

Case learnings – February 2023

Facts of the case

The company was a line-haul trucking company that operated 32 fatigue-regulated heavy vehicles. The two individuals charged, one of whom was the sole director and shareholder of the company, acted as schedulers for the company and scheduled drivers to drive heavy vehicles to carry out deliveries. It was argued that the company failed to take reasonable steps in relation to five aspects of its heavy vehicle operations:

1. Licencing of its drivers;
2. Speeding by drivers;
3. Fatigue of drivers;
4. Reporting of the receipt of infringement notices by company drivers; and
5. Training of drivers in respect of the above areas.

The two individuals failed to adequately manage fatigue of drivers as required in their role as schedulers for heavy vehicle drivers.

The investigation revealed that the company:

- Had no procedures in place to assess drivers' fitness to drive despite having policies for fatigue management.
- Installed cameras in its heavy vehicles to monitor driver fatigue but did not use the information from the cameras to monitor driver fatigue.
- Had a drug and alcohol policy but did not carry out any drug or alcohol testing of drivers.
- Had no policies or procedures related to speed and did not monitor speeding of drivers in heavy vehicles despite having GPS technology that could monitor for speeding.
- Failed to provide training to drivers in respect of speeding, fatigue management or filling in work diaries.
- Had inadequate procedures to detect breaches of work and rest hours by drivers.
- Did not regularly check the status of driver licences of its heavy vehicle drivers.
- Did not have a procedure requiring drivers to report any infringements received while driving a heavy vehicle.
- Relied on oral directions to schedule trips and did not prepare safe driving plans or consider fatigue of drivers.



Key take-aways

Considering the potential significant consequences for non-compliance with your primary duty, it is important to 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 take aways from this case:

- **Written.** Document directions you give to staff, do not rely on oral directions.
- **Systems.** If you have a system in place to manage your risks ensure they are working, maintained and accurate. You must proactively monitor compliance.
- **Recording breaks.** You cannot rely on drivers to accurately record breaks. There must be a system or process that ensures drivers are adhering to and recording their compliance with fatigue management.
- **Driver training.** It is about more than ensuring they know how to complete a work diary. You must take steps to ensure that the drivers understand and are properly trained in managing fatigue. Compliance must be monitored on an ongoing basis.
- **Risk.** The HVNL is risk focussed and there does not need to be a collision or fatal accident to be convicted of a primary duty offence.



Guidance for Schedulers, Operators and Employers

This case provides eight reasonably practicable measures **schedulers** can take to reduce or minimise the risks associated with scheduling heavy vehicles, including:

1. Asking drivers if they have secondary employment that may impact their levels of fatigue;
2. Preparing safe driving plans with scheduled break and rest locations;
3. Verifying driver's fitness to drive prior to each trip;
4. Be mindful of drivers returning to work from leave when scheduling their driving shifts;
5. Factor in delays encountered by drivers when scheduling;
6. Proactively monitor driver's compliance with their work and rest hours;
7. Use a GPS system to confirm actual driver work hours;
8. Ensure drivers have correctly calculated their work and rest hours and filled in their driver work diaries correctly prior to scheduling trips.

The case additionally provides eight reasonably practicable measures **operators** of heavy vehicles and **employers** of heavy vehicle drivers can take:

1. Continual assessment and review of risks within their transport operations;
2. Verifying drivers have current and valid licences;
3. Implement safe driving plans for drivers;
4. Ensure driver fitness is verified by a supervisor before each shift;
5. Use all available information to ensure drivers are not speeding;
6. Use all available information to make sure drivers are not driving in breach of their work and rest hours;
7. Making sure drivers report all notices issued to them by road and transport authorities;
8. Provide regular training to drivers about fatigue, work and rest hours, filling in work diaries and all company policies and procedures.

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

Factors considered on sentence

The case also gave National guidance on what will be considered on sentence for these offences. Some of the key messages were:

1. **Intentional or laziness?** Sloppiness, not paying proper attention or being unaware of the risks is not an excuse. However, deliberate conduct will be treated more seriously.
2. **Has the risk been remedied?** Action taken to remedy the risk after the offending may be considered, however, will not be given much weight if the circumstances of offending is serious.
3. **But there wasn't even an accident?** The fact there was no accident or fatality can be considered, however, is of little weight as the primary duty in the HVNL is focussed on risk.
4. **How long did it continue and who did it impact?** Offending that occurs over a long period of time, involves multiple heavy vehicles, and/or heavy vehicle drivers will be treated more seriously.
5. **Reasonably practicable measures.** The combined effect of all the reasonably practicable measures that the NHVR says could have been taken by an offender will be considered when determining the objective seriousness of an offence.

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