

# Proof of discrimination: employees can obtain personal information about other employees in comparable situations (Ruling n° 636 - 22-13.244)

01/06/2023



Ruling No. 636

**Dismissal**

FRENCH REPUBLIC

**RULING OF THE SOCIAL CHAMBER OF THE *COUR DE CASSATION* (COURT OF CASSATION) OF 1 JUNE 2023**

Renault Trucks, a simplified joint-stock company with registered office at [Address 25], lodged appeals Nos. U 22- 13.238, V 22-13.239, W 22-13.240, X 22-13.241, Y 22-13.242, Z 22-13.243, **A 22-13.244**, B 22-13.245, C 22-13.246, D 22- 13.247, E 22-13.248, F 22-13.249, H 22-13.250, G 22-13.251, J 22-13.252, K 22-13.253, M 22-13.254, N 22-13.255, P 22- 13.256, Q 22-13.257, R 22-13.258, S 22-13.259, T 22-13.260, U 22-13.261, V 22-13.262, W 22-13.263, X 22-13.264, Y 22- 13.265, Z 22-13.266, A 22-13.267, B 22-13.268 against thirty-one rulings delivered on 7 December 2021 by the *cour d'appel* (Court of Appeal) of Chambéry (social chamber) in the respective disputes between it and the following parties:

- 1) Mr [EH] [U], of address at [Address 2],
- 2) Mr [M] [S], of address at [Address 5],
- 3) Ms [IX] [B], of address at [Address 28],
- 4) Mr [K] [P], of address at [Address 4],
- 5) Mr [WK] [I], of address at [Address 20],
- 6) Mr [L] [N], of address at [Address 7],
- 7) Ms [A] [G], of address at [Address 1],
- 8) Mr [RD] [O], of address at [Address 12]
- 9) Ms [E] [C], of address at [Address 15],
- 10) Ms [SX] [X], of address at [Address 14],
- 11) Mr [J] [F], of address at [Address 26],
- 12) Mr [BU] [MK] [FE], of address at [Address 8],
- 13) Mr [XH] [UL], of address at [Address 27],
- 14) Ms [Z] [GY], of address at [Address 19],
- 15) Mr [YW] [CN], of address at [Address 18],
- 16) Mr [YE] [ZY], of address at [Address 21],
- 17) Mr [D] [NH], of address at [Address 11],
- 18) Mr [Y] [UR], of address at [Address 6],
- 19) Mr [XH] [XC], of address at [Address 16],
- 20) Mr [JO] [BR], of address at [Address 24],

- 21) Mr [SS] [AU], of address at [Address 29],
- 22) Mr [RD] [LN], of address at [Address 17],
- 23) Ms [IS] [JU], of address at [Address 10], acting as legal representative of the minors [ZB] [PB] and [V] [PB], all three taken as successors in title to [T] [PB] deceased,
- 24) Ms [NC] [CU], of address at [Address 32],
- 25) Ms [W] [CI], of address at [Address 23],
- 26) Mr [H] [R], of address at [Address 13],
- 27) Ms [KR] [RV], of address at [Address 3],
- 28) Mr [PY] [HV], of address at [Address 9],
- 29) Mr [GB] [IA], of address at [Address 30],
- 30) Mr [WK] [TO], of address at [Address 31],
- 31) Mr [OE] [BX], of address at [Address 22],

respondents in the quashings. The appellant bases its appeal on two common grounds of quashing.

The case files were sent to the Prosecutor-General.

On the report of Ms Ott, judge, the observations of SCP Gatineau, Fattaccini and Rebeyrol, lawyers of Renault Trucks, SCP Lyon-Caen and Thiriez, lawyers of Mr [U] and thirty other employees or successors in title after debate in the public hearing of 19 April 2023, attended by Mr Huglo, elder judge acting as President, Ms Ott, judge-rapporteur, Ms Sommé, judge, and Ms Dumont, Chamber Registrar,

the Social Chamber of the *Cour de cassation* (Court of Cassation), composed of the above-mentioned President and judges, after deliberating in accordance with the law, has issued this ruling.

Joinder

1. Given that they are related, appeals Nos. U 22-13.238, V 22-13.239, W 22-13.240, X 22-13.241, Y 22-13.242, Z 22-13.243, A 22-13.244, B 22-13.245, C 22-13.246, D 22-13.247, E 22-13.248, F 22-13.249, H 22-13.250, G 22-13.251, J 22-13.252, K 22-13.253, M 22-13.254, N 22-13.255, P 22-13.256, Q 22-13.257, R 22-13.258, S 22-13.259, T 22-13.260, U 22-13.261, V 22-13.262, W 22-13.263, X 22-13.264, Y 22-13.265, Z 22-13.266, A 22-13.267, B 22-13.268 are joined.

Account of the dispute

## Facts and procedure

2. According to the rulings under appeal (Chambéry, 7 December 2021), ruling on referral after quashing (Soc., 16 December 2020, appeals Nos. 19-17.648, 19-17.649, 19-17.650, 19-17.651, 19-17.652, 19-17.653, 19-17.655, 19-17.654, 19-17.656, 19-17.657, 19-17.658, 19-17.659, 19-17.637, 19-17.660, 19-17.638, 19-17.661, 19-17.639, 19-17.662, 19-17.640, 19-17.663, 19-17.641, 19-17.664, 19-17.642, 19-17.665, 19-17.643, 19-17.666, 19-17.644, 19-17.667, 19-17.645, 19-17.646, 19-17.647), Mr [U] and thirty other employees of Renault Trucks (the company), exercising powers of attorney as employee representatives and claiming discrimination on the grounds of their trade union activities, brought an action before the

industrial tribunal on 29 January 2018 to obtain information for a useful assessment of their situation in relation to that of other employees in comparable situations.

## Reviewing pleas

Examination of the pleas Concerning the third, fourth and fifth bases of the first plea

Statement of reasons

3. Pursuant to Article 1014(2) of the Civil Procedure Code, there is no need to rule on these pleas by virtue of a specially reasoned decision, since they are clearly not of a nature to lead to quashing with regard to the third and fourth parts and are inadmissible with regard to the fifth parts of the plea.

## Reviewing pleas

Concerning the first and second parts of the first plea Statement of plea

4. The company objects to the rulings ordering it to disclose the full names, sex, date of birth, age and date of entry of each of the persons hired on the same site, the same year or in the two preceding or following years (from N-2 to N+2), in the same professional category, at the same level or a level very similar in terms of qualification/classification and coefficient, as the employees, as well as for each of the employees included in this panel, the qualifications of the employees in the panel when they were hired, the December pay slips of each year since their hiring and the last pay slip, their current workplace, the dates of change of qualification/classification and their frequency, and the corresponding salary slips and riders, the dates of any change of occupational category, as well as the corresponding salary slips and riders, the dates and amounts of salary increases since they were hired and their frequency, as well as the corresponding salary slips and riders, their current qualifications/classification and coefficient, their qualifying training and their follow-up date, the current taxable and gross net salary, ordering it to draw up, for each employee in the comparison panel, a summary table of all the above information and to provide the elements referred to above under penalty of a fine, when:

"(1) an investigation based on Article 145 of the Civil Procedure Code may be ordered only in the presence of factual elements such as to characterise a potential dispute between the parties; in this case, the employer argued that the employees, who claimed that there had been alleged discrimination, were merely making allegations, merely disputed the amount and frequency of the salary increases from which they had benefited since they were hired, as well as the evolution of their classification, and argued, with supporting evidence, that the evolution of their classification and remuneration had been in accordance with or in excess of the duties they had carried out, in compliance with the company agreement on the dialogue between management and labour of 2 March 2006 and with the provisions intended to combat possible involuntary unequal treatment that might be noted; that in order to grant the employees' request for disclosure of documents, the *cour d'appel* (Court of Appeal) limited itself to noting that the employees' careers had developed very slowly, that their salary had hardly increased at all and that the table resulting from the compulsory annual negotiation of the average salary of employees classified in the same category showed that the employees were barely average; that in so ruling, without finding facts that characterised the existence of a potential dispute between the parties, the *cour d'appel* (Court of Appeal) deprived its decision of a legal basis under Article 145 of the Civil Procedure Code, together with Articles 6 and 8 of the European Convention on Human Rights;

(2) that the court must explain how the disclosure of the personal data of employees who are the subject of an investigation provided for in Article 145 of the Civil Procedure Code is indispensable to the exercise of the right to evidence of the discrimination alleged by the applicants in accordance with the investigation and proportionate to the aim pursued; that in this case, the employer argued, without being challenged, that the salary slips of the employees referred to in the investigation at issue contained personal data which, since they were not related to the subject of the

dispute, was not indispensable for the protection of the rights of the claimants in the investigation sought in the context of alleged trade union discrimination, *inter alia*, postal address, social security number, tax rate, detailed content of absences, leave for family events, bank address; that the *cour d'appel* (Court of Appeal) limited itself to stating peremptorily that the disclosure of the salary slips with the indications appearing on them is indispensable and the infringements of privacy are proportionate to the objective pursued; that by not explaining how the disclosure of the personal data of employees contained in the salary slips over a period of almost thirty years, such as postal address, social security number, tax rate, bank address of the employees involved in the investigation, unrelated to any trade union discrimination, was indispensable for the protection of the rights of the applicants and proportionate to the objective pursued, the *cour d'appel* (Court of Appeal) deprived its decision of a legal basis with regard to Article 145 of the Civil Procedure Code, together with Articles 6 and 8 of the European Convention on Human Rights, 9 of the Civil Code and Articles 5 and 32 of Regulation (EU) No. 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC."

Statement of reasons

## Court's response

5. It follows from point (4) of the introduction to Regulation (EU) No. 2016/679 of the European Parliament and of the Council of 27 April 2016, on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (GDPR), that the right to the protection of personal data is not an absolute right and must be considered in relation to its function in society and be balanced against other fundamental rights, in accordance with the principle of proportionality. Furthermore, this Regulation respects all fundamental rights and observes the freedoms and principles recognised by the Charter and enshrined in the Treaties, in particular the right to an effective remedy and to a fair trial.

6. According to article 145 of the Civil Procedure Code, if there is a legitimate reason to retain or establish before any trial the evidence of facts on which the resolution of a dispute might depend, legally admissible investigations may be ordered at the request of any interested party.

7. Then, it follows from Articles 6 and 8 of the European Convention on Human Rights, Article 9 of the Civil Code and Article 9 of the Civil Procedure Code, that the right to evidence may justify the production in court of exhibits that infringe on privacy, provided that such exhibits are indispensable to the exercise of this right and that the infringement is proportionate to the objective pursued.

8. It is therefore up to the court hearing a request for disclosure of documents on the basis of Article 145 of the Civil Procedure Code, firstly, to ascertain whether such disclosure is necessary for the exercise of the right to evidence of the alleged inequality of treatment and proportionate to the aim pursued and whether there is thus a legitimate reason to preserve or establish, prior to any legal proceedings, evidence of facts on which the outcome of a dispute may depend; then, if the information requested is likely to affect the personal lives of other employees, to verify which measures are essential to the exercise of the right to evidence and proportionate to the aim pursued, if necessary by limiting the scope of the production of exhibits as requested.

9. The *cour d'appel* (Court of Appeal) noted, on the one hand, that it is apparent from the employees' career development documents and pay slips that the employees' careers developed very slowly, their coefficient and salary having hardly increased, that the table resulting from the mandatory annual negotiation setting out the average salary of employees in the same category shows that the employees are barely average and that this situation concerns thirty-one employees, all of whom have powers of attorney as elected representatives or trade union powers of attorney, and they all suspect discrimination linked to their trade union activity, and that the employees had not been able to obtain the comparison requested from their employer despite intervention by the trade union with the management and the meetings that followed, referral to the Ombudsman and the labour inspector, and formal notice.

10. In the exercise of its sovereign discretion, the *cour d'appel* (Court of Appeal) thus considered that the employees' request was based on a legitimate reason to retain or establish, before any procedure, proof of facts on which the solution of a dispute could depend.

11. Having noted that only the employer held the requested elements and having argued that they were necessary in order for the employees to assert their rights in the context of a future trial, the *cour d'appel* (Court of Appeal) rightly held that it was necessary to assess whether all the evidence requested by the employees was indispensable and whether the infringement on the protection of the privacy of the employees affected by the comparison was proportionate to the objective pursued.

12. Carrying out the research allegedly omitted, the *cour d'appel* (Court of Appeal) was able to hold that, in order to make a useful comparison, employees had to have precise information on their colleagues whose situation can be compared in terms of seniority, age, qualification, education, classification, whether the contract was for a fixed term or an interim period then converted into an open-ended contract, and that the comparison had to be able to be made on similar or comparable job positions requiring the same qualification. It was also able to hold that the disclosure of names was indispensable and proportionate to the objective pursued, which is the protection of the right to evidence of employees who might be victims of discrimination, and that the disclosure of the salary slips with the information contained therein was indispensable and the infringements of personal privacy were proportionate to the objective pursued. Having noted that the request relating to the disclosure of the summary table was related to the comparison panel, the *cour d'appel* (Court of Appeal) was able to hold that a summary table drawn up on the basis of the elements thus disclosed by the employer was necessary.

13. The *cour d'appel* (Court of Appeal), which was not obliged to explain itself on each mention of the salary slips it was not required to cancel, thus lawfully justified its decisions.

## Reviewing pleas

### Concerning the second plea Statement of plea

14. The company objects to the rulings ordering it to pay the costs and to pay the employees various sums under Article 700 of the Civil Procedure Code, where:

"(1) the respondent in a request for investigation ordered on the basis of Article 145 of the Civil Procedure Code cannot be considered the losing party as defined in Article 696 of the same code; that therefore, by ordering Renault Trucks to pay the costs without giving any reasons for its decision, the *cour d'appel* (Court of Appeal) infringed Article 696 of the Civil Procedure Code;

(2) the court orders the losing party to pay the other party the sum it determines in respect of the expenses incurred and not included in the costs; it may only order another party in that regard if it gives reasons for its decision; in this case, by ordering Renault Trucks, which could not be considered the losing party as defined in Article 696 of the Civil Procedure Code, to pay the employees various sums under Article 700 of the Civil Procedure Code without giving reasons for its decision, the *cour d'appel* (Court of Appeal) infringed Articles 696 and 700 of the Civil Procedure Code."

Statement of reasons

## Court's response

15. Having held that neither the intervention of the trade union with the management and the meetings that had followed, nor the referral to the Ombudsman and the labour inspector, nor formal notice had made it possible for the employees to obtain from the employer the elements of comparison in the latter's possession and that said elements, requested by the employees, were indispensable if they were to assert their rights in the context of future proceedings, the *cour d'appel* (Court of Appeal), which ordered the employer to pay the costs and to pay each employee a certain amount pursuant to Article 700 of the Civil Procedure Code, justified its decision.

16. Consequently, the plea cannot be accepted.

Operative part of the ruling

**FOR THESE REASONS, the Court:**

DISMISSES the appeals;

Orders Renault Trucks to pay the costs;

In accordance with Article 700 of the Civil Procedure Code, dismisses Renault Trucks' claim and orders it to pay the thirty-one employees or successors in title, who are claimants in the appeal, the sum of EUR 3,000;

Thus decided by the Social Chamber of the *Cour de cassation* (Court of Cassation) and pronounced by the president in the public hearing on the first day of the month of June of the year two thousand and twenty-three.

**President : Mr HUGLO, elder judge acting as President**  
**Reporting judge : Ms Ott**  
**Judge : Ms Sommé**  
**Lawyer(s) : SCP Gatineau, Fattaccini and Rebeyrol – SCP Lyon–Caen and Thiriez**

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