

## Case learnings – December 2023

### Facts of the case

A transport and logging company was engaged in the transportation of approximately 15,000 tonnes of timber a week. The Company employed and subcontracted heavy vehicle drivers to transport the timber.

Between December 2019 and February 2020, the company directed 9 drivers to transport timber using either their own heavy vehicle or the company's heavy vehicles. Over the 3-month period, the drivers committed 251 work diary and fatigue-related offences.

Minimal training was provided to the drivers and the schedulers to address the ongoing fatigue breaches. Similarly, minimal disciplinary and/or remedial action was taken to address the ongoing fatigue breaches.

The investigation revealed that:

- The company was not compliant with its own policies and procedures.
- Schedulers did not have access to the drivers' National Driver Work Diary records.
- While there was GPS installed on a number of the heavy vehicles, the data was not cross-referenced against driver work records.
- The schedulers were not up to date in training.
- Drivers were often scheduled weeks in advance with no process for ensuring drivers were fit for work.
- Some drivers never participated in any toolbox talks with the company.



### The offence

The company, director and scheduler were each charged with one Category 2 offence contrary to the Heavy Vehicle National Law ('HVNL').

In addition, the director was also charged with an offence of failing to exercise due diligence as an executive to ensure that the company complied with its safety duty.

Broadly, it was alleged that they failed to implement adequate systems and procedures to manage fatigue.

Reasonably practical measures they could have taken included:

- Ensuring the business practices did not cause a driver to drive whilst fatigued or in breach of their work and rest hours option.
- Providing regular instruction and/or training to all employees in fatigue management.
- Developing and implementing strategies including workplace assessment, hazard identification, and appropriate remedial action to eliminate or minimise the risk of a driver driving whilst fatigued.
- Implementing and maintaining appropriate information and reporting systems.

The failure to take these measures exposed a class of individuals, including members of the public and other road users, to risk of death or serious injury.

### The sentence

The company, director and scheduler each pleaded guilty to a Category 2 offence. The Director also pleaded guilty to the offence of failing to exercise due diligence.

The company was sentenced to a conviction and fine of \$80,000 and a Supervisory Intervention Order ('SIO') with estimated costs of up to \$110,000. The director was convicted and fined \$8,000 and received a SIO with a training condition. The scheduler was fined \$1,500.

The SIO included conditions to provide relevant training, to use electronic work diaries and to provide driver work diary pages to the NHVR for all drivers for the term of the order.



## Key takeaways for executives

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 associated with your transport activities.

Below are some takeaways from this case:

- **Policies, systems and procedures:** If you have policies, systems and procedures in place to manage risk, make sure they are being utilised and applied.
- **Training:** Ensure that drivers and schedulers are appropriately trained and are aware of their obligations under the HVNL and the Master Code.
- **Compliance and monitoring:** Ensure that systems are in place to monitor compliance and that corrective measures are taken where appropriate. Compliance must be monitored on an ongoing basis.
- The HVNL 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 operators and schedulers can take to reduce or minimise the risks associated with fatigue for heavy vehicles, including:

- Ensuring that all employees, directly or indirectly employed by the Company, are inducted into all policies and procedures.
- Implementing and enforcing a competency-based training program for schedulers and drivers in the Company's fatigue management policies and procedures.
- Applying a 'risk management approach' to fatigue that requires driver time sheets to be verified.

- Taking corrective action to prevent recurrence where fatigue breaches are identified.
- Ensuring demands of other parties in the CoR do not result in a driver driving whilst impaired by fatigued.
- Routinely assessing and monitoring driver fitness for duty.
- Keeping accurate records for the driver of a fatigue-regulated 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:

Visit: [www.nhvr.gov.au](http://www.nhvr.gov.au)  
 Email: [info@nhvr.gov.au](mailto:info@nhvr.gov.au)  
 Phone: 13 NHVR (13 64 87)\*

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