

Dismissal of a television host following a sexist joke: a proportionate sanction that does not excessively infringe an employee's freedom of expression (Ruling 20-10.852)

23/03/2022



Ruling No. 520 FS-B
Appeal No. J 20-10.852

Dismissal

Public hearing of 20 April 2022

Dismissal

Mr CATHALA, President

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FRENCH REPUBLIC

ON BEHALF OF THE FRENCH PEOPLE

RULING OF THE SOCIAL CHAMBER OF THE *COUR DE CASSATION* (COURT OF CASSATION) OF 20 APRIL 2022

Mr [A] [S], domiciled at [Address 2], initiated appeal No. J 20-10.852 against the ruling of 3 December 2019 of the *cour d'appel* (Court of Appeal) of Paris (Section 6, Chamber 11) in the dispute between himself and the company Satisfy, a simplified joint-stock company, whose registered office is [Address 1], formerly known as Sony Pictures Television Production France, respondent before the *Cour de cassation* (Court of Cassation).

The appellant relies in support of his appeal on the two grounds of quashing attached to this ruling.

The case file has been sent to the Prosecutor General.

Concerning Mr Barincou's report, judge, the observations of SCP Thouvenin, Coudray and Grevy, lawyers representing Mr [S], of SCP Célice, Texidor, Pérrier, lawyers representing Satisfy, Maître Grévy and Maître Célice's oral arguments, and Ms Grivel's advisory opinion, advocate-general, after discussions in the public hearing of 8 March 2022 in the presence of Mr Cathala, President, Mr Barincou, reporting judge, Ms Mariette, elder judge, Mr Pietton, Ms Le Lay, Mr

Seguy, Ms Grandemange, judges, Ms Prache, Ms Prior, Ms Marguerite, Mr Carillon, judge referees, Ms Grivel, advocate-general, and Ms Jouanneau, Chamber Registrar,

the social chamber of the *Cour de cassation* (Court of Cassation), composed, pursuant to Article R. 431-5 of the Judicial Code, of the above-mentioned President and judges, after deliberation thereof in accordance with law, has delivered this ruling.

Facts and procedure

1. According to the ruling under appeal (Paris, 3 December 2019), Mr [S], a comedian known by the stage name "Tex", was hired as a host between September 2000 and December 2017, through multiple fixed-term contracts signed with Sony Pictures television production France, whose rights were assumed by the company Satisfy, to host a television game called "Les Z'amours", broadcast on the channel France 2.
2. On 6 December 2017, the employee was laid off and called to a preliminary interview with a view to a possible sanction that could lead to termination of his employment contract. On 14 December 2017, the employer notified him of the termination of his contract for serious misconduct.
3. Contesting this decision and requesting the reclassification of his employment contracts into a contract of indefinite duration, the employee brought the matter before the industrial tribunal.

Reviewing pleas

On the third and fourth part of the first and second pleas, attached hereto

4. Pursuant to Article 1014(2) of the Civil Procedure Code, there is no need to give a decision in respect of these pleas, the first of which is inadmissible and the second of which is not eligible for quashing.

On the first and second part of the second plea of appeal

Statement of plea

5. The employee objects to the ruling that considers the termination of the contract to be justified, dismisses his claims for the nullity of his dismissal and, incidentally, for the dismissal to be declared void without real and serious cause, dismisses his claims for an order whereby his employer must pay him compensation for the termination of his employment and, incidentally, for the dismissal to be declared void of any actual and serious basis, as well as his claims for statutory compensation for dismissal, compensation for notice and related paid leave, for the reassessment of salary on lay-off and for related paid leave, when:

"(1) except where abuse results from insulting, defamatory or excessive remarks, the employee has a right, within and outside the company, to his freedom of expression, to which only restrictions justified by the nature of the task to be performed and proportionate to the aim sought may be applied; that the employee does not commit any abuse in the exercise of his freedom of expression, nor any breach of his commitment to ethics, when he expresses, even in public during a television programme, a provocative humorous comment, especially when he does so in his capacity as a comedian; that, on the basis of such humorous comment, by asserting that the dismissal was based on gross misconduct, the *cour d'appel* (Court of Appeal) violated Article L. 1121-1 of the Labour Code and Article 10(1) of the European Convention on Human Rights;

(2) except where abuse results from insulting, defamatory or excessive remarks, the employee has a right, within and externally to the company, to his freedom of expression, to which only restrictions justified by the nature of the task to be performed and proportionate to the aim sought may be applied; that an employee who expresses himself, even sarcastically, in a restricted circle does not commit abuse in the exercise of his freedom of expression or breach of his commitment to ethics; that, by also relying, in order to hold that the dismissal was based on gross misconduct, on statements made by the employee to colleagues in an unofficial capacity, and thus not publicised, the *cour d'appel* (Court of Appeal) violated Article L. 1121-1 of the Labour Code and Article 10(1) of the European Convention on Human Rights."

Court's response

6. According to Article 10 of the European Convention on Human Rights, everyone has the right to the freedom of expression. This right includes freedom to hold opinions and to receive or impart information or ideas without interference by public authorities and regardless of frontiers.
7. The exercise of these freedoms, which entail duties and liabilities, may be subject to certain formalities, conditions, restrictions or penalties laid down by law, which constitute necessary measures in a democratic society for national security, territorial integrity or public security, for the defence of law and order and the prevention of crime, for the protection of health or morals, for the protection of the reputation or rights of others, for the prevention of the disclosure of confidential information or for the guarantee of the authority and impartiality of the judiciary.
8. Pursuant to Article L. 1121-1 of the Labour Code that, unless there is abuse, the employee has a right, within and externally to the company, to his freedom of expression, to which only restrictions justified by the nature of the task to be performed and proportionate to the aim sought may be imposed.

9. Although the termination of the employment contract on the basis of the statements made by the employee clearly constitutes interference by the employer in the exercise of his right to freedom of expression as guaranteed by Article 10(1) of the European Convention on Human Rights, it is, however, for the court to ascertain whether, in the case before it, such interference is necessary in a democratic society and, in order to do so, to assess the necessity of the measure in the light of the aim pursued, its appropriateness and its proportionality to that objective.
10. In order to weigh up the interests involved, the *cour d'appel* (Court of Appeal) first found that the specific terms of the employment contract included a clause whereby the host acknowledged having read and agreed to respect all the provisions of the terms of reference and the conditions of employment of France 2 and of the Charter of the antennas of France Televisions, and in particular the "*respect for human rights*", as constituting "*one of the major characteristics of the programmes broadcast by public television channels*", while the clause in Article 4.2 of the contract stated that "*any infringement of this principle by Tex, whether manifested on the air or other media, would constitute serious misconduct enabling Sony Pictures Television Production, as soon as it becomes aware thereof, to immediately terminate the contract.*"
11. It added that, in paragraph 2.9 of the chapter "*Respect for the person and dignity*", the Charter of the France Televisions antennas provided for the refusal of any complacency with regard to statements that might expose a person or a group of persons to hatred or contempt, in particular for reasons based on sex, and in paragraph 2.11, for the refusal of any valuation of violence and more particularly of the perverse forms it may take, such as sexism and violation of human dignity.
12. The *cour d'appel* (Court of Appeal) found that on 30 November 2017, while participating in the show "*C'est que de la télé !*" on the C8 channel, the employee was asked to conclude with a last moment of humour and then said: "*Since it's a very sensitive subject, I'll give it a go: guys, you know what they say about a woman who's got two black eyes? - She's terrible! - We don't tell her anything anymore, we've already explained it twice!*"
13. The *cour d'appel* (Court of Appeal) then established that these remarks had been made, that, on the one hand, the media was mobilized around the revelation in early October of the "*case [D]*" and the creation of blogs expressing the words of women such as "*#metoo*" and "*#balancetonchon*" and, on the other hand, that a few days earlier, on the occasion of the International Day for the Elimination of Violence against Women on 25 November 2017, the President of the Republic had announced measures to combat gender and sexual violence, recalling that 123 women had died in France in 2016.
14. It also established, on the one hand, the particular context in which the employee had made his remarks, at the end of a live broadcast and during prime time, in circumstances which did not enable the author to distance himself from them in an attempt to mitigate their impact, despite verbal precautions which reflected his awareness of going beyond acceptable limits, and found, on the other hand, that, in the days following, on the occasion of the broadcast of the programme of which he was the host, the employee, after boasting to one of his colleagues that he had thus "*made his little buzz*", had adopted a misguided attitude towards another contestant, consisting of several questions about the frequency of her sexual relations with her partner, which clearly did not correspond to the commitments he had renewed with his employer when the latter had alerted him to the need to change his behaviour towards women on the set.
15. It concluded that the behaviour adopted by the employee in the days following his intervention in the show "*C'est que de la télé !*", far from distancing him from the apparent trivialization of violence against women resulting from the terms of the "*joke*" he told, actually reinforced this trivialization, under the pretext of censorship attributed to his employer, indirectly implicated several times during the filming, and that the reiteration of misogynistic,

inappropriate and insulting remarks did not allow for the legitimacy of the transgressions the employee had made by abusing his freedom of expression and by breaching the ethical clause to which he had agreed under contract, such remarks being, moreover, sufficient to tarnish the image of the company that employed him, evidently threatened by a letter of 5 December 2017 from France Televisions, requiring the replacement of the host "without delay" in application of the contractual clauses by and between the parties.

16. Based on all these factors, the *cour d'appel* (Court of Appeal), which pointed out that the dismissal, based on the employee's breach of a clause of his employment contract as a TV host, pursued the legitimate aim of combating discrimination on grounds of sex and domestic violence and that of protecting the employer's reputation and rights, correctly deduced, taking into account the potential impact of the employee's repeated statements, which reflected a trivialization of violence against women, on the employer's commercial interests, that said breach was not disproportionate and therefore did not constitute excessive interference with the employee's freedom of expression.
17. The plea is therefore unfounded.

ON THESE GROUNDS, the Court:

DISMISSES the appeal;

Orders Mr [S] to pay the costs;

Pursuant to Article 700 of the Civil Procedure Code, dismisses the claims;

Thus decided by the social chamber of the *Cour de cassation* (Court of Cassation), and pronounced by the President in public hearing of the twentieth day of the month of April of the year two thousand and twenty-two.

President : Mr Cathala

Reporting Judge : Mr Barincou

Advocate-general : Ms Grivel

Lawyer(s) : SCP Thouvenin, Coudray and Grevy – SCP Célice, Texidor, Périer

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