

The Chairman's Jokes

Ralf Mehnert-Meland
mehnert@mnstate.edu

Author:

Ralf is an Assistant Professor at Minnesota State University – Moorhead. His teaching experience includes business law, business ethics, government regulation and law in international business. Ralf uses cases like “The Chairman’s Jokes” to introduce students to “real life” business scenarios, including situations that challenge the students’ views of the interplay of ethics, business and law.

Ralf holds a Juris Doctor from George Washington University, a Bachelor of Arts in Marketing and International Business from Carthage College and a degree as "Bankkaufmann" in his native Germany. He has worked in executive and management positions in the ERP, Cloud and healthcare industries in the United States and Germany.

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The Chairman's Jokes¹

Thomas Claes was a seasoned business executive. He had moved from his native Belgium to the United States to pursue his education in business and management. For the past 20 years, Thomas had worked in business development and management positions in the United States for French and US steel manufacturing companies. While he had grown up in Belgium and had a Belgian-American cultural identity, his business identity was firmly rooted in the business and human resource principles practiced in the United States. He had been trained in several large US companies on how to identify and address issues such as harassment and discrimination.

He also was a strong advocate of equal rights in his personal life. Thomas and his partner were active in several professional and social organizations advocating minority and LGBTQ+ causes. While his interest and participation were known, he did not actively advertise them in his work environment.

A Global Business Assignment

Thomas had recently joined the US subsidiary of a French specialty steel manufacturing company in an executive position at its headquarters near San Francisco, California. After a few months in his new role, his supervisor, the General Manager of the subsidiary, abruptly resigned. François Dubois, the Chairman of the Board of the entire company, personally asked Thomas to be the new General Manager to quickly fill the void left by the departure. Thomas agreed and was promoted. He was the third manager of the company's US operations in fewer than six months. In his new role, he directly reported to François. He also received a substantial salary increase.

François was the highly energetic and very engaging leader of the company. He was fun-loving and liked to party. Company social events were known as epic productions with bands, good food and alcohol. Business dinners with François were equally entertaining and luxurious. The official events and dinners were often followed by after-hour activities in various bars that lasted into the early morning hours.

Unfortunately, François also had a less charming side. He was prone to making very spontaneous business and personnel decisions, triggered often by side-discussions during the after-hour activities. His enthusiasm and top position within the company's hierarchy made it very difficult to challenge his decisions or provide alternative solutions. He sometimes displayed very forceful behavior and would demand immediate implementation of his *ad hoc* decisions. François's behavior was generally known by the employees. There often were subtle comments made about him. "Did you hear what happened at ..." was a common opening line when

¹ Names and specific locations have been anonymized.

employees would discuss François's behavior at a recent meeting, dinner or social event. As a result of his position and overall very engaging character, however, the employees tended to accept the more negative aspects as part of the "overall package."

Thomas's Challenge

Thomas enjoyed his new elevated position and responsibilities. The company was growing, profitable and in an exciting industry. It was still privately-owned but had plans to become a publicly-traded company and raise significant funds for a large global expansion. The US subsidiary included several offices around the country. While the US team had gone through difficult times because of the recent multiple changes in their leadership and needed rebuilding, Thomas believed that the team would be very successful going forward. He was especially excited about its great diversity, including team members from twelve different countries, different racial backgrounds and several openly gay employees.

During Thomas's first month in his new position, the company received a letter from his predecessor's personal attorney. The former General Manager claimed that the company had created a hostile work environment by not addressing explicit sexually-charged jokes made by François in multiple instances. In addition, Thomas began noticing a strange pattern of behavior developing when he was with François either in one-on-one or group situations: François was very fond of making disparaging remarks about others based on their looks, gender, skin color and other attributes. He also liked to make jokes. Many of the remarks and jokes had blatantly offensive and often very graphic racial, sexual or anti-gay connotations or were outright aimed against women, non-whites or gay individuals.

Thomas did not agree with these statements. He told the Chairman a number of times in private that such comments were inappropriate, could be misread and might negatively impact the cohesion of the team. He also pointed out that the rules and cultural expectations in the US were much stricter regarding these matters than those in France. François would brush off those suggestions with statements like: "This is all in fun. And it is OK to say as long as no one in the audience is part of group that I am making fun of." Despite Thomas's insistence that the statement was not true, the Chairman continued to make the offensive jokes in meetings with company employees, as well as meetings with representatives from other companies, customers and potential customers.

Company Policies in Place

The company had in place very clear personnel policies against harassment and discrimination that applied to all its employees worldwide. The policies were enforced by the global and local Human Resources departments. The company's employee handbook included the following language and every employee agreed to abide by it as part of their employment contract with the company.

All Team Members must always conduct themselves in a business-like manner while on our Company's property or while conducting business for our Company. All Team Members must treat fellow-Team Members, customers, partners and visitors to our Company with dignity and respect.

Our Company is committed to providing a work environment free of sexual harassment and harassment or discrimination based on race, color, national origin, gender, religion, age, disability or any other protected characteristic established by Federal or State laws. Our Company prohibits all behavior that constitutes or could lead or contribute to harassment and discrimination.

Requests for sexual acts, unwelcome sexual advances, touching, remarks or other conduct of a sexual nature are prohibited, as are any discriminatory acts or remarks. Any substantiated incidents of sexual harassment, harassment or discrimination by another Team Member will result in immediate disciplinary action up to and including termination.

This policy applies to all Team Members.

Having had no success changing the Chairman's behavior, Thomas made a confidential call to Ines Kellermann, the company's global head of Human Resources, to discuss the situation and possible avenues to address it. To his surprise, Thomas found that the issue was well-known by the HR department and that several - unsuccessful - attempts had been made to try and change the Chairman's offensive behavior. There actually was a concern in the HR Department that the company was subject to legal exposure in the United States because of its much stricter harassment and discrimination laws and regulations. These stricter rules had been the reason the company had developed the very clear language in the employee handbook and applied it to all employees around the world - even those in locations with less strict rules, such as the headquarter location in France. Ines also was concerned about negative publicity as the #MeToo Movement had just started to uncover instances of sexual harassment and assault in many industries around the world.

Ines and Thomas agreed to develop a short and confidential action plan to try and change the Chairman's behavior, assess the attitude of the US employees and identify potential legal exposure. In view of the sensitivity of the issue, the two decided to execute the plan subtly and, when asked, pretend it was part of an overall refresher for the team of the company's policies. They also agreed to review the findings within two months and then determine next steps or necessary changes.

The main steps of the action plan were to be:

1. Thomas would talk to François in private and clearly spell out the potential legal exposure of the offensive comments and jokes for the company.
2. Ines would send an email to all employees to remind them – in a positive manner – of the company’s policies regarding harassment and discrimination.
3. Thomas would talk to his Directors who were directly reporting to him to stress the importance of those policies.
4. He would also have one-on-one meetings with each Director to try to discover whether there were any direct concerns about François’s behavior.

One More Incident

Before the two could finalize and start implementing the plan, another incident occurred. The Chairman and the company’s global Chief Technology Officer visited the US operations as part of an executive tour of the company’s main offices. The two, Thomas and four of his Directors had dinner in downtown San Francisco. After Thomas had left the group for the evening, the Chairman made a number of offensive and graphical anti-gay comments. The new CTO joined in with several discriminatory statements and jokes regarding the gay population in San Francisco. The following day, one of the Directors filed a formal complaint with the Human Resources department claiming that the company was creating a hostile and discriminatory work environment. The Director’s uncle, who was also one of the company’s outside financial consultants, was openly gay. The Director felt the comments and jokes were highly offensive, inappropriate and against company policy. Thomas instructed the HR department to immediately follow up and review the claim. The review found that the comments and jokes did not amount to an actionable claim and - while in poor taste - were not made with discriminatory intent. When asked why she made the comments, the global CTO stated that she did not think they were an issue because “François does this all the time.” To Thomas’s surprise, Ines, the head of Global HR, decided not to pursue this matter any further even though the three other Directors attending the dinner had stated in the review process that they considered the statements and jokes as offensive.

The Final Straw

Less than a week after the report, the Chairman ordered Thomas to move the Director to a less desirable position with the company, an action that was a *de facto* demotion. François and Thomas met in person and Thomas forcefully told the Chairman that the decision to demote the Director was wrong. It also could be construed as illegal retaliation and he would not support it. The Chairman rejected his arguments and insisted on immediate demotion. Thomas also used this occasion to spell out in very clear and direct language that the continuation of this offensive behavior could result in legal exposure for the company and that it already had a negative impact on Thomas’s attempts to rebuild the US team. The Chairman merely thanked Thomas for bringing up his concerns but did not see any reason to pursue them any further. He

told Thomas that the decision was final, and that Thomas had no more say in it. He directed him to demote the Director the next day.

Thomas complied.