

Article

EMPLOYMENT LAW



Employer Dismisses Employee on a Collision Course with Another Driver

Fair Work Commission finds that employee involved in a road rage altercation was fairly dismissed.

By Patrick Walsh

Happy New Year everyone!

To begin 2017, I have decided to share some unashamed clickbait with you all – the Fair Work Commission decision of [*lannella v Engie Fire Services Australia Pty Ltd T/A Engie Services* \[2016\] FWC 8389](#).

The dispute in *lannella* relates to the dismissal of an employee for his involvement in an altercation while driving a company vehicle. This is particularly relevant for businesses in South Australia as we all prepare for the advent of the Tour Down Under, Clipsal 500, and March Madness!

With the increasing use of mobile phones and small cameras to record events, and then put them on social media, businesses need to remain on the front foot to ensure that they minimise the risk of an employee exposing the business to a public relations disaster.

As most businesses start preparing for the New Year, now is also a good time to meet with employees and discuss the businesses expectations of their behaviour in circumstances where they can be identified as an employee.

Facts in *lannella*

Mr lannella was employed to conduct testing of fire prevention and fighting equipment. As part of his employment, Mr lannella was supplied with a company vehicle and mobile phone.

On 22 July 2016 Mr lannella was involved in an incident with another driver, while driving the company vehicle home from work. Another employee was in the car at the time.

Commissioner Hampton found that the other driver drove up next to Mr lannella and gave him the finger. In response Mr lannella yelled at the driver, who then accelerated in front of Mr lannella and brake checked him.

Mr lannella followed the other driver down a side street and confronted her.

The other driver recorded this on her mobile phone, which was later sent to the employer in an email detailing her complaint.

Commissioner Hampton went on to state ***“It is evident to me that the other road user was a relatively young female driver and that although she was mainly responsible for the initial events and was acting stalwartly when confronted, the conduct of Mr lannella in following her, coming to her window and then aggressively moving his vehicle up even closer behind her car in the manner in which that was done would reasonably be understood to be intimidating and aggressive. In particular, the act of aggressively moving the 4WD Ute up even closer behind the other vehicle following the original “discussion” was very belligerent.”***

continued overleaf...

Issues

In determining whether the employer had a valid reason for the dismissal, Commissioner Hampton cited with approval the reasons of Commissioner Saunders in [Kedwell v Coal & Allied Mining Services Pty Limited T/A Mount Thorley Operations/Warkworth Mining \[2016\] FWC 6018](#) who summarised the approach taken by the Fair Work Commission in relation to out of hours conduct:

“[102] It is only in exceptional circumstances that an employer has a right to extend any supervision over the private activities of employees.

[103] The out of hours conduct must have a relevant connection to the employment relationship in order to be a valid reason for dismissal. In ascertaining whether a relevant connection is established, the following matters should be considered:

- a. Whether the conduct, viewed objectively, is likely to cause serious damage to the relationship between the employee and employer;
- b. Whether the conduct damages the employer's interests; or
- c. Whether the conduct is incompatible with the employee's duty as an employee.”

Conclusion

Importantly, in reaching his decision that there was a valid reason for the dismissal, Commissioner Hampton stated:

“I am not without sympathy for the circumstances of Mr Iannella and I have taken into account the fact that this was a single act of misconduct after relatively long service. However, given the absence of any real recognition of his misconduct, combined with the actual conduct as found by the Commission and the other circumstances and statutory considerations, he is largely responsible for his own fate.”

Advances in technology and social media mean that businesses, and consequently their employees, are subject to an increasing amount of scrutiny.

In this particular case, the other driver did not publish the recording on social media; but could have done so very easily. Rightly, or wrongly, any altercation between an employee and a member of the public can be recorded and then published on the internet instantaneously, and without any context. This represents an obvious and very real risk to the business.

Businesses must not only have policies which clearly set out their expectations of employee conduct:

1. During work hours;

2. Outside of work hours where the activity has any connection with the workplace (i.e. interacting with other employees, or using company equipment); and
3. On social media where an employee's employer is identifiable,

but these expectations must be discussed with employees as well.

It almost goes without saying that employees who understand not only the policies, but also why their employer has them in place are far less likely to behave in a way that contravenes the policy. And no business wants to be the next click bait on social media!



MORE INFO

Patrick Walsh Senior Associate

p: +61 8 8124 1941

patrick.walsh@dwfoxtucker.com.au

DW Fox Tucker Lawyers

L14, 100 King William Street, Adelaide, SA 5000

p: +61 8 8124 1811 e: info@dwfoxtucker.com.au dwfoxtucker.com.au

COMMERCIAL | CORPORATE | DISPUTES | INSOLVENCY | TAX | HOSPITALITY | IP | PROPERTY | ENERGY | RESOURCES
EMPLOYMENT | WORKERS COMPENSATION | SELF INSURANCE

Disclaimer: The information contained in this communication does not constitute advice and should not be relied upon as such. Professional advice should be sought prior to any action being taken in reliance on any of the information.

