

# Legal Torque

## Infringement Offences

Can the Courts reduce instant fines?

- Michael Jamieson-

The transport industry is, as most operators are aware, a highly regulated industry, and what's more, it is rigorously enforced by the commercial vehicle investigation unit.

Infringement fines are often regarded by operators as a necessary cost of doing business just like paying for diesel or repairs and maintenance.

But sometimes operators wish to defend the fines or they do not wish to defend the fines because they accept that the offence has been committed but they feel that there are circumstances which they would like to be taken into account in terms of the level of the fines to be imposed.

**Fines are often regarded by operators as a necessary cost of doing business just like paying for diesel or repairs and maintenance.**

First, it is only the court that has the power to reduce fines on infringement tickets. The police can withdraw an infringement ticket but they cannot reduce the fine noted on the ticket.

Secondly, only some types of fines can be reduced, others are set in stone. It may help you to know which of the fines can be reduced by the court and which are mandatory.

### The Procedure

In terms of the procedure for dealing with infringement tickets, this is set out on the back of the ticket. If you are issued with an infringement ticket, you have 28 days to either pay the fine or write to the police denying liability and requesting a hearing.

If you fail to take any action during those 28 days, a reminder notice will be sent to you. After you receive the reminder notice you have a further 28 days to pay the fine or to deny liability and request a hearing.

If you do nothing for 28 days after the reminder notice was sent to you (i.e. a total of 56 days), the instant fine will be lodged in the District Court and become a Court fine and Court costs will be added to the fine. The Court will then proceed to enforce that fine if it remains unpaid.

Should you wish to defend the ticket or you have particular circumstances you wish taken into account in terms of the level of the fine, then you should write away denying liability and requesting a hearing.

If you request a hearing and then plead guilty, the Court will consider any submissions you wish to make in respect of the reasons why you committed the offence and your personal circumstances, and if the Court has discretion to reduce the fine, they may exercise that discretion. The discretion of the Court will ultimately depend on the type of offence for which you have been charged.

The most common infringement offences are offences for road user charges matters, overloading and dangerous goods offences.

### Road User Charges Act

Infringement fines in respect of road user charges matters are not mandatory. The Courts have a discretion to reduce those fines if it decides it is appropriate to do so. It is our experience that the Courts are open to hearing explanations as to why and how the offence was committed and often reduce the fines, sometimes quite significantly.

*(Continued overleaf)*

### Overloading

Overloading fines are mandatory. Fines for overloading range from \$150 to \$10,000. The Courts have no discretion to reduce these fines and so there is no point in making submissions to the Court to try and have those fines reduced. You can of course defend the charge and if you are successful, the fines will be wiped altogether.

### Dangerous Goods

Until recently, there was no authority as to whether infringement fines for dangerous goods offences were mandatory or not. The law was unclear and there were no court decisions to clarify whether the courts had a discretion to reduce these fines or not. Fortune Manning was

involved in a case earlier this month where this issue was finally addressed. It has now been confirmed that Courts do have discretion to reduce (or increase, if it sees fit) instant fines for infringement offences against the Dangerous Goods Rules. Therefore, you can plead guilty and set out the circumstances surrounding the offence and the Courts will decide whether to exercise their discretion to reduce the fines or not.

Dangerous goods offences of their very nature relate directly to public safety which is why the fines are significant. The discretion to reduce fines will depend largely on the type of offence and the degree to which the public safety was at risk.

## The Holidays Act 2003

Are you ready for the changes?

- Catherine Bormans-

**T**he Holidays Act 2003 ("the Act") was passed in parliament on 17 December 2003 and comes into force on 1 April 2004. Until 1 April 2004 the Holidays Act 1981 remains the law in respect of holidays and leave.

The Act will apply to all employees fulltime, part-time or casual. Listed below are some of the changes that will take effect under the Act.

### Sick Leave

After 6 months service an employee is entitled to 5 days sick leave every year. Any unused sick leave can accumulate up to a maximum of 20 days.

### Bereavement Leave

An employee is entitled to bereavement leave after 6 months continuous employment. On the death of a family member an employee is entitled to three days paid leave. On the death of any other person to which the employee feels bereaved, they are entitled to one day paid leave.

### Holiday Pay

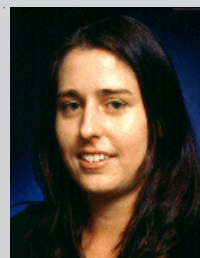
An employee will be entitled to four weeks paid leave a year. However, this will only take effect from 1 April 2007. Until that date the existing

entitlement to three weeks a year remains unchanged.

### Public Holidays

Employees must now be paid time and a half as well as receive a day in lieu for working on a public holiday.

If you would like us to assist you in reviewing your employment agreements or business practices, please call either **Catherine Bormans** or **Michael Jamieson**.



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