CASE NUMBER: 40/2011

DATE OF HEARING: 25 NOVEMBER 2011

C PHAHLANE obo GAUTENG DEPARTMENT
OF EDUCATION COMPLAINANT

vs

SAFM NEWS RESPONDENT

TRIBUNAL: PROF HENNING VILJOEN (DEPUTY CHAIRPERSON)
MS ZALI MBOMBO
PROF SR VAN JAARSVELD (CO-OPTED MEMBER)

FOR THE COMPLAINANT: Mr Charles Phahlane: GDE Spokesman and Mr Reason Mgwena: Communication Officer.

FOR THE RESPONDENT: Mr Fakir Hassen, Acting General Manager: Broadcasting Compliance, accompanied by Mr Solly Phetoe: National Editor, SABC Radio News and Ms Angela Bolowana: Education Reporter.

Complaint about a broadcast relating to Secondary School Improvement Programme of the Gauteng Department of Education – Broadcaster interviewed secretary of SADTU branch and gave Complainant opportunity to respond but Complainant refused for not wanting to give credit to secretary – after broadcast, complaint was lodged, based on the broadcast being consistently biased and factually incorrect – Tribunal finding no contravention of clause 11 (“News”), clause 12 (“Comment”) or clause 13 (“Controversial Issues of Public Importance”) – complaint not upheld - Phahlane obo Gauteng Department of Education vs SAFM, Case No 40/2011.
SUMMARY

This case deals with a complaint about a broadcast relating to the Secondary School Improvement Programme (SSIP) of the Gauteng Department of Education. The Broadcaster interviewed the secretary of a SADTU branch who averred that SSIP was a waste of money and should be scrapped. Before the broadcast the Complainant was given the opportunity to respond but the Complainant refused for not wanting to give credit to the secretary and because it wanted to wait until after the national conference of SADTU. After the broadcast, a complaint was lodged, based on the broadcast being consistently biased and factually incorrect. The Tribunal found that there was no contravention of clause 11 (“News”) in that the broadcast was factually truthful; no contravention of clause 12 (“Comment”) in that the broadcast was clearly comment and was made on facts truly stated; and no contravention of clause 13 (“Controversial Issues of Public Importance”) in that the opportunity to state the Department’s point of view during the broadcast was not utilised. No evidence of bias could be found. Complaint not upheld.

JUDGMENT

HP VILJOEN

[1] On 8 September 2011 at about 12:26 the Defendant radio station (SAFM) broadcast a report in which criticism was expressed of the Gauteng Education Department’s Secondary School Improvement Programme (SSIP). This resulted in Mr Charles Phahlane laying a complaint on behalf of the Gauteng Department of Education with the Broadcasting Complaints Commission of South Africa.

[2] The complaint reads as follows:

“I wish to complain about the SABC radio who through its journalist Angela Bolowana consistently broadcasts biased and factually incorrect information about the Secondary School Improvement Programme (SSIP) of the Gauteng Department of Education.

The latest is a piece that was aired on 8 September 2011. The journalist initially sent me an email claiming Sadtu wanted the SSIP programme scrapped because the funds could be better used. I phoned her and asked which Sadtu she referred to and she said Sadtu –
Gauteng province. She knows very well the difference between a branch of Sadtu and the provincial structure.

This is deceitful. I am not sure which aspect of the code this violates, but it is clearly unethical and unprofessional and goes against the essence of journalism.

When I told the Head of the Gauteng Department of Education, he was actually in a meeting with the general secretary of Sadtu province Tseliso Ledimo and the MEC. I was called up to the meeting and upon discussion with Ledimo, he vehemently denied his organisation having said something of that nature.

I then phone the journalist but her phone went unanswered. I phoned her supervisor Mahlatse Gallens who dropped the phone and said her cellphone reception was poor and Angela was at the gym. I then failed to get hold of bulletins editor Zolisa Sigabi whose phone rang unanswered.

I am unhappy that Angela is attempting to give more credence to her unhappiness about SSIP by attributing that statement to the provincial structure when this is a mere branch. She does this ahead of an elective Sadtu conference where Nyathi is actively involved. This brings to question the ethics of the journalist.

I complained to the SABC and said I would raise the matter with the BCCSA.

This story is a sequel to another factually incorrect piece she broadcast in July 2011.

The July story was based on the first two days of the two-week SSIP winter school programme. She said:

1. The GDE is paying 360 teachers R9000 each to do nothing – this was non-attributed (violation of article 11.4 of the Code) and is factually incorrect (violation of Code 11.1).
2. That “Learners were not interested as no more than 5 000 attend”, also that “no more than five learners attend SSIP sites – gross generalisation of the situation in all the 341 sites (violation of article 11.2c). She could not have possibly visited more than a handful of sites.
3. The department is spending R300 million in two weeks on the programme (violation of article 11.1). This they admitted was factually incorrect and said they would retract. But the retraction was on two SAFM news bulletins but not on Radio Metro where this was broadcast widely and which has the larger listenership (violation of article 11.6).

In the latest story, she repeats her false assertion in the first story that no more than 5 learners attend classes.

The SABC had said it would come back to me regarding my complaints following a meeting held with them. I have received no response. Instead, they broadcast the second story.

It is strange that with Cosas and NASGB, she has comment from their provincial bodies, but with Sadtu she is basing her story entirely on a branch secretary – someone who does not have locus standi to speak on behalf of the province.

My request is that the BCCSA:
1. Assesses the two stories together.
2. That she substantiate or retract her assertion that no more than 5 learners attend classes when our figures show the contrary
3. Please make a finding on the ethics of the journalist to deliberately mislead the GDE in order to give credence to her and her protagonist’s fiction.
4. You rule on her bias and unprofessionalism towards the SSIP programme, firstly by publishing blatantly false information, and secondly by resurrecting a dead story to punt for her candidates ahead of the Sadtu elective conference.

I will be sending attachments of the two stories in a second email as the file is big.

It is SAFM on 8 September 2011 at 12h26. The earlier broadcast was on 29 June 2011 at 16h55. The reason I refer to the July report is because the second report is a sequel to the first one. It will give you the context within which the second story is a problem, even if you do not make specific rulings on it.

[3] The broadcaster responded as follows:

We will not address the complaint which refers to a broadcast in July which the complainant had the right to object to at the time but did not. Neither can we address the generic remarks alleging “consistently biased and factually incorrect” broadcasts which are not substantiated or detailed in the complaint.

As for the broadcast of 8 September 2011, the complainant himself admits that he was approached for comment on the matter but he declined the opportunity to go on air with his comment. This fact was mentioned in the broadcast, effectively providing the requisite right of reply.

We also believe that the remark that the approach of the journalist in question “brings to question the ethics of the journalist” is unfair and call for a retraction from the complainant.

It is true that the complainant contacted the SABC and there have in fact been interactions with him by senior management from the News Division about his concerns, which resulted in Gauteng Education MEC Barbara Creecy being interviewed on SAFm to clear up the issues she was dissatisfied with. We also ran bulletins containing the clarifications agreed on in the meetings. We submit that there has been no contravention of the Code.

[4] The Complainant had the opportunity to reply to the Broadcaster’s response and did so as follows:

“The crux of the issue I am raising is not whether I was offered a right of reply or not. The issue is the journalist deliberately misrepresenting “facts” when working on this second story. The reason for this misrepresentation, I submit, is the bias which is evinced by the July story.

If I am an ethical journalist I cannot phone an opposition politician and request them to comment on a statement made by the President of the ANC (which carries more weight) when in fact the statement was made by an ANC supporter. That is the issue I am raising, misrepresentation of credentials. Is the SABC not worried that its journalists are doing this? Does it encourage this?

But this indeed is a curious response from the SABC.

The respondent starts by saying they will not consider the July report, but then goes on to explain how they responded to that report in the second last paragraph. If the respondent wants to go back to that “story” they should say so. I made it very clear that the second story was not subject of complaint to the BCCSA but was instead submitted to indicate the bias of the journalist. You can use history to show bias, which is exactly what I am doing.
I went to the executives at the SABC as one needs to raise matters with the broadcaster concerned before going to the BCCSA or courts as a last resort. So if there has been interaction with the executives, can the correspondent indicate the outcome of those interactions with regards to the July story? For me they have amounted to nought because the journalist continues in the same biased vein as in July, this time using unethical tactics. If they prefer that I submit all complaints to the BCCSA and not interact with their executives, I will be happy to do that, strange as that may be. I am willing to address the BCCSA on this matter if necessary."

[5] We think it is necessary, at the outset, to determine the clause or clauses of the Broadcasting Code of Conduct in terms of which this complaint should be dealt with. As we understand the situation, this report and comments were broadcast in the context of a news actuality programme. There are thus elements of a news item, which would bring it within the ambit of clause 11 ("News") and also elements of comment on events of public importance which would bring it within the ambit of clause 12 ("Comment"). The basic requirement for news is that it must be broadcast truthfully, accurately and fairly. As far as comment is concerned, the Code requires that it must be an honest expression of opinion and that it must appear clearly to be comment and must be made on facts truly stated or fairly indicated and referred to. It could even be dealt with in terms of clause 13(1) which requires of broadcasters, when broadcasting on controversial issues of public importance, to present opposing points of view. We will come back to these clauses when we apply the law to the facts.

[6] In his complaint, Mr Phahlane referred to the “consistently … biased and factually incorrect information about the Secondary School Improvement Programme (SSIP)” for which the journalist Angela Bolowana should take responsibility. During his address to us, it appeared that this was not the first time that SIPP was the subject of an actuality programme of this radio station and by the same journalist. After the first programme sometime in July 2011, we were told, the Complainant met with senior management of the news division about his unhappiness with the broadcast and that this resulted in the MEC for Education being interviewed on radio. Certain clarifications were also broadcast. The Complainant confirmed that the dispute regarding the broadcast of July 2011 had been settled and that the present complaint before us concerned only the broadcast of 8 September 2011, beside the fact that any
complaint about the broadcast of July would have been out of time, according to item 1.3 of the Procedure of the BCCSA.

[7] Turning now to the broadcast of 8 September, we were initially made to understand by the Complainant that there were various factual inaccuracies in the broadcast. Attendance of the programme by learners of grades 10 and 11 was said to be as low as 45% on average. The Complainant said it was 48%. We did not regard this as a substantial inaccuracy. The Complainant also averred that it was stated in the broadcast that no more than 5 learners attend the classes. It transpired that in the broadcast it was stated that at one school it was alleged that only 5 learners attend classes. In the end it transpired that there were no inaccuracies of such nature that would bring us to the conclusion that clause 11 had been contravened.

[8] The main bone of contention, it seems, is the fact that the broadcast contained an interview with the secretary of the central branch of the South African Democratic Teachers Union (SADTU). According to this person the SIPP was a waste of money and should be scrapped. Before broadcasting this interview, the journalist phoned Mr Phahlane and solicited his response to what the secretary of the central branch had to say. Before answering the journalist Mr Phahlane spoke to one of his seniors who happened at that moment to be discussing another matter with the secretary general of SADTU. This last mentioned person denied that it was the official stance of the Union that the SIPP should be scrapped and that this matter would be discussed during the forthcoming national conference of the Union. The decision by the Department of Education, as represented by Mr Phahlane, was that there should be “no comment” to the allegations by the secretary of the central branch of SADTU. The argument, so we were informed, was that by not commenting on the allegations they would be denying credit to the secretary of a branch whom they considered to be of a lesser status than the secretary general. The Department thus did not make use of the opportunity, granted to them by the journalist, to present their side of the case to the listeners of the broadcast. By offering the Department the opportunity to respond to the allegations by the branch secretary, the Broadcaster was complying with the provisions of clause 13(1) of the Code. The Department chose not to make use of the opportunity and thus ran the risk of getting bad publicity.
Mr Phahlane spent some time in explaining to the hearing that the Department did not want to give any credit to the branch secretary. In a way he took the Broadcaster to task for broadcasting an interview with the branch secretary of SADTU instead of the secretary general. The Department decided to withhold comment until the matter had been discussed by the national conference of SADTU.

It was hinted by Mr Phahlane that the Broadcaster should have interviewed the secretary general instead of the branch secretary. Decisions like these are the prerogative of the broadcaster and it is not for the Department, nor for this Tribunal, to prescribe to the Broadcaster whom it should interview and whom not. If the Broadcaster considered the secretary of the branch as a representative of a Union viewpoint and creditable to be interviewed, it is its right to do so and it cannot be sanctioned for this.

It is our view that the broadcast was not in contravention of clause 12 because it amounted to an honest expression of opinion and it appeared clearly to be comment and was made on facts truly stated or fairly indicated and referred to. Neither could the Tribunal find any evidence of bias on the part of the Broadcaster.

As no contravention of the Code could be found, the complaint was not upheld.

PROF HENNING VILJOEN
DEPUTY CHAIRPERSON

Commissioner Mbombo and co-opted Commissioner Van Jaarsveld concurred with the judgment of the Deputy Chairperson