Date of Hearing: 05 JULY 2004

N MALICK       Complainant

vs

567 CAPE TALK   Respondent

TRIBUNAL:       Prof Kobus van Rooyen SC (Chairperson)
                 Mr Ratha Mokgoatlheng (Viewer Listener Representative)
                 Dr Lynda Gilfillan (Co-Opted Member)

Complainant:    The Complainant in person, assisted by Sulayman Lukie,
                 Nazeem Malick and Mogamad Sedick Lukie.

Respondent:     Ms Pheladi Gwangwa, Regulatory Affairs Manager, Primedia

Comment – insert by American commentator on the Iraq war found to have been unfair.
Steps should be taken to balance the insert either in the insert itself or within a reasonable period of time thereafter. N Malick vs 567 Cape Talk Case No: 25/2004

SUMMARY

A complaint was received from a member of the Muslim community in Cape Town that, in a regular news commentary insert, the Iraq war is frequently presented in a biased manner and Muslims themselves are portrayed in a negative way and dealt with unfairly.

The Commission held as follows:

Given the fact that the Connie Lawn broadcast could be regarded as a broadcast which forms part of the early morning news commentary, it is of public importance,
not only from a global perspective but also within the South African context. Since freedom of speech lies at the heart of democracy and a broadcaster has the right to inform listeners in the manner it chooses, it would be wrong to find that the broadcasts should be stopped. However, the broadcaster has a duty, in terms of the Broadcasting Code, to ensure that the commentary of Connie Lawn is based on facts truly stated or fairly indicated and referred to. Cape Talk can only achieve this aim by affording the listeners the opportunity of hearing opposing sets of views. However, given the fact that the programme is clearly pro-American, this would probably not be possible within the parameters of Connie Lawn’s interview. Nevertheless, if this aim cannot be achieved, it is obligatory for Cape Talk to ensure that the views expressed are balanced, at least within a period of seven days, by broadcasting a news insert which deals with problems seen from the Iraqi side. In any case, Ms Lawn must be informed that any criticism against Muslims as such must either be avoided or balanced in the interest of fairness, either in the same programme, or in a subsequent insert, within a reasonable time. This places an obligation on Cape Talk to monitor what Ms Lawn says on a daily basis and then to ensure, where her comment is deemed to be unfair, that the necessary balance is provided in a subsequent news commentary insert that is related to the programme, by the next morning, or, at least, within a period of seven days.

The Complaint was upheld.

JUDGMENT

JCW van Rooyen, Chairperson

[1] The Registrar of this Commission received a complaint from a Mrs Malick regarding a regular news commentary insert between 06:30 and 7:00 by Cape Talk that frequently deals with the war in Iraq. The commentary is that of Connie Lawn, an American journalist.

[2] It was common cause that a substantial number of Muslims live in Cape Town and in the surrounding areas of Cape Town. A large number of this community forms part of the listeners of Cape Talk. The core of the complaint was that Connie Lawn had for some time clearly sided with the American cause in Iraq. In the process, the plight of the Iraqis and the Muslims in Iraq has constantly been downplayed, to the extent that Cape Talk has been unfair towards them and had, accordingly, contravened the Broadcasting Code.
Ms Malick’s complaint reads as follows:

The initial complaint which the Registrar received reads as follows:

‘I am writing to you because I have complained to Capetalk on numerous occasions about the vicious, hate filled statements made on a daily basis by their USA correspondent, Connie Lawn. I have emailed the interviewee and also the station manager on numerous occasions and I have not received acknowledgement of the complaint.

The interview takes place every week day at 06h40 and lasts for + 10 minutes. Every opportunity is taken by Connie Lawn to incite hatred towards muslims. Whenever she gets an opportunity she incites hatred towards Islam/Muslims. She says things like "they hate us for our freedom and our Judaeo-Christian way of life" "These people are bad news" "Saddam Hussein should have gone the route of his sons he is of no use to us" "South Africa should be on alert because Pakistani’s are attending the madressahs in South Africa" She implies that anything Islamic is bad, even muslim schools. Right through the war she made these statements and not once mentioned the fact that the WMD do not exist. She just continues with her muslim hatred.

What perplexes me is the Capetalk host never asks her how can you continue to make these statements, where is the proof? She promotes the USA/Bush as saintly. What about the hundreds of thousands of Iraqi's killed by US bombs. She condones the killing of muslims, no problem. She has never mentioned facts, she continuously rants and raves about how much muslims hate their way of life. This woman has for the past year incited so much hatred towards muslims and Capetalk hosts have never asked pertinent questions as to what does she think caused this so-called hatred. This is the worst kind of hate speach. Any listener will immediately get the feeling that all muslims hate christians.

Why does Capetalk give her this Carte Blanche to continue with these views even after so many countries including our own knows their is another reason for this war other than "these people are bad" as she puts it.

This woman is an ultra right wing journalist that repeats everything that the Pentagon says and never questions them. To give you an idea of her blatant statements she said Janet Jackson is a slut, the host was so shocked he asked her to repeat her statement and she did. Why is Capetalk allowing this? Tim Modise has for months had interviews about how sinister the plotting for war has been and tried his best to interview people who could give us the truth of what was happening. Capetalk's is really promoting one-sided biased hate filled views by having this journalist on every morning. She is so biased she wont allow any other view. In the interest of truthful reporting I think they should interview a journalists who can enlighten us listeners not promote doses of hatred on a daily basis. Take a look at what Christiane Amanpour said:

Iraq: CNN's Amanpour on US media war record. CNN's senior correspondent Christiane Amanpour has accused US TV networks of allowing themselves to be 'intimidated' into taking up the US official line during the war on Iraq. She also admitted self-censorship at
CNN. Many networks, including her own, were "intimidated by the (US) administration and its foot soldiers at Fox News," she said.

Connie is clearly one of these journalists who only promote one view this is not good enough for us in SA. I think the South African public is mature enough because of our history to know that there is another side. She is damaging the relationship between muslims and judaeo-christians by continuously pushing one biased side heavily by promoting war and violence. I will forward the emails I sent to Capetalk if you need it.”

[4] Cape Talk’s response reads as follows:

“N MALICK / CAPE TALK: COMPLAINT ABOUT CAPETALK’S USA CORRESPONDENT

1. CapeTalk is in receipt of a complaint from one N. Malick that complains in general about the tone of CapeTalk’s USA correspondent Connie Lawn. As the complainant did not specify a date on which the allegedly offending remarks were made, we have enclosed a copy of the broadcast of the 19th of March 2004, which is the date on which the complaint was sent to the BCCSA.

2. The statements complained of were made in the breakfast show, which is broadcast between 6h00 and 09h00. This show is a fast paced news and information slot featuring local, national and international stories. The essence of the show is to ensure that listeners are apprised of what has been happening in their world and in other parts of the world, either the previous day or while they were sleeping. For that reason, the show includes news reports and commentary from other parts of the world such as the UK, the USA and the African Continent. It is one of these slots that the complainant is not satisfied with.

3. Connie Lawn is CapeTalk’s USA correspondent. As a longstanding correspondent of the White House in America, Connie’s reports mainly focus on the views of the White House; she also reflects on the views that are expressed in the American media. Her views are balanced by commentary from the talkshow host and from analysts and experts. For example, during the Iraqi War, Connie’s comments have been leaning more towards the USA Government but these were balanced either in the same show or in other shows through interviews with experts on USA Foreign Policy and other political analysts who did not support the War. In the broadcast that has been provided, the presenter interjected when Connie said that “Uman Alta Khari is wanted dead or alive, preferably dead” in reference to an alleged manhunt on the Pakistani/Afghan border for Uman Alta Khari who is allegedly Osama Bin Laden’s deputy.

4. It would seem to CapeTalk that the complainant advocates for sanitisation of the airwaves where anything stated that remotely criticises people who adhere to the Islamic faith should not be allowed. The broadcast of the 19th of March does not constitute hate speech, as alleged by the complainant. For speech to lose constitutional protection, it must be found to have amounted to “advocacy of hatred based on religion” and to have “constituted incitement to cause harm”.

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Thus, the broadcast in question must satisfy the requirements of the two legs of the inquiry, before it loses constitutional protection.

5. Should the complainant supply more details of the dates on which the statements made in the complaint were uttered, CapeTalk would certainly respond thereto fully.”

[5] Clause 35 of the Broadcasting Code provides as follows:

**Comment**

35.1 Licensees shall be entitled to broadcast comment on and criticism of any actions or events of public importance.

35.2 Comment shall be an honest expression of opinion and shall be presented in such manner that it appears clearly to be comment, and shall be made on facts truly stated or fairly indicated and referred to.

[6] This Tribunal has, on occasion, held that news comment on foreign matters\(^1\) does not qualify as being comment on matters of “public importance” and that fairness and balance are, accordingly, not required in terms of clause 35 or its predecessor, clause 3. The reason for this approach has been that the requirement of “public importance” clearly pertains to matters of public importance in the Republic itself. From a practical point of view, it is, in any case, difficult for this Tribunal to establish what “balance” and “fairness” means within a foreign context: this is so since we simply do not have the necessary access to what exactly takes place in a foreign country. It would, in any case, seem unfair to take a decision from South Africa as to what constitutes fair coverage of a foreign event. On occasion, it has, however, been regarded as a matter of public importance where, for example, the producer was afforded the opportunity to further motivate his position as to the Jewish-Arab conflict in an interview with a local interviewer.\(^2\)

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1. *N Dinur, D Mankowitz & EMET SA vs M-Net, Case No 11/2002*
*M Loomat & Others vs SABC3, Case No: 03/2002*

2. *N Dinur, D Mankowitz & EMET SA vs M-Net, Case No: 18/2002*
*J Shoot, EMET SA, Rabbi Elfassi, J Brill, J Esekow & Others vs e-tv, Case No: 08/2003*
Given the fact that the Connie Lawn broadcast could be regarded as a broadcast which forms part of the early morning news commentary, it is of public importance, not only from a global perspective but also within the South African context. Since freedom of speech lies at the heart of democracy and a broadcaster has the right to inform listeners in the manner it chooses, it would be wrong to find that the broadcasts should be stopped. However, the broadcaster has a duty, in terms of the Broadcasting Code, to ensure that the commentary of Connie Lawn is based on facts truly stated or fairly indicated and referred to. Cape Talk can only achieve this aim by affording the listeners the opportunity of hearing opposing sets of views. However, given the fact that the programme is clearly pro-American, this would probably not be possible within the parameters of Connie Lawn’s interview. Nevertheless, if this aim cannot be achieved, it is obligatory for Cape Talk to ensure that the views expressed are balanced, at least within a period of seven days, by broadcasting a news insert which deals with problems seen from the Iraqi side. In any case, Ms Lawn must be informed that any criticism against Muslims as such must either be avoided or balanced in the interest of fairness, either in the same programme, or in a subsequent insert, within a reasonable time. This places an obligation on Cape Talk to monitor what Ms Lawn says on a daily basis and then to ensure, where her comment is deemed to be unfair, that the necessary balance is provided in a subsequent news commentary insert that is related to the programme, by the next morning, or, at least, within a period of seven days.

Ms Gwangwa indicated to the Tribunal at the hearing of the matter that Cape Talk has informed Ms Lawn of the complaints and that she has taken steps to ensure more fairness.

Although we believe that Cape Talk has contravened the Broadcasting Code, we also believe that it would only be fair not to impose a sanction. There was no
mala fides or gross negligence on the side of Cape Talk. This decision should, accordingly, rather be regarded as a decision which requires Cape Talk to take the necessary steps to avoid the contravention referred to. If the Code is *prima facie* contravened by the Connie Lawn insert again, we will once again hold an inquiry and determine whether the necessary steps have been taken. It should be borne in mind that we have often held in the past that perfect balance is impossible. Only in a case where we can unequivocally conclude that a programme was unfair, would a contravention be found. This approach is in the interest of free speech and based on the necessity that broadcasters should not unduly be stifled in their news coverage and comment.

The Complaint is upheld.

JCW VAN ROOYEN
CHAIRPERSON

*Commissioners Mokgoatlheng and Gilfillan concurred.*