DATE OF HEARING: 9 JULY 2010

J BARREIRA

vs

94.7 HIGHVELD STEREO

TRIBUNAL: PROF KOBUS VAN ROOYEN SC (CHAIRPERSON)
PROF HENNING VILJOEN (DEPUTY CHAIRPERSON)
MS ZALI MBOMBO
MR BRIAN MAKEKETA

Complainant: The Complainant was invited but did not attend.

Respondent: Ms Khahliso Mochaba, Human Capital & Regulatory Affairs Manager Primedia (Proprietary) Limited

Complaint that by using the word “Porra”, the presenters of the “Rude awakening” had a go at the Portuguese community, that the use of the word was offensive and uncalled for – Tribunal finding that, judged in context, there was no advocacy of hatred, nor was there any incitement to cause harm - Barreira vs 94.7 Highveld Stereo, Case No: 16/2010(BCTSA)

SUMMARY

A complaint was received that by using the word “Porra”, the presenters of the “Rude awakening” had a go at the Portuguese community. They alleged that the use of the word was offensive and uncalled for. It appeared that in Brazilian
Portuguese “Porra” is used as an expletive. It can also mean “semen”. The Tribunal found that, judged in context, there was no advocacy of hatred based on race or ethnicity, nor was there any incitement to cause harm.

JUDGMENT

PROF HP VILJOEN

[1] During the “Rude Awakening” show on 8 June 2010 reference was made to Portuguese speaking people in Portugal, Madeira, Mozambique and “Joburg” South. The term used for Portuguese people by the presenters was “Porras”. This word was used twice. A complaint was received from a listener to the programme about the use of this word.

[2] The complaint reads as follows:

“Mr. Jeremy Mansfield and Mr. Darren Simpson during the Rude Awakening show this morning, 8th June 2010 (8:45), had a go at the Portuguese community, both immigrant and Luso decedents born in South Africa. They used the derogative term “Porras” on numerous occasions.

I find this reference to the Portuguese community offensive and uncalled for, and unfortunately when “role models” use these derogative terms, it permeates throughout our South African society, which may lead to certain sectors of our society, using publically broadcasted derogative terms to ostracize other communities.”

[3] The broadcaster responded as follows:

“DR JOSE BARREIRA / 94.7 HIGHVELD STEREO – USE OF DEROGATORY TERM

1. 94.7 Highveld Stereo is in receipt of complaint from Dr Jose Barreira (“the complainant”) about on-air use of the word “Porras” by two of the station’s presenters.

2. The office of the Registrar at the Broadcasting Complaints Commission of South Africa (“the BCCSA”) has directed the station to respond to the complaint in terms of clause 16.3 of the BCCSA Code of Conduct (“the
Consequently, the station deals with the provisions of clause 16.3 of the Code below.

3. **Clause 16.3 of the Code**

3.1 Clause 16 of the Code is titled “Violence and Hate Speech against specific groups” and clause 16.3 provides that:

16.3 Licensees shall not broadcast material which, judged within context, amounts to (a) propaganda for war; (b) incitement of imminent violence; or (c) the advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm.

3.2 **Clause 16.3(a) of the Code**

3.2.1 The provisions of clause 16.3(a) prohibit the broadcast of propaganda for war as well as incitement of imminent violence.

3.2.2 94.7 Highveld Stereo submits that the language complained of constituted neither propaganda for war nor incitement of imminent violence. In fact, the complaint itself does not allege either of the two. Consequently, the station respectfully submits that clause 16.3(a) does not apply to the complaint and therefore, has not been contravened.

3.3 **Clause 16.3(b) of the Code**

3.3.1 Clause 16.3(b) prohibits broadcast of material that when judged within context amount to “incitement of imminent violence”. In this regard, the wording makes it clear that there are two elements that a broadcast has to meet in order to fall within the ambit of this clause, namely that there has to be “incitement” of violence and the violence has to be “imminent”.
3.3.2 The language complained of has to be looked at and judged in the context of what incitement and imminent mean. For the language to contravene the provisions of clause 16.3(b) of the Code, then the language should have encouraged or stirred up or urged on or provoked violence. Furthermore, the broadcast should not have just ended at incitement of violence but the violence incited must have been imminent and should have been real in the sense that it should have been immediate and/or should have been about to happen at the time of the incitement.

3.3.3 94.7 Highveld Stereo submits that the language in question did not in any way urge or provoke or stir up violence and did not result in any immediate violence to anyone. Consequently, it is our submission that there has been no contravention the provisions of clause 16.3(b) of the Code.

3.4 Clause 16.3(c) of the Code

3.4.1 For the language complained of to constitute “advocacy of hatred” in terms of clause 16.3(c) of the Code, the advocacy has to be based on race, or ethnicity, or gender or religion.

3.4.2 There are three elements to clause 16.3(c) of the Code and these are:

? advocacy of hatred;

? based on listed grounds; and

? that constitutes incitement to cause harm. We deal with each of the three elements below.

3.4.3 For language complained of to have constituted advocacy of hatred, it ought to have publicly supported or recommended or provoked or promoted or pleaded for detestation or ill-will against the Portuguese community. The broadcast in question did not in any way recommend or support or urge any action whatsoever against the
Portuguese community. It only made use of language that some people may consider to be in bad taste. It is therefore 94.7’s respectful submission that the language complained of did not publicly support or recommend or plead for any detestation or ill-will against the Portuguese community.

3.4.4 As has been shown above, the language fails to meet the first element, i.e. it does not constitute advocacy of hatred, therefore, the need to go into each of the other two elements falls away as in order for 16.3(c) to be contravened, all three elements ought to have been contravened. Consequently, we submit that there has been no contravention of clause 16.3 of the Code.

4. While the station acknowledges that some segments of our society may have found the language highly offensive, the language however does not amount to hate speech. The station wishes to reiterate its submission namely that, the language complained of did not in any way urge or provoke or stir up violence or instill detestation, enmity, ill-will and malevolence towards the Portuguese community. To use the Commission's words in *C Eatock vs 94.7 Highveld Stereo* Case No: 2004/22, we submit that the statements “did not go so far that the likely reasonable listener who is not overtly sensitive would conclude that the statements advocated hatred that is based on religion and that constitutes incitement to cause harm”. “

[4] In complaints like this one we always have to consider the context in which the word or words complained of was used. The words were used during the programme called “Rude Awakening”. This is not the first time that the broadcaster, 94.7 Highveld Stereo, has to appear before us for words that were broadcast during the “Rude Awakening” show and which were considered to be offensive. By stating this, we are not expressing bias against the broadcaster in any manner. It is just to state that we have experience with this type of complaint and that we want to treat this kind of complaint in a manner consistent with how we have treated similar complaints before.
As far as context is concerned, the programme “Rude Awakening” show contains a warning in its name that the listener must expect to hear words, jokes, stories, etc. that might disturb, offend or even shock the listener. The presenters Mansfield and Scott are also well known as radio personalities who say what they think, who do not regard many things or people with reverence and who are quite proficient in slaughtering holy cows. During this particular broadcast the discussion turned around the FIFA World Cup soccer competition and the particular reference was to the Portuguese team and to Portuguese speaking people. As stated in the first paragraph above, they twice referred to Portuguese people as “Porras”. The word was used in a joking manner and the context of the discussion was light hearted.

In a recent adjudication by commissioner Dr Lynda Gilfillan, 39/A/2010 Jose Ferraz/SABC2 (Erfsondes), the commissioner had to consider whether the use of the same word “Porra” constituted a contravention of the Code. Deciding that it did not, she stated that it is an unfortunate reality that derisory terms exist to describe an “out-group” or the “other”. Examples mentioned by her are “Pom” (English), “Boer” (Afrikaner), “Frog” (Frenchman) and so forth. She stated that the existence of such terms is part and parcel of human language and that it would be an impossible task to sanitise such language which may even be used in a slightly satirical or even humorous manner. According to Dr Gilfillan, the word “Porra” is a slang abbreviation of the word “Portuguese” and there is nothing intrinsically offensive in its primary meaning.

From some research done on the Internet (Wikipedia), it appears that the term “porra” is used as an expletive, at least in Brazilian Portuguese. It is also used as a slang word for “semen”. Maybe the Complainant knows this but it is doubtful whether the average listener to the “rude awakening” would know this. However, this is not the test to decide whether there has been a contravention of the Code.
The question here is whether the word complained of constituted the advocacy of hatred based on race or ethnicity and whether there was incitement to cause harm. To decide on this, one has to consider the context in which the word was used, as stated above. The Complainant avers that the presenters “had a go at the Portuguese community” and broadcast “derogative terms to ostracize other communities”. This might have been the subjective perspective of the Complainant and he felt offended. We do not doubt that he felt offended – this, after all, is the reason for his complaint. Our task is to determine objectively whether the word used constituted hate speech.

We have to agree with the broadcaster that, judged in context, there is no promotion or provoking of ill-will against the Portuguese community with the use of the word “Porra”. The presenters made some remarks regarding the Portuguese in the context of the FIFA World Cup where peoples and communities from a variety of countries descended onto our shores. There was probably a lot of buffoonery in the broadcasts of the “Rude awakening” on other days where other nationalities had to bear the brunt. We cannot find any advocacy of hatred towards Portuguese speaking people. The broadcast concerned equally lacked the incitement to cause harm. Judged in context again, the light hearted way in which everything was said, cannot be judged to mean that the presenters incited their listeners to cause harm to members of the Portuguese community. We cannot find that there was incitement to cause harm. These two requirements, the advocacy of hatred and the incitement to cause harm were clearly not present in this programme. Likewise and for the same reasons, as far as clause 16.3(b) is concerned, we find that there was no “incitement of imminent violence”. We could not find any contravention of the Code of Conduct.

The complaint is, accordingly, not upheld.

HP VILJOEN
DEPUTY CHAIRPERSON
Commissioners Viljoen, Mbombo and Makeketa concurred in the above judgment of the Deputy Chairperson.