

FREEDOM OF SPEECH: A SEXIST JOKE CAN JUSTIFY A DIMISSAL May 2022

In a decision of April 20th, 2022 (<u>here</u> in French), the French Supreme Court decided that an employer could validly dismiss an employee for having made a sexist joke.

What is the case about?

The claimant was an employee of a TV production company for which he hosted a show where couples compete with eachother over questions regarding their love life.

According to his employment contract, the host had committed to respecting the policies of the TV channel broadcasting the show. This policy specifically required him not to make hateful or contemptuous comments on the basis of sex and not to promote sexist violence, regardless of the media he would appear in.

In 2017, the TV host, who is also a comedian, was invited on another TV channel to promote his latest one-man show. At the end of the show, he was invited to make one last joke, which he formulated as follows: "As this is a very sensitive topic, I'll take a stab at it: do you guys know what you say to a woman who already has two black eyes? - It's a terrible one! - We don't tell her anything anymore, we've already explained it to her twice!"

This "joke" led to a big controversy.

A few days later, during his own show, the host referred to the controversy around his joke and made other sexist comments to one of the women candidates.

The TV production company eventually decided to dismiss the host for serious misconduct ("faute grave").

The Employment Tribunal and the Court of Appeal considered that the dismissal was valid. The host then filed an appeal with the French Supreme Court.

What are the legal issues at stake?

The French Supreme Court had to decide whether:

✓ such comments constitute misconduct of the employee in the performance of his employment contract?



✓ the freedom of speech (protected by article 11 of the French Declaration of Human and Civil rights and article 10 of the European Convention on Human rights) prevents the employer from dismissing an employee who makes a joke?

According to established case law, the French Supreme Court considered that any limit to the freedom of speech has to be justified by the nature of the duties performed by the employee and proportionate to the intended purpose.

What did the French Supreme Court decide?

The Supreme Court finally ruled as follows:

- ✓ Taking into account the context in which the sexist joke and comments were made (mainly the Weinstein Case and #Metoo movement), the TV production company could validly impose restrictions to the host's freedom of speech in order to support the TV channel's commitment to fighting against violence towards women and to protect its reputation and rights.
- The repetition of the sexist comments, not only made as a joke but also made on his own show, provided evidence that the employee was actually satisfied with the controversy and was not committed to respecting the TV channel's policy despite the commitments taken as part of his employment contract.
- ✓ the dismissal does not amount to a disproportionate infringement of the employee's freedom of speech.



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