

# Disciplinary dismissals, oath taking and freedom of religion

07/07/2021



## **RULING OF THE *COUR DE CASSATION* (COURT OF CASSATION), SOCIAL CHAMBER, OF 7 JULY 2021**

### **Employment contract, termination**

Dismissal - Reason - Due reason - Default - Case - Discrimination - Discrimination based on religion - Various applications - Dismissal of a staff member of the Régie Autonome des Transports Parisiens (RATP) who refused to take an oath - Scope.

With regard to the freedom of thought, conscience and religion protected by Article 9 of the Convention on the Protection of Human Rights and Fundamental Freedoms, there is no fault on the part of an employee, a supervisory officer of the Régie Autonome des Transports Parisiens (RATP), who requests, during the oath-taking hearing, the possibility of substituting a solemn undertaking for the phrase “I swear”. As a result, their dismissal, pronounced for misconduct on the grounds of refusal to take the oath and the consequent impossibility of obtaining the oath, is without

due reason.

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Public hearing of 7 July 2021

Partial quashing without referral

Mr CATHALA, President

Ruling No. 965 FS-B

*Appeal* No. D 20-16.206

F R E N C H R E P U B L I C

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IN THE NAME OF THE FRENCH PEOPLE

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Ms [Z] [D], residing at [Address 1], lodged *appeal* no. D 20-16.206 against the ruling delivered on 24 January 2019 by the *cour d'appel* (Court of Appeal) of Paris (Division 6, Chamber 7), in the dispute between her and the Régie Autonome des Transports Parisiens (RATP), a public industrial and commercial establishment, whose registered office is at [Address 2], respondent to the appeal.

In support of her *appeal*, the appellant relies on the single plea for quashing appended to this ruling.

The file has been sent to the Prosecutor-General.

On the report of Ms Sommé, Judge, the observations of SCP de Nervo et Poupet, lawyer for Ms [D], of SCP Célice, Texidor, Périer, lawyer for the Régie autonome des transports parisiens, the pleadings of Mr de Nervo and Mr Célice, and the opinion of Ms Courcol-Bouchard, First Advocate-General, after the arguments at the public hearing of 9 June 2021, in which Mr Cathala, President, Ms Sommé, Reporting Judge, Ms Leprieur, Elder Judge, Mr Rinuy, Mr Pietton, Ms Ott, Ms Le Lay, Ms Mariette, Mr Barincou, Mr Seguy, Judges, Ms Lanoue, Mr Joly, Mr Le Masne de Chermont, Ms Marguerite, Judge Referees, Ms Courcol-Bouchard, First Advocate-General, and Ms Piquot, Chamber Registrar,

the Social Chamber of the *Cour de cassation* (Court of cassation), composed, pursuant to Articles R. 421-4-2 and R. 431-5 of the Judicial Code, of the above-mentioned President and Judges, having deliberated in accordance with the law, has delivered the present ruling.

## Facts and procedure

1. According to the ruling under appeal (Paris, 24 January 2019), delivered on remand after quashing (Soc., 1 February 2017, *appeal* no. 16-10.459, Bull. 2017, V, no. 18) and the elements produced, Ms [D] was hired on 25 September 2006 by RATP as a trainee, within the meaning of the staff regulations, to carry out a four-month assignment within the measurement control unit, and then from 5 February 2007 as a mobile agent coordinator within an operational unit of the department. Her final admission to the permanent staff of the RATP was subject to her being sworn in.
2. On 5 September 2007, the RATP sent her a summons to appear before the *tribunal de grande instance* (Tribunal of First Instance), for a hearing on 28 September, with a view to having her sworn in under Article 23 of the Act of 15 July 1845 on the railway police force.
3. At the hearing on 28 September 2007, the president of the *tribunal de grande instance* (Tribunal of First Instance) recorded in the official transcript that Ms [D] “tells the court that her (Christian) religion forbids her to take the oath provided for by law. The oath was therefore not taken.”

4. In a letter dated 12 November 2007, the employee was dismissed on the grounds that she had refused to take the oath provided for by law, that as a result she could not obtain her swearing-in and that these wrongful acts did not allow her to be admitted to the permanent staff of the RATP.

5. Claiming that she had refused to take the oath because of her religious beliefs and that she had proposed another oath, in accordance with her Christian religion, which the president of the *tribunal de grande instance* (Tribunal of First Instance) had refused, the employee brought claims before the labour court on 16 December 2011 for payment of compensation for dismissal without due reason and for damages for non-material loss.

## Reviewing plea

### Statement of plea

6. The employee objected the ruling for dismissing all her claims against the RATP, on the grounds that “it follows from Article 23 of the Act of 15 July 1845 on the railway police force that the oath of supervisory staff may be taken in the manner customary in their religion. The employee could not have committed a fault by proposing such a formula. It follows that the dismissal was pronounced because of the employee’s religious convictions and that it was therefore null and void. In ruling as it did, the *cour d’appel* (Court of Appeal) infringed, together, Article L. 1132-1 of the Labour Code and Article 9 of the European Convention on the Protection of Human Rights and Fundamental Freedoms.”

## Court’s response

In view of Article 9 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, and of Article L. 1232-1 of the Labour Code:

7. According to the former, 1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance. 2. Freedom to manifest one’s religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.

8. It follows from the case-law of the European Court of Human Rights that the State’s duty of neutrality and impartiality is incompatible with any power of appreciation on its part as to the legitimacy of religious beliefs or the ways in which they are expressed (GC, 1 July 2014, *SAS v. France*, no. 43835/11, § 127). The freedom to manifest one’s religious beliefs also has a negative aspect, namely the right of the individual not to be obliged to state his or her religious denomination or belief and not to be compelled to engage in conduct from which it may be inferred that he or she does - or does not - hold such beliefs. State authorities are not permitted to interfere with a person’s freedom of conscience by inquiring into his or her religious beliefs or by obliging him or her to manifest them, especially when taking an oath, in order to be able to perform certain functions (*Alexandridis v. Greece*, no. 19516/06, 21 February 2008, § 38; *Dimitras and Others v. Greece*, no. 42837/06 et al., 3 June 2010, § 78).

9. Article 23 of the Act of 15 July 1845 on the railway police force, which was applicable at the time, stipulates that, by means of an oath taken before the *tribunal de grande instance* (*Tribunal of First Instance*) of their place of residence, the supervisory agents of the administration and of public service concession holders (*concessionnaires*) or service concession holders (*fermiers*) may issue statements of offence on the entire line of the railway to which they are attached.

10. In order to dismiss all of the employee’s claims, the ruling noted that the principle of secularism in the French Republic derives from the provisions of Article 1 of the Constitution of 4 October 1958, which also affirms respect for all beliefs. It added that the swearing-in formula is present in the oaths taken by many professions, that when pronouncing

this formula, the person concerned does not place their right hand on the Bible or another religious text, or even on the Constitution, that this formula is devoid of any religious connotation and any reference to a higher authority, that it is only intended to express the commitment of the person pronouncing it to loyally and solemnly respect the obligations placed upon them, namely to record offences and draw up reports in accordance with the rules imposed on the person concerned. As such it infers that the employer, in dismissing the employee, had merely complied with the law, which required her to be sworn in in order to be able to perform the duties of a mobile agent.

11. In so ruling, although the employee had not committed any fault in requesting, during the oath hearing, the possibility of substituting the formula “I swear” for that of a solemn undertaking, which meant that the dismissal, pronounced for misconduct on the grounds of her refusal to take the oath and the subsequent impossibility of obtaining her oath, while not null and void as it had not been pronounced by the employer on account of the employee’s religious convictions, was without due reason, the *cour d’appel* (Court of Appeal) infringed the above-mentioned texts.

Scope and consequences of the quashing

12. This quashing only entails the quashing of the parts of the ruling confirming the judgment insofar as it dismissed the employee’s claims for payment of compensation for dismissal without due reason and for damages for non-material loss.

13. The quashing entails the quashing by way of consequence on the operative part of the ruling relating to the application of Article 700 of the Civil Procedure Code and the costs.

14. After notice given to the parties in accordance with Article 1015 of the Civil Procedure Code, Articles L. 411-3, paragraph 2 of the Judicial Code and 627 of the Civil Procedure Code shall be applied.

15. The interest of the proper administration of justice justifies that the *Cour de cassation* (Court of cassation) decides partially on the merits.

## ON THESE GROUNDS, the Court:

QUASHES AND SETS ASIDE, but only insofar as it rejects the claims for dismissal without due reason and for damages for non-material loss, as well as in its provisions relating to the application of Article 700 of the Civil Procedure Code and to the costs, the ruling handed down on 24 January 2019, between the parties, by the *cour d’appel* (Court of Appeal) of Paris;

DECLARES that there is no need to refer the case back to the *cour d’appel* (Court of Appeal) on the cause of the dismissal;

DECLARES that the dismissal of Ms [D] was without due reason;

Remits the case and the parties to the state they were in prior to this ruling and refers them to the *cour d’appel* (Court of Appeal) of Versailles;

Orders RATP to pay the costs;

States that, at the request of the Prosecutor-General of the *Cour de cassation* (Court of cassation), this ruling will be transmitted to be transcribed in the margin or following the partially quashed ruling;

Thus carried out and decided by the *Cour de cassation* (Court of cassation), Social Chamber, and pronounced by the President at the public hearing of the seventh of July, two thousand and twenty-one.

**President : Mr Cathala**

**Reporting Judge : Ms Sommé, Judge**

**First Advocate-General : Ms Courcol-Bouchard**

**Lawyer(s) : SCP de Nervo et Poupet – SCP Célice, Texidor, Périer**



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