

Case learnings – September 2023

Background

The company was engaged in the transportation of bulk industrial liquid waste, live birds, and feed. The company operated approximately 26 prime movers and engaged 34 workers to undertake its transport activities.

In February 2020 at about 7.30am a fatigue-regulated heavy vehicle, operated by the company, was involved in a single vehicle roll over. The heavy vehicle was loaded with live chickens when it veered on to the wrong side of the road, collided with trees along the shoulder before returning to the centre of the road, rolling on its side, and sliding to a halt.

The driver escaped with minor injuries and a large number of the chickens were destroyed.

Victoria Police commenced an investigation into the incident which revealed that:

- The driver of the heavy vehicle was a prospective employee of the company who had attended the company's premises at 9:30pm the night prior for a job interview as a driver.
- The interview was conducted by a supervisor from the company and involved sighting the prospective employee's physical licence, asking their age, driving experience, showing them the work site and providing time to ask questions about the role.
- The prospective employee then joined the supervisor for a 'ride-along' to observe the transport activity being performed commencing at 10:00pm.
- During the ride-along, a driver from the company contacted the supervisor and advised they were sick and would not be able to complete their driving shift early the next morning.
- Between 1:00am and 7:00am, the prospective employee had (2) two separate 1-hour sleeps in the sleeping compartment of a heavy vehicle. These were observed by the supervisor and the supervisor recalled having difficulty waking the prospective employee just prior to 7:00am.
- The supervisor did not perform a thorough fitness for duty check, did not sight the

prospective employee's work diary or clarify how much sleep they had the night prior. The supervisor only performed a 'visual check' to ensure the prospective employee's eyes were 'wide open' and didn't look tired.

- At approximately 7:00am, the prospective employee was directed/permitted to operate a heavy vehicle, loaded with live chickens, after the supervisor was unable to organise another driver to complete the loads for the sick driver.
- The prospective employee returned a positive reading for methylamphetamine at the time of the roll-over.



Subsequent investigations by Victoria Police into the company revealed that:

- The company had inadequate policies and procedures to monitor and assess drivers' fitness to drive, and inadequate training and induction processes to ensure new employees were adequately trained to drive the company's heavy vehicles.
- The company had no policies or procedures that specifically targeted fitness to drive and had no system in place to assess a driver's fitness to drive, written or otherwise.
- The company had no formal interview or induction process, written or otherwise. The general practice was the prospective employee would observe as a passenger on the first night and on a subsequent night perform driving tasks under supervision.
- Despite having a policy prohibiting staff presenting to work under the influence of drugs or alcohol, there was no evidence the

company performed random drug or alcohol testing of drivers.

The offences

The company and the supervisor were each charged with, and pleaded guilty to, category 2 offences contrary to section 26G of the Heavy Vehicle National Law in the Magistrates Court. The charges were brought as:

- The supervisor failed to ensure the prospective employee was fit for duty.
- The supervisor failed to adequately train and induct the prospective employee in the use of the company's heavy vehicles.
- The company failed to have systems and procedures in place to assess, monitor and manage the driver's fitness for duty and failed to ensure its staff were adequately trained to assess, monitor and manage drivers' fitness for duty.
- The company failed to have systems and procedures in place to ensure employees and prospective employees were adequately trained and inducted in the use of the company's heavy vehicles and failed to ensure Company staff were adequately trained to provide adequate training and induction to drivers.



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:

- Fitness for duty and assessing the fatigue levels of a driver requires more than a verbal confirmation from the driver or a visual assessment. Be thorough and assess all factors that may impact on a driver's fitness for duty.

- If a driver displays signs consistent with fatigue, i.e. drowsiness or lack of alertness, ensure a thorough fitness for duty check is performed.
- Ensure safety is prioritised and that last-minute time pressures do not impact your decision-making. Written, formal policies will likely reduce the risk of a lapse in judgement occurring.

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:

- Implement and enforce a Driver Fatigue Management Plan, including a 'Fitness for Duty' assessment, for drivers of heavy vehicles.
- Ensure drivers have sufficient work hours to perform driving tasks by reference to their work diaries and, if not available, direct they not complete any driving tasks until available.
- Implement and enforce a drug and alcohol policy, including random testing.
- Ensure drivers complete a medical examination prior to operating heavy vehicles, including assessment of the use of legal and illegal drugs.
- Induct and train drivers prior to permitting them to operate a heavy vehicle, including supervision of the task being performed.
- Confirm the status of a driver's licence and their driving history with the relevant transport authority prior to permitting the driver to operate heavy vehicle.

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](#).

For more information:

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