



## Family business sacks son for attending dinner late

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The *Fair Work Act 2009* ('the Act') does not prescribe what is a valid reason for dismissal from your employment. It considers factors which may render a dismissal harsh, unjust or unreasonable which could give rise to an unfair dismissal claim. In today's article, we consider whether 'attending a family dinner late amounts to a valid reason for dismissal'.

In the recent decision of *Parente v Selective Smash Repairs Pty Ltd [2019] FWC 7559*, the Fair Work Commission (FWC) reviewed an employer's bizarre decision to terminate an employee (who happened to be the employer's son) after he attended a family dinner late.

### Background

The employer, Selective Smash Repairs Pty Ltd, was run by Mr Egidio Parente, with his son Mr Pasquale Parente also working for the family business.

On Sunday 10 March 2019, Pasquale was late for dinner at his parents' house. As a result, his parents became angry, with an argument ensuing. Pasquale was subsequently told to leave and never come back, either to his parents' house or to the business and was dismissed from his employment immediately.

Pasquale attempted to contact his parents the following day for clarification but his calls went unanswered.

### An unfair dismissal claim was lodged

Pasquale filed an unfair dismissal application under s. 394 of the *Fair Work Act 2009* claiming his dismissal was unfair.

A conciliation was held but failed to resolve the claim and the FWC was ultimately left to review and determine whether the dismissal was unfair.

In considering the claim, the Commissioner expressed the following view:

*'It is, to my mind, extremely sad that what was once a loving family has allowed relationships to deteriorate to the extent that they have. However, Pasquale has the right to bring his claim and I must deal with it accordingly.'*

## Was the dismissal consistent with the Small Business Fair Dismissal Code?

As Selective Smash Repairs was considered a small business under the *Fair Work Act 2009* in that it employed fewer than 15 people, the FWC examined whether the termination was consistent with the small business dismissal code, often referred to as the checklist (**'the Checklist'**).

The Act refers small businesses to the Checklist as a tool to help small business employers when considering terminating an employee. The Checklist includes a number of simple questions for an employer such as:

- *How many employees are employed in the business? (Including the dismissed employee and any other employee dismissed at the same time).*
- *Did you dismiss the employee for some other form of serious misconduct?*
- *Did you dismiss the employee because of the employee's unsatisfactory conduct, performance or capacity to do the job?*
- *Did you keep any records of warning(s) made to the employee or of discussions on how his or her conduct or performance could be improved?*

Completing the Checklist is not a mandatory requirement under the Act, however, completing it is important as the FWC will examine whether the termination was consistent with the Checklist.

In considering the Checklist in this case, the FWC found that the termination was not consistent with the small business dismissal code in that:

- the dismissal occurred without warning;
- there was no evidence that the business or any of its officers held any relevant belief that the conduct of Pasquale was so serious that immediate dismissal would be justified; and
- there was no evidence of any warnings being given to Pasquale before he was dismissed.

## Was the dismissal harsh, unjust or unreasonable?

There is [no hard and fast rule as to what constitutes a harsh, unfair or unreasonable dismissal](#). Each dismissal is different and accordingly, the surrounding circumstances of each claim will be considered by the FWC.

In this case the FWC examined each of the considerations surrounding whether the dismissal was harsh, unjust or unreasonable and concluded that:

1. failing to attend a family dinner cannot be characterised work-related conduct;
2. there was no valid reason for dismissal based on Pasquale arriving late for a family dinner.
3. The Commission acknowledged that the relationship with his parents had been under strain, however that there was insufficient context to explain why arriving late for dinner would have been a valid reason for dismissal; and
4. there was no evidence of previous unsatisfactory performance.

## Outcome

Having considered each of the matters specified in s.387 of the *Fair Work Act 2009* (as referred to above), the Commission found the dismissal was unjust and unfair, making an order for compensation in lieu of reinstatement.

## Have you been dismissed and you think it is unfair?

It's important to act fast. You should [seek urgent advice from a lawyer experienced in employment law](#). You can [contact our employment law team for further advice or assistance](#).

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