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National origin discrimination or racial discrimination? The mobilization of SNCF's Moroccan railway workers

In 2018, 848 Moroccan railway workers had the French national train company convicted for national origin discrimination. In the French context, this fight and the judicial outcome are remarkable. The absence of class action and the color blind environment have historically limited mobilization against racial discrimination. This article examines the conditions of this success despite the institutional context. Some peripheral actors tried but failed to impose a racial and post-colonial framing. Only the “national origin discrimination” framework enabled the achievement of the legal case.

Keywords : discrimination ; nationality ; mobilization ; law ; color blind ; immigration

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Introduction

On 31 January 2018, the Paris Court of Appeal convicted the Société Nationale des Chemins de Fer français (SNCF – French national railway company) for discrimination based on national origin against 848 employees or former employees. Like the automotive, mining and construction industries of European colonial powers that in the post-war period had used colonial and/or post-colonial labour (Pitti 2002; Perdoncin 2018; Bruno 2010), the SNCF, a French industrial flagship, had recruited approximately 2,000 Moroccan workers in the early 1970s. These new recruits were railway workers, but fell outside the company’s central “permanent framework” which offered benefits that were advantageous compared to those available under traditional labour law (promotion according to codified seniority rules, access to a specific social protection fund, occupational medicine and ease of movement). Access to this status was strictly limited by conditions relating to age (being less than 30

years old) and nationality (being a French national, and, as from the mid-1990s, from a European Union country).

To meet recruitment needs that the French workforce had not always been able to satisfy and to make conditions of employment more flexible, the company created other statuses, in particular that of "permanent auxiliary", renamed "PS25" in 1982 in company terminology. Intended for railway workers involved in the maintenance of the railway network, it allowed for the hiring of workers of foreign origin and/or those over the age limit. This status was also subject to promotion rules, but was far less advantageous: there were fewer opportunities for career development and pension levels were lower; PS25s paid contributions to the general social security system and not to the fund reserved for the "permanent framework"; lastly, they had no access to occupational medicine or to the same facilities of movement.

The labour chamber of the court of appealⁱ, which had convicted the SNCF, declared the original registration of the 848 Moroccan complainants within this derogatory status, due to their foreign nationality, to have had discriminatory effects. This verdict was based on an interpretation in terms of discrimination on the grounds of national origin: it was because they were legally non-French that they did not benefit from the same rights as their statutory colleagues, without this difference being justified in any objective and proportionate manner.

The way the mobilisation unfolded shows us that this was not the only possible interpretation: within the Paris Court of Appeal itself, the *Défenseur des droits* (Defender of Human Rights) – a body responsible for promoting equality and for ensuring the effectiveness of non-discrimination law - proposed an interpretation based on "racial discrimination". Outside the court, associations that had come to support the plaintiffs saw in this case the sign of systemic racism affecting immigrants from former French colonies and their descendants. This 'racial' reading of the situation of Moroccan railway workers, where – in line with the example of the analysis of the status of racialized French people in Dubai (Le Renard 2016) - the origin goes beyond the issue of national belonging, nevertheless remained marginal compared to a legal framework based on nationality which was confirmed in the Court of Appeal's ruling.

How can we explain this state of affairs and the downplaying of the "racial" interpretation of the discrimination issue ? The answer can be found in the way policies to combat racial discrimination are constructed in France. The first major French law (known as the "Pleven law") against racism passed in 1972 was essentially symbolic in nature: while prohibiting racial discrimination, it mainly focused on fighting racist discourse, and was not backed by the creation of any specific authority or instrument to ensure its effectiveness - unlike the situation in Great Britain (Bleich 2003). Resulting from a long period of collective action, as far as political actors were concerned this law was nevertheless based on a belief in the marginal nature of racism in France, and therefore on the pointlessness of committing to a real public policy to tackle the problem. The centralisation of the French state had not been conducive to the mobilisation of minorities, unlike in the United States where institutional fragmentation had allowed them to influence the determination and implementation of anti-discrimination policies (Lieberman 2004; Pedriana and Stryker 2004). France had thus based its anti-racist policy on a case-by-case treatment of racial discrimination and racist acts, and this had not led to the emergence of categories and instruments making it possible to grasp the 'collective' nature of racism and of the social groups that were subjected to it. This "colour-blind" approach – in as much as racism was understood as an interindividual act and not as a social relationship of domination between social groups defined by the socially constructed category of 'race' - resonated with the universalist 'republican doxa' (Lépinard 2013) that valorises a citizen presence in the public space devoid of all identity traits (Schnapper 2004).

The direct consequence of this “colour-blind” vision was the heavy constraints and criticisms weighing on the construction of ethnic statistics that made it possible to grasp the collective nature of discrimination (Blum and Guérin-Pace 2008), and the many more or less confused debates that surrounded this issueⁱⁱ (Sabbagh and Peer 2008). These obstacles to considering the structural nature of racial discrimination were also reflected in the legal framing of the problem, with preference being given to a criminal approach in terms of guilt rather than to a civil law approach that focused on the question of monetary compensation for discrimination (Suk 2007). France’s criminal justice system was thus little inclined to incorporate 'consequentialist' reasoning (Pedriana and Stryker 2014) based on organisational or structural explanations of discrimination, unlike some US judges who had used social science explanations to support their rulings (Dobbin 2002).

This conception of racism, hostile to any collective and structural reading of racism, has nevertheless been challenged since 1972. The European Union has been a vector for the desingularization of French anti-discrimination policies (Amiriaux and Guiraudon 2010), in particular by promoting a more consequentialist and group interpretation of discrimination that is therefore less bound to the prism of racist intentionality. In 2016, the decision to use group action in the fight against discrimination would appear to extend this interpretation at the institutional level, despite the fact that anti-racism movements were emerging more explicitly than before, opposing colour-blind ideology head-on and promoting a systemic reading of racism.

In the face of these real developments, institutional inertia nevertheless hindered change, reworking the European anti-discrimination categories into a framework that was compatible with the republican and colour-blind approach (Geddes and Guiraudon 2006; Guiraudon 2009; Downing 2015), which continued to be echoed in policies to promote diversity within the French civil service (Bereni, Epstein, and Torres 2020). Although weakened, the use of criminal law to combat discrimination remained symbolically important; moreover, the absence of any stabilised racial frame of reference and the tenuous legitimacy of ethnic statistics were a brake on practices of objectification and knowledge of discrimination at the level of both society as a whole and of companies and institutions (Simon 2008). Indeed, the recent judicial condemnation in a civil court of police practices of basing the decision to check a person’s identity using their facial characteristics demonstrated the usefulness of figures - when available - for objectifying discrimination (Boutros 2020).

This article does not aim to correct the judicial interpretation of these discriminations by affirming that they are racial rather than national. We do however want to look at why—and how—the “nationality” frame has obscured the “racial” frame. This is notable because, as we have shown, some of the actors involved do frame this case in racial terms. Moreover, the narratives that Moroccan railway workers have shared about their careers in the company invites us to take this framing seriously (albeit not to the exclusion of all others). By “racial” we understand those “social relations of domination/subordination which are based on references to people’s origins, whether they be treated in a naturalizing way—racialization—or else in a culturalizing way – ethnicization—or, as is most common, both.” (Poiret 2011). As others have done, we consider that processes of racialization may rely on assigning a permanent quality to supposed attributes of cultures and/or religions. Although they may still be referred to as “cultural”, such attributes are thus essentialized. We may then use the concept of “racialization” to describe this process. (Barot et Bird 2001 ; Galonnier 2015 ; Gonzales-Sobrino et Goss 2018 ; Gotanda 2011 ; Guillaumin 1972 ; Hajjat et Mohammed 2013).

An analysis of the different interpretative frameworks used to give meaning to the socio-economic inequalities (associated with differences in status, nationality, 'race', etc.) that disadvantaged

Moroccan railway workers thus allows us not only to reopen the question of the effects of the colour-blind ideology in the French political context, but also to observe its relative weakening. In the context of this collective action, we will show that while race does not totally go without mention, it is nevertheless always referred to in a discreet or euphemistic way. Conversely, and without being able to confirm that the euphemization of the racial interpretation was a determining factor behind the judicial victory, the legitimacy of the nationality category made it an undeniable support for the denunciation of injustice made by Moroccan railway workers.

The sociology of collective action has taken an interest in the mobilizations of immigrant and foreign workers for many years. Without being exhaustive, we can on one side distinguish the studies which have long interrogated the specificity of the conditions of mobilization of immigrants and foreigners, their resources, their repertoires of contention and revendications (Gilroy 1982; Parma 1982; Siméant 1998; Hargreaves 1991) and on the other side those that examine these mobilizations as indicators of “integration” in the workplace and, more widely, the national community (Gay 2020; Chuang 2021). By taking an interest in the different ways this mobilization has been framed along the years and across various spaces, we are looking at how the meaning assigned to this mobilization has evolved and we offer to reflect on how frames are imposed or obscured. Our survey documents an instance of workplace mobilization involving a plurality of actors and social spaces (unions, judicial actors, NGOs). It offers a particularly interesting case study to reflect on the conditions required for injustices to be exposed and recognized, particularly those injustices which impact immigrant or foreign workers (or workers who are perceived as such) in contemporary France.

At the theoretical level, we use a frame analysis as deployed in the sociology of social movements (Snow and al. 1986): while the colour-blind approach can be considered as a 'master frame' that guides policies to fight racial discrimination in France (Snow and Benford 1992), we seek to understand movements of transformation, particularly by proposing different interpretative frames mobilised by 'movement entrepreneurs' (Zald and McCarthy 1979) and organisations; we will then explain the resources they use and the reasons why they opt for these alternative frames.

These materials are drawn from an archival (trade union and media archives) and ethnographic survey of the actors involved in the mobilisation. We attended almost all of the judicial hearings relating to this trial and many legal clinics held by legal professionals; we also conducted semi-directive interviews with different categories of actor (railway workers, legal professionals, trade union supports) (N=31).

The article first returns to the initial problematisation of the inequalities at work affecting Moroccan PS25s and shows that they were considered by trade union actors to be inequalities relating to an illegitimate statutory difference. It then shows how the judicialisation of the mobilisation is accompanied by an alternative framing in terms of national origin discrimination, the difference in status arising from national difference. The article then discusses the ambiguities of these framings and the way in which the racial reading of the situation nevertheless emerges more or less explicitly throughout the period studied. The conclusion returns to the consequences of framing in terms of nationality and the limits of the legal weapon when it comes to challenging the colour-blind nature of French institutional arenas.

I From the struggle for equal status to the denunciation of national origin discrimination

Between community identification and union support

During the 1980s, Moroccan railway workers gradually noticed differences in the way they were being treated compared to their French colleagues. These differences concerned opportunities for professional advancement, as their skills were not even appraised by their supervisors. They turned to their supervisors and denounced their exclusion from opportunities for advancement through the appraisal of their work. However, for the most part these reports remained individual. It was with the founding in 1999 of the *Ismaïlia* association that their condition was to become the subject of a specific collective mobilisation. This association was born of the awareness by the first Moroccan PS25s to reach retirement age of the derisory amount of their pensions, despite an entire career spent making contributions to the company retirement fund.

The creation of this association contrasted with the specificity of the situation of foreign workers which the trade unions had been monitoring for several decades. As from the 1970s, following the emblematic strikes in which huge numbers of foreign workers had participated, French trade unions took the situation of foreign workers into account. The *Confédération Générale du Travail* (CGT – general labour confederation), declaring itself to be of Marxist persuasion, remained torn between a universalistic approach that considered foreign workers above all as members of the working class like any other, and a particularistic approach that focused on their specific demands (Gay and Perdoncin 2018). The *Confédération Française Démocratique du Travail* (CFDT – French democratic labour confederation) - historically closer to movements advocating self-management before adhering for the most part to a reformist strategy in the 1980s - sought to unionise unskilled workers (among whom foreigners were over-represented) but also encountered difficulties when taking up their specific demands at the national level (Bruno 2011).

This tension can be seen at SNCF level. Despite their support since the 1980s, their situation was analysed as an aspect of the more general problem of the employment of contract workers. The rapprochement between the *Ismaïlia* association and the trade unions - particularly SUD-Rail, a radical trade union created following a split with the CFDT, which was increasingly committed to reformism – was also to come about through this prism of access to the permanent framework. This junction between the community association and the union was achieved through the intermediary of Bouabdellah Frahlia, a railway worker of French nationality and a descendant of Algerian immigrants. In 2002, after discovering the case of these railway workers Frahlia contacted Ahmed Katim, founding chairman of *Ismaïlia*. Together, they undertook the task of identifying the Moroccan PS25s, a job that involved visiting all of the main railway stations in France.

On 30 April 2003, they succeeded in bringing together 150 PS25s at the Bourse du Travail in Paris for a day of information and awareness-raising. From then on, the mobilisation gathered momentum through monthly meetings at the Bourse du Travail, enabling the Moroccan PS25s present, the members of *Ismaïlia* and their trade union supporters to appreciate the number of railway workers concerned by this status and to demonstrate possibilities for future action. Various steps were taken over the course of 2003: demonstrations, strikes, questions to the company chairman, and sit-ins at the SNCF headquarters and in front of the Ministry of Transport. The alliance made it possible to achieve the opening of negotiations in 2004 .

The trade unionisation of this mobilisation had the effect of giving it scope and of helping to define the railway workers concerned and who could be mobilised. It contributed to a general increase in isolated cases with the same condition. Yet this unionisation took place through the prism of the dividing line between "no-status" and permanent framework, with no specific problematisation of discrimination relating to nationality or origin. The national otherness of the Moroccans recruited in the 1970s, which was the very reason for their registration as PS25s, was not totally denied by the union. In the political context of the mobilisation, marked by the electoral rise of far-right, SUD-Rail

linkened the nationality clause to the principle of "national preference" defended by the National Front. Yet the postcolonial conditions of recruitment and the practice of French companies, which consisted in massively and collectively recruiting workers from its former colonies, were not specifically analysed, any more than the term "discrimination" appeared at the heart of the union's mobilisation.

A hesitant articulation between unions and Moroccans in relation to the contract workers' cause

As from the mid-2000s, the main focus of the mobilisation shifted from the denunciation of statutory inequalities to that of discrimination. The question of nationality had already been problematised during the first phase of the mobilisation, though on a secondary basis. The emphasis on the issue of nationality thus resonated with the tightening of mobilisation in relation to judicial arenas, the progressive marginalization of trade unions and the emergence of a mobilisation entrepreneur (Zald and McCarthy 1979) characterized by both his legal skills and his Moroccan nationality.

The melding of the Moroccan railway workers' cause with that of contract workers was not entirely smooth. For SUD-Rail, it was not so much a question of mobilising for a category of personnel who were victims of injustice due to their nationality, as of demanding that the status be extended, and consequently of criticising the growing proportion of contract workers in the public company. In making this mobilisation a specific aspect of a broader movement, SUD-Rail wanted these Moroccan contract workers to demonstrate a more constant commitment to the struggle. They implicitly accuse the PS25s of instrumentalizing trade union action for their own benefit without consideration for contract workers as a whole.

Another form of trade union distrust of the Moroccan railway workers was the fear that such mobilisation would undermine the very status of the workers. This was notably the argument used by the dominant CGT union, whose lack of commitment was particularly striking. Unlike SUD-Rail, the CGT focused its attention on defending the status itself. The underlying discourse was that the extension of the status to categories of personnel who until then did not benefit from it would risk weakening the guarantees of the permanent framework, which could only be extended at the cost of its deterioration. More broadly, some trade unionists feared that the abolition of the nationality clause would inevitably lead to the SNCF being privatised.

The turning point for legal action

In 2004, the unions and the Ismaïlia association signed an agreement with management. It provided above all the possibility of early retirement for those aged 55 to 60, while continuing to contribute to the pension funds. SUD-Rail saw the agreement as a success that allowed the two parties to reconcile: although it marked the abandonment of the demands concerning the abolition of the nationality clause, it nevertheless provided a satisfactory solution for PS25 employees; for the SNCF, it allowed tired employees to leave the company in a context of staff reductions.

Against SUD-Rail expectations, the association did not abandon the fight and refocused on the judicial arena via the industrial tribunal: as the 2004 agreement did not settle the matter of the career gaps between Moroccan PS25s and their French colleagues, the problem was now framed in terms of discrimination and of loss of earnings resulting from differentiated careers. These were linked to the combined effects of nationality and age: due to their nationality, Moroccan railway workers could not access the permanent framework, while those who did acquire French nationality

had by that time exceeded the age limit that conditioned access to the status. The SUD-Rail trade union did not back this mobilisation, claiming that the case had now lost its political and union dimension.

This new framing of the mobilisation as a "judicial" fight against nationality and age-related discrimination meant that new specialist skills were needed to enable it to move within the legal and judicial space (Bourdieu 1986). The new resources/actors were henceforth legal professionals, capable of handling legal arguments: various lawyers succeeded one another during the procedure, but it was essentially Abdelkader Bendali, a Moroccan professor of law and economics, who offered to help put the case together. The judicialisation of the case - and its corollary, the distancing of the trade union actors - had the effect of fragmenting the struggle (Scheingold 2004), in the sense that there was a disconnection from the contract workers' agenda and a tighter focus on the situation of the Moroccan railway workers. This was re-problematized through the legal - and moral - framework of non-discrimination (AUTHORS A and B).

II Racial discrimination as implicit in mobilisation

During the first few years of mobilisation, this framing suggested that the abolition of the nationality clause would make the issue of the Moroccan PS25s disappear. It was the difference in status that was at the heart of the denunciation of the trade union discourses and leaflets, and not racism and racial discrimination. However, were Moroccan PS25s purely perceived by their trade union supporters in terms of "legal" categories, be they those of salary status or nationality? Did these institutional differences exhaust the categorisations of which they were the object in these interactions?

The previous section has shown that the Moroccan PS25s were the object of other forms of categorisation in the context of work and of the relations that were established therein, not only during their careers but also during trade union and judicial mobilisation. The railway workers were 'othered' and exploited beyond their differences in status and nationality. These imputations of (negatively connoted) practices, behaviours and capacities on the basis of origin can be seen as a form of racialization (Essed 1991) and essentialisation which is more broadly embedded in a context of domination favouring the overexploitation (Balibar and Wallerstein 2011) of the wages of the railway workers in question.

Careers marked by the experience of racism and discrimination

Above and beyond the objective differences in status that hindered the careers of PS25s compared to their French colleagues - whose objectification constituted essential evidence during the court cases - the testimonies given by the railway workers revealed numerous forms of harassment that pointed to a general denial of recognition (Honneth 1996). While not central to the interviews, and without always being named as such, the respondents spoke of racist interactions with their direct colleagues, and more generally of stereotypes used against them in relation to their abilities and, ultimately, their origins.

These stereotypes had concrete consequences. The essentialisation of their physical capacity - and the denial of their intellectual or managerial capacity - meant they were confined to jobs that were low-skilled, tiring and dangerous to their health. Another reason for the absence of career development was the representation that the company had had of these employees based on their origin: their immigration was in fact viewed through the "illusion of the provisional" (Sayad,

Bourdieu, and Macey 2018), i.e. from the perspective of a short-term return to the country of emigration. It did not therefore seem necessary to consider a career perspective for the employees in question. Although the various trade union mobilisations of the 1980s and 1990s made it possible to strengthen this default status, they did not make it possible to turn them into full-blown railway workers for whom there was a long-term projection. One might therefore hypothesise that this organisational blindness was based on a lack of recognition of the reality of their work, which was rooted in belittling racist stereotypes.

Moreover, the respondents regularly mentioned their difficulty in making union colleagues aware of the specific problems and difficulties linked to their status. One example often came up in the interviews, that of trade union lists. According to the respondents, when Moroccan PS25s were asked to appear on the lists for union elections, it was to "win the support of the Moroccans". Nevertheless, the denunciation of racism was not always at the heart of their narratives concerning their past experience at work and it did not exclude a feeling of worker pride and of belonging to the "railway worker family". This worker pride seemed to allow them to make the best of their experiences of racism in the workplace.

Ambiguities in union support

In the early 2000s, trade union support for the cause of the Moroccan PS25s was effective and decisive. But this support was not offered by all trade unions represented at the SNCF. It was essentially that of SUD-Rail which had come into being on the basis of "inclusive" positions, among others (Bérout et al. 2011). Conversely, the CGT majority union quite explicitly defended a form of statutory privilege inseparable from the nationality clause.

Large numbers of Moroccan PS25s had been working for the SNCF since the 1970s. But it was only 30 years later that their status became a trade union "cause" in its own right. Finally, this trade union support was not without ambiguity. For example, to prove that some unions had not waited for the mobilisation of the Moroccan railway workers in the 2000s to communicate on the case of foreign contract workers, a trade union official from SUD-Rail shared with us a comic strip taken from the CFDT union archives, dating back to the late 1980s.

PHOTO 1 here

In this sequence, two railway workers described as SNCF "auxiliary workers" come to see a superior to inform him of their demands concerning the conditions for promotion and health insurance contributions, etc., which are less advantageous than those of their French colleagues in the permanent framework. The strip underlines management's cynicism in this matter. Yet at the same time, it shows that for at least some of the trade union actors, the auxiliary workers were assimilated to non-whites (phenotypes and other physical characteristics referring to racial characteristics) and were socialised outside of metropolitan France (as evidenced by the supposedly West Indian accent of one of the protagonists).

This sequence has no demonstrative value. It does, however, testify to the association of ideas in play, if only in trade union communication and through a clearly stereotypical drawing, with "auxiliary workers" and racial minorities identified as such.

Above and beyond this example, the practices and discourses of SUD Rail's management also contributed to the otherness of this marginal section of the workforce. This process was based on the consideration of a certain number of characteristics of the Moroccan PS25s: language, physical appearance, mode of organisation and propensity to mobilise. Some of these traits (and among many other characteristics) objectively characterised a large proportion of the PS25s (such as the fact

of speaking Arabic among themselves), while others characterised them only by presumption and through the activation of stereotypes resulting from the perception of physical appearance (such as the fact of taking the wearing of beard to mean a significant place attached to religious commitment). Finally, a third set of characteristics was based on stereotypes and collective reputations, such as the belief that immigrant workers did not mobilise very often and demonstrated individualistic behaviour.

When a SUD-Rail federation executive who had worked to unionise the Ismaïlia association and to expand its mobilisation referred back to the hesitation of union management to embrace the PS25 cause, he talked about how he had above all perceived them in terms of their exteriority:

"When we saw Ismaïlia, we said to ourselves: 'What's all this?' [...] I won't hide the fact that for a month or two I had the leaflets they were writing translated by a Moroccan friend [laughs]. I wanted to make sure there wasn't a religious side to them. [...] We didn't really know what Ismaïlia was [...] We reached a time when there was communitarian work going on. We looked into it. We quickly realised that this was not at all the case, so afterwards we didn't think about it anymore" (Interview 23/11/2015).

The fact that Arabic was the language spoken by the mobilised Moroccan PS25s aroused mistrust within the trade union framework. The name of the association, Ismaïlia, was also associated with a Muslim religious content. Yet the association's founders regularly pointed out that it referred to the Moroccan city of Oujda, from which many of them came. This choice therefore stemmed from the community-based organisation of the PS25s, who were simply referring to their country of emigration. Finally, the assimilation of A. Katim to an "imam" was a third factor that sealed the perceived exteriority of this collective. Anti-communitarian prejudices reinforced the suspicions of SUD-Rail's trade union activists, some of whom were involved in extreme left-wing parties that often maintained distrustful relations with regard to religious matters.

Race made visible by judicial proceedings

The history of mobilisation shows how the racial dimension loomed over the issue of nationality and related legal status, even though it was never problematised as such. Its strictly judicial aspect accelerated the *visibilisation of 'race'* (Guillaumin 1995), even if this visibility was always understood in a minor, implicit or contested fashion. The judicial moment thus offered a striking contrast between public ordeals, where race was seen in multiple ways, and the continuity of a legal framework that obscured the racial dimension of the social relationship highlighted in the court case.

Whether at first instance or on appeal, at no point did the judicial decisions mention a racial reason for the discrimination, in connection with what would have been a stereotypical assignment of inferior qualities to the Moroccan railway workers. The judges' arguments were purely consequentialist, denouncing not the nationality clause as such, but its impact on various aspects of the professional and salary trajectories of foreign workers. From this point of view, it was merely a mismatch between the legitimacy of the national norm (the nationality requirement for becoming a railway worker under the permanent framework) and the illegitimacy of certain of its consequences with regard to non-discrimination law. Recognition of the continued discrimination despite French naturalisation (when this was obtained after the age of 30, thus preventing one from integrating the permanent framework) nevertheless already highlighted an effect of "origin", i.e. the perpetuation of the effect of the initial nationality even after the acquisition of French nationality.

The survey nevertheless allows us to question this judicial ignorance of race. In our opinion as observers, it would seem that the public mobilised in the judicial arena made visible a potentially racializable form of otherness. For example, the Moroccan railway workers tended to speak Arabic among themselves, often wore traditional skullcaps and/or were accompanied by their wives wearing the hijab.

This brief description does not, of course, allow us to conclude that there was racialization (except to produce it ourselves through our description), but it does show that the railway workers did not consciously or unconsciously opt for a strategy to invisibilise their 'Arabness' and/or 'Islamity' in judicial arenasⁱⁱⁱ. Conversely, the interactions of non-Moroccans in the face of this visibility can be difficult to interpret, as the following example shows:

"During one hearing, I was talking with the presiding judge about the influx of plaintiffs, which he admitted he had not foreseen, and the organisational problems that this posed; we were joined by a Moroccan railway worker who lectured him on this subject. The railway worker pointed out that Friday was not a good day for hearings, while adding, with a knowing look, that he would not tell him why. The judge agreed: "ah yes, for religious reasons". Next to us, a man took off his shoes, got down on his knees and started praying. The judge was about to step towards him but changed his mind." (Observation made by AUTHOR A, 5 May 2014, Conseil des prud'hommes de Paris).

Other scenes also appear to reveal possible forms of annoyance, such as when a judge became irritated when the ringtone of a plaintiff's phone rang out a prayer in Arabic, without us being able to determine whether or not his irritation was due to the Arab-Muslim content of the ringtone.

There is some evidence to support the argument of a process to racialize the case. A systematic analysis of its representations in articles in the national press since 2001 shows the importance of the 'racial' interpretation of discrimination. Railway workers are described as "natives of the railways", whose prematurely aged bodies contrast with the original physical power that the company had exploited. The spread of the term "*chibani*" - "white hair" in Arabic - in the media from 2015 onwards demonstrates the imposition of this racializing imaginary, conjuring up widely disseminated representations at the crossroads of Arabness, the frailty of old age and the male gender. Although the tone of the articles differs in accordance with the media concerned, the latter nevertheless showed no hesitation in describing a situation of discrimination that was based on the specific exploitation of a fragile and marginalised population. These discourses echoed the Moroccan railway workers' own denunciations, at the hearings or during live interviews with journalists, who made extensive use of the vocabulary of exploitation, denial of recognition and dehumanisation to describe their treatment by the railway company.

More surprisingly, racialization could also be maintained within the mobilised group. Some of the most active members of the collective regularly referred to the figure of the Moroccan "country bumpkin" to criticise the poor comprehension skills of the less educated complainants who had an imperfect command of the French language. These practices and discourses of distinction thus contributed to the reproduction of a stigma linked to a deskilling deemed to be due to an alleged lack of civilisation, at the intersection of race and social class.

More anecdotally, in the absence of concrete evidence, an article in the weekly *Le Canard enchaîné* newspaper of May 6, 2015 revealed that the judge who had been considered for the labour tribunal had been excluded from the case due to her own Moroccan origins: if this information is accurate (it was certainly not denied), it attests to an institutional racial prejudice based on a belief in community solidarity that calls into question the ability of this judge to fulfil her professional role.

Confirming the racial character of the discrimination

Signs of the racial dimension of the case remained largely implicit, making their objectification uncertain or questionable. Conversely, some actors made this racial dimension explicit. This interpretation, which goes beyond an analysis in terms of nationality alone, is found in the comments and actions of a small collective within the SNCF, represented by a young former railway worker, also of Moroccan origin. Through his association - the "Droit à la différence" (the right to be different) - he denounced cases of a racial discrimination that he considered to be rampant within the company. He wanted to use this case to reveal the continued discriminatory treatment of employees of Moroccan origin and, more broadly, of post-colonial origin, above and beyond the legal issue of nationality. He then took the case to the Front Uni de l'Immigration et des Quartiers Populaires (FUIQP – united front for immigration and working-class districts), which fought "class, race and gender domination" and brought together complainants and anti-racism activists. These attempts to broaden and connect, whether inside or outside the SNCF, nevertheless remained limited due to the refusal of legal professionals to politicise the case for the purposes of judicial strategy.

The attempt at "racial" framing was to be most evident in the speech made by the representative of the *Défenseur des droits* at the Court of Appeal hearing. Following the model of the Swedish Ombudsman, the role of this independent constitutional authority, created in 2011, was to ensure the effectiveness of various rights, including that of non-discrimination; it replaced the High Authority against Discrimination and for Equality, itself the result of the Europeanisation of anti-discrimination policies (Guiraudon 2009). Over the years, racial discrimination had been increasingly taken up by the *Défenseur des droits* (2018 report). During this case, its offensive strategy was confirmed with the decision to be represented by Slim Ben Achour: the latter is a "cause lawyer" (Sarat and Scheingold 1998) trained partly in the United States and specialising in matters of racial discrimination. He has notably succeeded in getting the State convicted in relation to racial controls carried out by the police (Boutros, 2020).

As is allowed by law, he presented the 'observations' of the *Défenseur des droits* before the court and explained that the issue of nationality could not be separated from the criteria of origin and race, as these are intertwined. The existence of a maximum age condition for being granted this status had just "one objective: that of maintaining Moroccans who have become French within this social group". In concluding his pleading, Slim Ben Achour went on to generalise, linking the discrimination experienced by railway workers with that of those "who are perhaps their children and grandchildren", asserting the existence of a "continuum that is not unrelated to our colonial history".

The argument of a continuity between the national legal boundary and the symbolic racial boundary was put forward through the symbolically and institutionally powerful voice of the *Défenseur des droits*. The objective was not to assert that in this case national discrimination was intentionally covering up racial discrimination, but rather that the categories of nationality, origin and race were not watertight. There was an interplay of movement between these different social relationships that went beyond their legal validity: the nationality boundary *survived* through the category of origin which found forms of reification/categorization in racial assignments or demands. In this mobilisation, these interwoven social relations intersected with others: not only the question of age, but also those of social class and gender, directly linked to the type of material exploitation that these railway workers had to endure.

Conclusion

The history of this mobilisation thus allows us to follow the succession of different interwoven and variously arranged frames to grasp the injustice suffered by these railway workers. Initially, it was the question of statutory equality that was put forward as a reference for action, particularly by the trade unions: nationality was not refuted as a basis for differentiation, but was deemed to be a secondary criterion that specified rather than explained what was at the heart of the discrimination. Secondly, we saw a reversal of the relationship in favour of judicialisation when the victims' group took over the case: henceforth it was the issue of national origin discrimination that was at the centre of the denunciation. Access to status - or to equivalent rights - was then problematised by the victims as a consequence of their national otherness.

Other social relationships were connected to these two successive modes of framing that took place over the period in question; they were more or less explicitly problematized by the actors and helped to clarify the logic of injustice: first of all, of course, there was age and its different dimensions (Rennes 2019), which was not just a legal condition to gain access to the status, but also a criterion for differentiating between statutory and non-statutory retirement and a 'social age' related to the accelerated ageing of exploited bodies. Social class (and gender) was also a significant element in denouncing the physical dimension of exploitation, through the extremely physical, arduous and dangerous work carried out, entrusted only to men who were considered to be particularly suited to such difficult conditions. Finally, the question of race was of course omnipresent, albeit discreetly at first, not only in the way that the actors represented these railway workers, but also in how the latter perceived their own situation, fully aware that the specific form of exploitation that they were suffering was not solely linked to a nationality boundary (which many of them had in fact crossed). Some actors – and by no means the least important among them - took the plunge by offering, in political, judicial and media arenas, a directly racial interpretation of the discrimination experienced by railway workers.

Hypothetically, it would therefore be interesting to ask whether a court case on such a scale could have taken place to support the denunciation of racial discrimination, in the colour-blind context of French republican universalism. It is of course impossible to give a clear-cut answer, but in this particular case we can certainly see that it was the objectivity of the nationality category, and its direct consequences in terms of the possibility of gaining access to the status, that provided a basis for legal objectification. In judicial investigations there is no prior categorial support allowing one to clearly objectify the ethnicity of different railway workers for the purpose of making comparisons. Nationality provided an opportunity for the actors to coordinate around an identical definition of the social identity of individuals, to combine these definitions, to compare social groups and to *measure* the discrimination.

In this case, race - as a social relationship - did not generally need to be explicitly mentioned, because the nationality category worked equally well. As we have shown, this did not amount to a total negation of the racial issue, but rather to it being kept at the boundary between the implicit and the explicit. This minor-mode enunciation resonated with the structural constraints of republican grammar, supported by actors who considered the assertion of sub-groups within the national community to be illegitimate or dangerous (Lépinard 2013).

Race did not need to be explicitly stated in this situation, something that provided two major pragmatic advantages: that of facilitating the coordination of the actors, and that of avoiding an over-politicisation that might have had negative effects. However, while this judicial strategy was completely understandable as far as the complainants' interests were concerned, it did not make it

possible to counter the invisibilisation of discrimination that was strictly racial in nature. In France, the widespread nature of such discrimination remained largely under-problematised or even denied. From this standpoint, the Moroccan railway worker case seemed to be characteristic of racial blindness as the dominant ideological framework in France. Despite a certain number of minority voices, it essentially appeared to be a denunciation of and redress for an injustice relating to colonial history and to its immediate consequences, rather than a lever to condemn the structural character of racial and post-colonial discrimination. The absence of 'radiating effects' (McCann 1994) following this trial thus demonstrated the import of the universalist republican framework, despite the assertion in recent years of academic and activist voices offering a critical counter-hegemonic discourse. This conclusion refers more broadly to the ambiguous nature of judicial arenas: while the law can at times be a repertoire of action at the service of social change and the fight against inequalities (Stryker 2007), its use nevertheless remains largely constrained by compliance with the prevailing rules and is therefore not conducive to substantial ideological change.

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PHOTO 1



Extract from a CFDT-Gare de Lyon union brochure December 1989

ⁱ The "labour chamber of the court of appeal" (chambre sociale de la cour d'appel) is the specialist appellate court for disputes relating to private employment. Disputes are considered in terms of civil liability and redress (and not of guilt and conviction as is the case in the criminal courts). The level below the labour chamber of the court of appeal is the industrial tribunal: its particularity is that the judges who sit on it are industrial tribunal judges, elected from trade union, employee and employer lists.

ⁱⁱ The controversy around “ethnic statistics” has reared its head several times in French public debate since the end of the 1990s. The question was last notably raised by Sibeth Ndiaye, then the Government Spokesperson. In June 2020, she proposed reopening the debate regarding the relevance of generating such data at the national statistics level. She came under fire from the overwhelming majority of political actors across the spectrum.

ⁱⁱⁱ We have no reason to believe that this non-invisibilisation responds to an intentional judicial strategy, any more than we have observed any injunction from legal professionals to understate the signs referring to a supposed Arabness.