

Court fines employer for sacking staff member who took leave to be with dying mother

30 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.

The operators of a retail caravan business that dismissed an employee because he took leave to care for his dying mother have been fined a total of \$18,700.

RFJCO Pty Ltd - which operates a franchise business trading as Jayco Canberra, engaged in selling and repairing caravans - has been fined \$14,300.

Company directors, brothers Roy and John Lustri, of Queanbeyan, have each been fined a further \$2200.

Federal Magistrate Kenneth Raphael imposed the penalties after the Lustri brothers admitted they were involved in RFJCO dismissing a full-time employee because he took paid personal/carer's, compassionate and annual leave around the time of his mother's death.

RFJCO was also ordered to pay the employee \$2099 compensation.

The fines and compensation order, imposed in the Federal Magistrates Court in Sydney, are the result of an investigation and prosecution by the Fair Work Ombudsman.

The employee, who performed caravan repair and maintenance work, took leave in December 2010 and January 2011 to care for his mother in Sydney and then to assist with funeral arrangements and be with his family.

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

However, when the employee returned to work, he was dismissed on arrival, with Roy Lustri providing him with a letter stating that his "performance and commitment to Jayco Canberra has failed to reach expectations". Roy and John Lustri later told Fair Work inspectors that one reason the employee was dismissed was that he had taken leave.

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

Fair Work Ombudsman Nicholas Wilson says the Court's decision reminds employers that breaching employee rights is a serious matter.

"It is important that employers respect the lawful right of employees to access the leave entitlements in appropriate situations," Mr Wilson said.

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

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