

22 May 2024

Our Reference: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

RE: Bhupinder Singh Kharaud

Heavy Vehicle National Law
Part 10.1 – Enforceable Undertakings
REASONS FOR DECISION

Introduction

1. In accordance with section 590A (7) of the Heavy Vehicle National Law (HVNL), I provide written notice and reasons for my decision to accept the Enforceable Undertaking proposed (the EU proposal) by Bhupinder Singh Kharaud pursuant to Part 10.1A of the HVNL.

I have considered this proposal and assessed it against the National Heavy Vehicle Regulator (NHVR) Prosecution Policy (the policy), Enforceable Undertakings Policy (the EU policy) and the Guidelines on Proposing an Enforceable Undertaking (the EU Guidelines). For the reasons set out below, I am of the opinion that the EU proposal, in the circumstances, is an appropriate enforcement option for the particular contraventions alleged in this case.

The Alleged Facts

2. At about 9.45am on 1 September 2023, Mr Kharaud was driving a fatigue-regulated heavy vehicle, namely a Volvo FH13 Series bearing QLD registration [REDACTED], on the A1 Pacific Highway Pine Creek, NSW. It was on a journey from Kingsgrove NSW to Tennyson QLD.
3. The heavy vehicle has a GVM of 28.1 tonnes.
4. It was towing a trailer bearing registration (QLD) [REDACTED] carrying a general load.
5. The vehicle was intercepted by NHVR authorised officers at the Pine Creek Heavy Vehicle Safety Station (HVSS) for a compliance check.
6. Upon inspection of the vehicle and the driver's work diary, the following offences were identified.

Charge 1 – Solo Driver Rest less than BFM minimum rest time – critical

7. Section 253 of the HVNL requires a person who drives a fatigue-regulated heavy vehicle to comply with the applicable work hours if operating under a Basic Fatigue Management (BFM) accreditation.
8. The standard rest hours are prescribed by section 9 and Schedule 2 of the *Heavy Vehicle (Fatigue Management) National Regulation*.
9. In any 24-hour period, the minimum rest time is seven continuous hours of stationary rest time.
10. Upon inspection of Mr Kharaud's work diary, namely work diary pages [REDACTED] and [REDACTED], the authorised officers identified a breach of the HVNL between 6pm on 1 August 2023 and 6pm 2 August 2023 when Mr Kharaud only had four hours of continuous stationary rest time between 2pm and 6pm on 2 August 2023.
11. The breach is a critical risk category.
12. At the time of the intercept, Mr Kharaud presented his BFM National Heavy Vehicle Accreditation Scheme (NHVAS) certificate number [REDACTED] to the Authorised Officers. The NHVAS BFM expires on 13 February 2025.

Charge 2 – Drive/Permit heavy vehicle not comply mass requirement - substantial

13. Section 96 of the HVNL requires a person who drives a heavy vehicle on a road, to ensure the vehicle, its components and load, comply with the mass requirements applying to the vehicle.
14. The mass requirements are prescribed by Part 2 of the *Heavy Vehicle (Mass, Dimension and Loading) National Regulation*.
15. Upon inspection of the vehicle, it was ascertained that the vehicle was overweight in the third axle group.
16. The vehicle's permitted mass was 21 tonnes.
17. The vehicle's mass was weighed at 23.22 tonnes. Taking into account the applicable mass adjustment, the vehicle's alleged mass was 22.72 tonnes, an excess mass of 1.72 tonnes, or an overload of 108%.
18. The contravention of the vehicle's permitted mass resulted in a substantial risk breach.

The Proposed Enforceable Undertaking

19. The EU proposal from Mr Kharaud comprises four (4) initiatives to be completed within 12 months of the EU order being approved. The total cost to Mr Kharaud would amount to \$3,300.00.
20. The four initiatives can be summarised as follows. Mr Kharaud undertakes to:
1. Complete the fatigue management course TLIF0005 through Natwide Training Australia within six months of the EU approval.
 2. Donate \$500 to the Road Trauma Support Group within two weeks of the EU approval.
 3. Implement Logmaster Electronic Work Diary (EWD) within two months of acceptance of the EU proposal. Commencing from the date that Mr Kharaud commences using an EWD and until the date the EU ends, Mr Kharaud must:
 - a) Record his driving hours and rest breaks in the EWD as required by the NHVR; and
 - b) Provide to the NHVR on the first business day of each month a copy of the records of the usage of the EWDs for the preceding month.
 4. Undertake a tailored compliance management course run by [REDACTED] within six months of the EU being approved.

Criteria to be applied

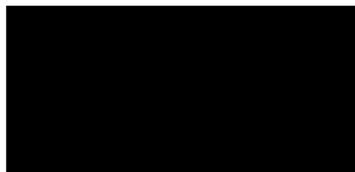
21. In arriving at my decision, I have evaluated the EU proposal against the 11 evaluation criteria in Section 4 of the EU Guidelines namely:
- (1) The nature and extent of the omission alleged;
 - (2) The Promisor's compliance history;
 - (3) Whether the EU proposal delivers benefits to the public beyond the Promisor's compliance with the law;
 - (4) The quality of the strategies proposed and the extent to which they are likely to achieve measurable improvement in heavy vehicle transport safety;
 - (5) The likely improvements in safety within the Promisor's business or operations;
 - (6) The Promisor's ability, including financial ability, to meet the terms of the EU proposal;
 - (7) The significance of the commitment compared to the capability of the Promisor;

- (8) The support the Promisor has provided and has committed to providing into the future to an injured or affected person(s);
 - (9) Input from injured and affected persons;
 - (10) The likely outcome should the matter be dealt with through legal proceedings; and
 - (11) Reports or assessments of investigating or prosecuting agencies who have conduct of the matter.
22. With regards to criteria (1) and (2), I have considered the nature and extent of the conduct alleged and Mr Kharaud's compliance history.
23. I acknowledge that prior to these allegations, I am not aware of any convictions for compliance breaches of the HVNL or any breaches of related safety duties by Mr Kharaud.
24. With regards to criteria (3), (4) and (5), there is a proposal to donate \$500 to the community. The proposal of the donation is to the Road Trauma Safety Group.
25. The donation proposal has measurable output towards heavy vehicle transport safety and as such it delivers a benefit to the community.
26. With regards to criteria (6) and (7), I acknowledge that Mr Kharaud has the ability to meet the terms of the EU proposal and I have taken into account the significance of the EU commitment, compared to Mr Kharaud's capability.
27. With regards to criteria (8) and (9), concerning the EU proposal's support of injured or affected person(s) and input from injured and affected persons, I have found these factors are not a relevant consideration, bearing in mind the specific facts of this matter.
28. With regards to criteria (10) and (11), concerning the likely outcome should this matter be dealt with through legal proceedings and the views of investigating and prosecuting agencies, I have similarly taken these matters into account.

Conclusion

29. Considering all of these criteria, I am of the opinion that it is appropriate to accept the EU proposal as an alternative to prosecution. Consequently, I have decided to accept the proposed EU and advise that the legal proceedings against Bhupinder Singh Kharaud will be withdrawn.

Yours sincerely



Raymond Hassall
Executive Director, Statutory Compliance