

Time machines

Monitoring and controlling drivers' hours and tachograph information can be a confusing and time-consuming task. Andrew Woolfall clarifies the legal requirements and pitfalls

Issues arising from breaches of the tachograph or drivers' hours rules are common features of many public inquiries and court prosecutions. Operators frequently fall foul of the law by not having proper systems and procedures in place, by not training drivers or monitoring them and by failing to take disciplinary action. Operators also mistakenly think that, when the bad weather comes and legislative requirements are relaxed, this provides an easy opt-out; but this is not always the case.

Any system that is to be accepted by the enforcement authorities or traffic commissioners must have at its core two fundamentals: proper equipment and drivers who know how to use it. Operators must ensure that tachograph recording equipment fitted to their vehicles is properly calibrated and inspected, and is in working order.

Furthermore, if it is an analogue device, then the proper charts must be issued for that equipment. An operator cannot assume that any chart can be used with any tachograph. Only certain approved types of charts will work correctly with each device. If the vehicle has a digital tachograph fitted, the driver must have the appropriate digital driver card. If the driver does not have the card then, with limited exceptions, he cannot drive.

Having the correct equipment is only part of the requirements. The next element is for the driver to be properly trained. While drivers' knowledge is improving, following the introduction of the driver CPC qualification, many have still not received any formal training on the subject of drivers' hours and tachographs. A surprising number of drivers learn their knowledge at the truck stop.

Importance of training

Whenever a new driver starts with an operator, he or she should be given a full induction, which includes specific training on drivers' hours and tachographs. This might include showing the driver one of the various DVDs that are available from organisations such as VOSA or the FTA. Drivers should also

be given written reference materials that they can then refer to, if any issues arise during the course of the working day. Training should not, though, be restricted simply to the initial induction. The driver must also receive regular refresher training (for example, as part of the driver CPC), giving an opportunity for any infringements to be found.

It is also recommended that all training should include an element of testing the driver's knowledge. An operator cannot assume that, just because the driver has watched a DVD, he fully understands the rules and regulations. Test records can prove invaluable to the operator in



establishing that a driver has been trained and fully understands the law. This can negate claims by the driver that he or she did not know what he was doing.

Take Backhouse Jones' recent representation of one company when it was being prosecuted, in relation to numerous offences committed by a driver by failing to take an appropriate break after four and a half hours' driving. In his interview with VOSA, the driver had claimed that he was never trained on the law and did not know the rules. At trial, we presented his training records and his test paper where he had scored full marks on this subject. Needless to say, this put a very different perspective on the case. However, had the operator not had these documents, it would have struggled to establish that its systems were up to the mark.

Once the driver has been trained and the correct equipment is in place, there must be a thorough system for recovering the tachograph charts or digital data. Many operators have systems of spreadsheets, showing which drivers used vehicles on specific days. This helps to ensure that all charts and data are recovered.

Where vehicles use digital tachographs, regular downloads must also be made of the vehicle units. Operators cannot simply rely on downloading the driver's smart card. There is a legal requirement to download the vehicle unit at least once every 56 days. Incidentally, by comparing the vehicle and driver downloads, missing mileage can be traced and hopefully an explanation provided.

Meanwhile, downloaded data must be analysed promptly. The driver is entitled to have his current day's tachograph chart with him, and those for the previous 28 days, but operators use systems whereby charts are scanned and returned to drivers. This enables the chart to be analysed on the day it

“A surprising number of drivers learn their knowledge at the truck stop and more often than not this is bad timing”

was created or during that week. It is not acceptable to wait weeks after a chart has been created for it to be analysed.

Analysis of the chart must be correct and it is recommended that operators regularly audit the quality of information being provided. This might be done via a second analysis bureau double checking a portion of the original information. The point,

however, is that, just as with the maintenance of vehicles, quality control is vital and the authorities expect operators to 'check the checker'.

Acting on data

As soon as tachograph data has been analysed, it must be acted upon. Many operators simply receive the analysis and file it in the 'to do later' pile. It never gets looked at; drivers never get spoken to; and offences go undetected. The traffic commissioners and enforcement authorities expect the analysis to be looked at promptly and the driver to be taken through any infringements that may come to light. Written records should also be kept of any explanation given by the driver for his infringements.

Any driver infringements should then be compared against previous analysis to see if any trends are developing – for example, if he is increasingly committing daily rest offences. If any problems are serious enough to merit it, or a clear trend is beginning, the driver should either be retrained or disciplined. Serial offenders should receive formal written warnings and, depending on the circumstances, dismissed.

Many operators are reluctant to discipline or dismiss drivers, not only for tachograph and drivers' hours infringements, but also for other failures – for example, not conducting proper daily defect inspections. Once again, the authorities will have little sympathy for operators who fail to act. Not disciplining a driver because 'he is a good lad' is tantamount to accepting that you are happy to send him out, knowing that it is more than likely that he will commit offences, just to get the job done. A traffic commissioner may take the view that such an operator is more concerned about profit than safety or complying with the law.

All of the above may seem harsh and onerous on both operators and drivers, but they are the standards expected – and any operator will have to provide good justification for departing from them. **TE**

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Rules relaxation

Occasionally, as at the end of 2010, the drivers' hours and tachograph rules are relaxed when there is severe weather. Frequently, these relaxations only affect the requirements with regards to driving time or daily and weekly rest. They often do not affect the need to keep records and properly analyse them.

However, clearly, records should be looked at in the context of any relaxation that might be appropriate to the operator. The relaxations issued usually relate to specific named industries or movements of specific types of load. They do not normally apply to all commercial goods vehicles subject to the European legislation.