

Fired! For having downloaded music illegally from work

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On March 31st 2011, the Court of appeal of Versailles upheld that the act, for an employee, of downloading illegally music files on his professional computer during working hours should be considered as serious misconduct and may justify his dismissal.

Here are the facts: while he was away, some of his colleagues discovered, while opening a file marked “personal” on his computer, that he was downloading music files using “eMule”, a peer to peer file sharing program. A few days later, the same file was opened again, this time in front of the concerned employee. The latter was then dismissed for serious misconduct, based on the illegal downloading of music files from his work computer and using the bailiff office’s identity to do so.

The first level judges had ruled that such an act was indeed a serious fault which justified the employee’s dismissal. However, the former employee pointed out in appeal to the irregularity of the “search” of his computer and personal files, in particular while he was absent. Indeed, French case law is clear on the fact that an employer may not open files identified as personal without the presence of his employee, aside from particular

circumstances, or the evidence so gathered may be considered not admissible.

But the Court of Appeal rejected those arguments saying that the files were opened in order to end the illegal downloading unrelated to the office’s activity but performed through the office’s IP address. The Court added that, if the files had first been seen in the absence of the employee, the second time the control had been done in front of him, which impeached him to invoke the irregularity of such a control. The Court finally judged that the dismissal for serious misconduct was justified, considering that the use of a program like “eMule” with the IP address of his employer was a misconduct which made it impossible for the employee to keep working for this office.

This judgement will no doubt be a deterrent for all employees happily using their employer’s system and Internet connection to illegally download protected work such as music or movies. Such a deterrent might even prove stronger than all efforts made by the authorities to discourage illegal downloading, even if the threat only applies in the professional world...

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