

Case learnings – January 2024

Background

In 2019, South Australian Police commenced an investigation following a heavy vehicle collision. The investigation centred around the business practices of a trucking company that operated heavy vehicles to transport freight as part of inter and intrastate transport operations.

The subsequent police investigation revealed that in a five-month period:

- There were significant failures by the company and its director to manage the risk of fatigue in the company's drivers, including a failure to audit the work diaries of its drivers for compliance.
- The director had failed to take reasonable steps to ensure the company complied with its duty to manage the risks of fatigue.
- The company had written policies and procedures in relation to fatigue management and Chain of Responsibility; however, they were not applied in any meaningful way. The company also had no established systems to review or manage the risk.
- The company's system of record keeping was antiquated; scheduling for a fleet of 40 trucks and approximately 70 drivers was carried out in a handwritten journal.
- The only compliance assurance measure used to check work diaries and fatigue was an automated checking software which checked recorded hours of work but was unable to identify or detect unrealistic work patterns. This was despite the company having access to schedules, pay sheets, transportation documents and GPS data with which they could have cross-referenced and/or audited the work diaries.

As a result, the company was charged with two Category 3 offences under the Heavy Vehicle National Law ('HVNL').

The company's director was charged with two offences for failing to comply with their duty to exercise due diligence.

Following being charged with HVNL offences, the company closed and disposed of their assets.

The Sentence

In 2022, the company pleaded guilty to the charges.

Notwithstanding submissions from the company's legal representatives with respect to the company's financial situation and that the director ought not be convicted, the Magistrate issued the following penalties:

- a \$120,000 fine against the company which was reduced to \$84,000 on account of an early guilty plea;
- a \$20,000 fine against the director which was reduced to \$14,000 on account of an early guilty plea; and
- a Prohibition Order against the director preventing them from engaging in transport activities for a period of 12 months.



Key takeaways

Considering the potentially significant consequences of non-compliance with your primary duty, it is important that you review your fatigue management guidelines 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:

- It is not enough to simply have policies and procedures in place to manage the risk of fatigue; the company must ensure that the policies are implemented and complied with, as well as continually monitored and reviewed.

- A company can still be held liable under the HVNL even after divesting their assets.
- 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 management of heavy vehicle drivers, including:

- Ensuring that trips are scheduled, which allows sufficient time for the driver to rest.
- Using all available means at a company to ensure fatigue laws are not being breached; this may include conducting audits against GPS data, loading schedules, pay sheets and transportation documents.
- Ensuring all drivers are adequately trained in fatigue management and are empowered to rest when they are required.
- Ensuring that when a company expands, adequate resources are devoted to their compliance measures.

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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