

Case learnings – June 2023

Facts of the case

A transport and construction company were engaged in the transportation of structural steel for industrial and commercial building development projects.

The company employed heavy vehicle drivers to transport building materials between construction sites.

In February 2019 the company directed a driver to transport a load of metal structural beams for delivery to a client. The driver restrained the metal beams with webbing restraints. The driver transported the metal beams using public roads, and upon approaching a set of traffic lights, slowed to approximately 10 kilometres per hour. As the vehicle came to a stop, the load shifted and one or more of the beams moved forward, smashing the rear window of the prime mover cabin.

No one was injured because of the incident.

The investigation revealed that:

- There was no headboard attached to the trailer.
- Webbing restraints were used on the strong, ridged load, instead of a low stretch restraint such as a transport chain.
- The beams had been loaded onto the trailer between several weeks and several months prior to the transportation.
- The company had pre-transport checklists that were not used by the driver.
- The company's loading policy stated that drivers were to be trained in load restraint and have evidence of this training otherwise they were to be supervised by an authorised person.
- The company knew the driver had no prior load restraint training or experience.
- The company failed to provide the driver with training or supervision.



The offence

The company pleaded guilty to three offences contrary to the Heavy Vehicle National Law (HVNL) in the Local Court:

One count contrary to section 26G

- The company did not take the reasonably practical measure of ensuring that a headboard was fitted to a trailer at all times when that trailer was involved in transport activities.
- The failure to take this measure exposed a named person to risk of death or serious injury.

One count contrary to section 26G

- The company did not take the reasonably practical measure of ensuring fit and proper restraints were available to use to properly restrain a load.
- And that the load was not properly restrained prior to the heavy vehicle leaving the company's depot.
- The company failed to ensure a transport checklist for the load was completed and adhered to before the heavy vehicle left the company's depot.
- The failure to take this measure exposed a named person to risk of death or serious injury.

One count contrary to section 26H

- The company had a duty to, and it was reasonably practical for it to, and it failed to provide the driver with adequate training and supervision related to loading and load restraint.



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:

- **SMS and Policies:** If you have systems and policies in place to manage risk, make sure they are being used by your employees. The company had a 'pre-transport checklist' that if used, would have identified the missing headboard. SMS and policies are of little value if they remain on the shelf.
- **Driver training:** You must take steps to ensure that the drivers understand and are properly trained in load restraint. Compliance must be monitored on an ongoing basis.
- **Driver management:** If you have an inexperienced driver, ensure that they are supervised until they are trained to safely complete the job.
- The *Heavy Vehicle National Law* is concerned with potential harm, not actual harm. **An accident or fatality doesn't have to occur for charges to be brought.**
- The definition of reasonably practicable requires a **holistic assessment** of what is reasonably practicable having regard, amongst other things, to the likelihood of the risk happening and the harm if the risk happens. For more information, see the [Regulatory Advice – Reasonably practicable](#).

Guidance for Transport Companies

The case provides some reasonably practicable measures transport companies can take to reduce or minimise the risks associated with load restraint for heavy vehicles, including:

- Ensure that any transport checklists are completed before the vehicle leaves the depot.
- Ensure that appropriate load restraints are available to use to properly restrain the load.
- Ensure that appropriate load restraints are in fit and proper condition to be used to properly restrain the load.
- Ensure that the load is restrained to prevent it from shifting during the transport activity.
- Ensure that staff members are provided with adequate training to load heavy vehicles.
- Ensure that inexperienced staff are supervised when loading heavy vehicles.
- Ensure compliance with the requirements of the Heavy Vehicle National Law and Regulations.

- Ensure compliance with internal Safety Management Systems, policies, and procedures.

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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