



## YACHT CREW WHO MAKE INAPPROPRIATE REMARKS TO THEIR COLLEAGUES COULD FIND THEMSELVES OUT OF A JOB...

By Lorenzo Ranieri

A recent decision by the Italian Supreme Court could have significant ramifications for yacht crew and seafarers. Following the dismissal of an employee who made sexually charged comments to his colleague, the court ruled that his employer was justified in sacking him.

Decision no. 23295/2023, to give the court's ruling its official title, states that if a person makes sexual comments in the workplace, then their dismissal as a result of these actions is lawful. Such behavior cannot be justified on the basis of these allusions being lighthearted or superficial. In other words, claiming that sexually offensive remarks are just banter is not permissible.

In this case, the man's behaviour was reported by both the company and by a co-worker. After hearing his case, the Italian Supreme Court subsequently condemned his actions, clarifying that this behaviour constituted a legitimate reason for dismissal even though it did not culminate in a physical assault. As the judgement explains, *"those unwanted behaviors, carried out for sexual reasons, have the purposes of effecting or violating the dignity of a male or a female worker and they create an intimidating, hostile, degrading, humiliating or offensive atmosphere."*

This judgement draws on an earlier principle stated in the 2006 Consolidated Text on Equal Opportunities, which classified verbal sexual comments in the workplace as sexual harassment.

What does the EU have to say about this? Under the Directive (EU) no.73/2002 the kind of behaviour seen in this case is considered to be “sex discrimination”. The directive states that “anyone who violates the dignity, reputation and safety of their colleagues may be lawfully dismissed”. It’s interesting to look at this from the employer’s perspective. Employers are obliged to protect the physical and mental health of their employees. So, if an employee uses inappropriate or unsuitable language, even if he uses it as “a joke”, the employer is entitled to fire that staff member. In a similar vein, if a team member makes comments with sexual connotations, then the employer is also entitled to carry out a disciplinary procedure against that person.

It might be useful here to define the differences between sexual harassment, sexual assault and, for instance, stalking. Under article 660 of the Italian Criminal Code sexual comments are considered to be sexual harassment. No physical contact or stalking needs to have taken place for this behaviour to be deemed as such. Sexual assault is a more serious crime whereby physical contact is involved. Stalking involves repeated behaviour that creates an enduring state of anxiety and fear on the victim.

What does the decision by the Italian Supreme Court in this case mean for yacht crew? First, it means that crew members must behave properly on board the yacht. They must not make sexual remarks to other crew members or guests. If they do make inappropriate comments, then the employer may be entitled under the terms of the employment contract to lawfully dismiss that person. Even if there is nothing in the contract that enables the employer to dismiss the crew member, following the court judgement, he can still be sacked under Italian law.

Not only may the seafarer who has made sexual allusions find himself without a job, but he may also face criminal repercussions under Italian law. In fact, a separate criminal proceeding may be initiated by the victim with possible conviction of sexual harassment (imprisonment up to six months), sexual assault (imprisonment from six to twelve years) or stalking (imprisonment from one year to six years and six months).

Of course, it’s not just about the legal consequences. It is important to have a peaceful and calm environment on board for the sake and safety of everyone - the owner, crew and the guests. Yacht crew who create unpleasant situations by making sexual allusions to other seafarers or guests, may also create untold loss of revenue to the Owner. Charter guests will not want to come back on board and any negative publicity could be very costly for the yacht. Just imagine a great cruising experience, sailing alongside the Mediterranean coasts, all ruined by inappropriate and misplaced comments.

Unfortunately, these kinds of behaviors are not often reported by the victims because of fear. Victims may then quit and leave their jobs for no apparent reason, leaving the Owner with an under-staffed yacht and possible loss of charter revenue.



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PG Legal has an extensive expertise in dismissals and matters of labor law connected to seafarers and has, several times, assisted owners willing to dismiss a member of the crew for sexual-related causes. PG Legal is able to assist the owner in all steps of the disciplinary procedure and of the actual dismissal.