

Employee allegedly sacked for taking leave to be with dying mother

7 August 2012

Note: Reference to prosecution in this media release is a general reference to the FWO commencing proceedings for the imposition of civil penalties and should not be taken to be a reference to criminal proceedings.

A retail caravan business dismissed an employee because he took leave to care for his dying mother, the Fair Work Ombudsman alleges.

The Fair Work Ombudsman is prosecuting the company after investigating a complaint from the employee.

Facing court is RFJCO Pty Ltd, which operates a franchise business trading as Jayco Canberra, engaged in selling and repairing caravans.

Also facing court are company directors, brothers Roy and John Lustri, of Queanbeyan.

In documents lodged in the Federal Magistrates Court in Sydney, the Fair Work Ombudsman alleges that a full-time employee who performed caravan repair and maintenance work was dismissed because he took paid personal/carer's, compassionate and annual leave around the time of his mother's death.

After the employee's mother had emergency surgery, the employee took a week of leave in mid-December, 2010 and further leave in January, 2011 to care for her in Sydney.

After his mother's health deteriorated and she passed away on January 22, the employee took further leave to assist with funeral arrangements and be with his family.

The Fair Work Ombudsman claims the employee had accrued entitlements for the leave he took – having been employed by RFJCO since June, 2009 – and that he kept his employer informed about his mother's health and his need to access the leave.

However, when the employee returned to work on Monday January 31, he was allegedly dismissed on arrival.

Roy Lustri allegedly provided the employee with a letter stating that his "performance and commitment to Jayco Canberra has failed to reach expectations".

Court documents further allege that in recorded formal interviews with Fair Work inspectors, Roy and John Lustri stated that one of the reasons the employee was dismissed was that he had taken leave.

It is unlawful to take adverse action against an employee, such as dismissing them, to prevent an employee from exercising a workplace right, such as accessing a lawful entitlement to take leave.

John Lustri was allegedly involved in RFJCO committing two breaches of workplace laws and Roy Lustri was allegedly involved in one breach.

The brothers each face maximum penalties of \$6600 per breach and RFJCO faces maximum penalties of a further \$33,000 per breach.

The Fair Work Ombudsman is also seeking a Court Order for RFJCO to pay the employee \$2099 compensation for the economic loss he suffered as a result of the alleged breaches.

The case is listed for a hearing on August 29.

Employers or employees seeking assistance should contact the Fair Work Infoline on 13 13 94 or visit www.fairwork.gov.au A free interpreter service is available on 13 14 50.

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Contact us

Fair Work Online: www.fairwork.gov.au

Fair Work Infoline: 13 13 94

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