

**No. 03-45.269**

### **1) Reference Details**

Jurisdiction: Court of Cassation, Labour Chamber, France

Date of Decision: 2 June 2004

Case Status: Concluded

Link to full case:

[www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000007048221&fastReqId=333342946&fastPos=16](http://www.legifrance.gouv.fr/affichJuriJudi.do?oldAction=rechJuriJudi&idTexte=JURITEXT000007048221&fastReqId=333342946&fastPos=16)

### **2) Facts**

An employee of the company 'Spot' used his work email to send a message containing anti-Semitic insults to an Israeli who made a complaint to the employer. As a result the employee was dismissed for grave misconduct. The employee Mr Z brought the case before the employment tribunal and the Court of Appeal in Toulouse. The Court of Appeal found Mr Z had committed a real and serious fault which was justification for his dismissal but did not constitute grave misconduct. Mr Z appealed the decision of the Court of Appeal before the Labour Chamber of the Court of Cassation.

### **3) Law**

- Article 627 of the Civil Procedure Code
- Articles L.122-6, L.122-8 and L.122-14-3 of the Labour Code

### **4) Legal Arguments**

Mr Z challenged the Court of Appeal ruling that he was the author of the incriminating email.

### **5) Decision**

The Court of Cassation decided that the Court of Appeal, having considered all evidence and the historical use of email in the company, made the correct ruling that Mr Z was the author of the email in question, and that the circumstances did not warrant a reconsideration of that decision. On this ground the Court of Cassation rejected the appeal.

However, the Court of Cassation went on to consider whether the email constituted a either real and serious fault for which Mr Z may be dismissed with either notice or an indemnification in place of notice, or alternatively whether the email constituted a grave misconduct, for which Mr Z is liable to being dismissed without either notice, or a compensatory indemnity.

The Court of Cassation decided that the Court of Appeal had erred in finding that Mr Z had committed only a real and serious fault. The Court of Cassation considered that using a company email account in conditions permitting the identification of the company to send a message containing anti-Semitic insults is necessarily misconduct under Articles L.122-6, L.122-8 and L.122-14-3 of the Labour Code, which makes it impossible to maintain the employee in the company. The Court of Cassation used its power under Article 627 of the Civil Procedure Code to take this decision itself without returning it to a new Court of Appeal; the Court of Cassation partially annulled the ruling in this sense.