts that the company had made since the offending to manage its risks. These included the employment of an experienced compliance officer, having drivers transition to BFM hours and starting to use a new program to assist with audits and monitoring.



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:

- Use all available information, such as GPS data, fuel records and toll records, to assist with auditing work diaries to ensure their accuracy and manage speed compliance.
- Ensure that trips provide drivers with sufficient time to complete all tasks in a safe manner and allow for their required rest breaks.
- It is not enough to simply have policies and procedures in place to manage risk, you must ensure that there is compliance with those policies and procedures. Continue to monitor and review them.
- Where breaches are detected you must take appropriate action and record such action.

¹ See, section 250 of the *Heavy Vehicle National Law*.

Guidance for Operators

The case provides some reasonably practicable measures operators can take to reduce or minimise the risks associated with fatigued or untrained drivers operating heavy vehicles, including:

- Develop scheduling and rostering practices to ensure that all trip/work schedules and rosters take into account the total time for all driving and work activities to be safely completed;
- Develop a Driver Fatigue Management Plan in respect to drivers of fatigue-regulated heavy vehicles;
- Provide adequate information, instruction and training to schedulers and drivers;
- Implement effective practices to control, monitor and review the levels of compliance with the Heavy Vehicle National Law;
- Develop and implement an effective discipline procedure to ensure appropriate action could be taken in response to identified substantial non-conformance, including reporting workers who submit falsified work diaries and those who approve falsified work diaries;
- Develop and implement an effective system to regularly monitor and review the accuracy of driver's work diary records using available tools including schedules/rosters, GPS records, toll records, fuel records, delivery records, Safe-T-Cam notices and infringement notices;
- Develop and implement an effective system to regularly monitor and review speeds driven by drivers using available tools including, but not limited to, GPS data.
- Adopt a culture of complying with fatigue management and speed limits.

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



For more information:

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