DATE OF TRIBUNAL: 08 APRIL 2002

RAND WATER COMPLAINANT

vs

SABC RESPONDENT

TRIBUNAL: PROF KOBUS VAN ROOYEN SC (CHAIRPERSON)
MR ARTHUR MAIMANE
PROF RAVI NAYAGAR

For the Complainant: Adv Annemarie De Kock instructed by Dison Ndlovu (Ms Karien Norval).

For the Respondent: Mr Mark Rosin from Rosin Wright and Rosengarten and with him Dr S Zikalala, Executive Editor, SABC; Ms D van Tonder, Acting Manager, Policy & Regulatory Affairs, SABC.

News – accuracy of – reports said to be “damning” whilst no such conclusion could be drawn from the first report which was in reality a summary of what had been established at workshops and from which no definite deduction could be made as to whether the report was “damning” - second report was critical, but certainly not “damning”. News items should, generally, not include comment from broadcaster. Comment in news items only acceptable in exceptional circumstances.

SUMMARY

The Rand Water Board complained that a news item on two internal reports was inaccurate. The BCCSA held that it was inaccurate to state that the reports were “damning”, whilst no such conclusion could be drawn from the first “report” which was in reality a summary of what had been established at workshops and from
JUDGMENT

JCW van Rooyen

Several broadcasts, both on TV and Radio, covered two internal reports from the Rand Water Board. It was said by the reporter from the SABC that the reports had been “damning” insofar as it was found that there was still racism within the Board.

The transcript reads as follows:

“Two damming reports commissioned by Rand Water have concluded that racism still exists within the organisation and that transformation has not been successful. This has prompted the South African Municipal Workers Union (Samwu) to call on the government to intervene, and the union is also demanding an urgent meeting with Rand Water management to discuss racism and health and safety issues at the work place.

Rand Water, which is a para-stal organisation and employs about 3 500, supplies water in bulk to a population of 10 million people in its 18 000 km2 service area. Its customers comprise three metropolitan municipalities and 40 mines and 100 small customers. However, the organisation is battling to transform itself.

SABC News is in possession of two reports commissioned by Rand Water at the cost of about a million rand.

The Mokgobo report, presented to Rand Water in June 1998, concluded that transformation has not been successful, and the Succinct report, submitted in September last year, also concluded that there are two cultures at Rand Water.

The report says Rand Water plants in Reitzvlei, Zuikerbosch, Water Treatment Technologies, Swartkoppies, Vereeniging and Central Depot are riddled with serious problems relating to racism and nepotism. It’s alleged that wives of senior staff members get to run canteens. The report also points out that there is disregard to health safety standards. Drinking and taking of drugs, working hours, theft and inequitable and unfair salary administration and single sex hostels is also matter of concern, the reports said.

With the allegations from the two damning reports hanging over the organisation, Piroshaw Camay, chairman of Rand Water board and Vincent Baath, the organisation’s CEO declined at the last minute to comment on the findings of the two documents.

Victor Mahlangu, Samwu official says the union has been concerned about members who have been complaining about racial practices at Rand Water. “We are demanding that these reports be made public. Rand Water management should meet Samwu as soon as possible so as to address
the serious nature of the reports and that the minister of water affairs, Ronnie Kasrils should intervene” said Mahlnagu.

Samwu says the outgoing board led by Camay and Baath have failed to transform the organisation. Baath is expected to leave Rand Water before the end of June, after more than 30 years of service. His retirement package is said to be about R12 million. It is believed that Sino Lushaba from Spoornet will take over from Baath as the new CEO in April.”

**The Complaint filed with the Registrar, reads as follows:**

“Complaint to the Broadcasting Complaints Commission: Rand Water / SABC

1. Rand Water herewith lodges a complaint in terms of the Rule 1 of the Procedure of the Broadcasting Complaints Commission of South Africa.

2. The respondent against whom the complaint is lodged is the South African Broadcasting Corporation.

3. The complaint arises from:

   3.1 A report broadcast by the respondent on SABC Television on 12 January 2002 (hereinafter referred to as “the television report”); and

   3.2 Reports broadcast by the respondent on SAFM Stereo and Motsweding FM on 14 January 2002 (hereinafter referred to as “the radio reports”).

4. Transcripts of the television and radio reports are annexed hereto, marked “A”, “B” and “C” respectively.

5. The complainant contends that, for the reasons set out hereunder, the aforesaid reports constitute a contravention of the Code of the Broadcasting Complaints Commission. More particularly, they constitute a breach of the respondent’s obligation:

   5.1 To report news truthfully, accurately and with due impartiality.

   5.2 To present news in the correct context and in a balanced manner, without any intentional or negligent departure from the facts by:

       5.1.1 distortion, exaggeration or misrepresentation;

       5.1.2 material omission; or

       5.1.3 summarisation.

   5.3 To afford the complainant a reasonable opportunity to reply to criticism against it.

6. The complainant contends that, as a result of the respondent’s breach of the Code, it has been seriously injured in its reputation.

7. As regards to the television report:

   7.1 It was stated that: “Two damning reports commissioned by Rand Water have concluded that racism still exists within the organisation and that transformation has not been successful.”

   7.1.1 This statement conveys that:
7.1.1 Authoritative factual findings had been made, in two reports, that racist policies are practised by the complainant and that it has failed in the transformation process; and

7.1.2 That such findings relate to the current state of affairs within the complainant.

7.1.2 The aforesaid implications are false and/or misleading, in that:

7.1.2.1 The Mokhobo report, referred to in the television report, was submitted in June 1998. Whilst the report did state that, in the investigators’ view, attempts at transformation had not been successful, the report made it clear, in its terms of reference and its description of the process used, that this finding was based on the investigators’ findings as to the views and perceptions of stakeholders and that these views and perceptions had not been tested to ascertain the factual correctness thereof. The report did not make any factual finding that racist policies existed within the complainant.

7.1.2.2 The Succinct report, referred to in the television report, was submitted in September 2001. It entails a report to the management of the complainants of the results of workshops held with all the employees of the complainant. At these workshops employees were invited to list what they believed the complainant should stop doing, start doing, and continue doing. The report does not purport to entail a finding of any kind, but simply conveys statements made by employees (who are not identified) during workshops.

7.1.2.3 It is important to note that the Succinct report does not purport to make any finding, or reach any conclusion, as to the existence of racism or the success of transformation process.

7.1.2.4 It is accordingly false and misleading to state that “Two damning reports” have concluded that transformation has failed and racism still exists. In so far as it may be contended that the Mokhobo report entails such a finding (which as stated above, is incorrect), this report, published in 1998, cannot support a statement that conveys that racism and a failure of transformation currently still exists within the complainant.

7.2 It was stated that: “the Mokgobo (sic) report, presented to Rand Water in June 1998, concluded that transformation has not been successful, and the Succinct report, submitted in September last year, also concluded that there are two cultures at Rand Water.”

7.2.1 As set out above, it is false and misleading to suggest that the Succinct report came to any conclusion. The report merely stated that a statement to the effect that there were two cultures at Rand Water had been made by an unidentified employee (or employees) during a workshop.

7.3 It was stated that: “The report says Rand Water plants in Rietvlei, Zuikerbosch, Water Treatment Technologies, Swartkoppies, Vereeniging and Central Depot are riddled with serious problems relating to racism and nepotism. It’s alleged that wives of senior staff members get to run canteens. The reports also points out
that there is disregard to health safety standards. Drinking and taking of drugs working hours, theft and inequitable and unfair salary administration and single sex hostels is also a matter of concern, the reports said.”

7.3.1 The aforesaid statement, which purports to be a summarisation of the findings of the two reports, is false and misleading.

7.3.2 As set out above, the Succinct report did not purport to make any factual finding as to the statements made by individual employees. Its expressed purpose was simply to relay statements made by individual and unidentified complaint.

7.4 It was stated: “With the allegations from the two damning reports hanging over the organisation, Piroshaw Camay, chairman of Rand Water board and Vincent Baath, the organisations CEO declined at the last minute to comment on the findings of the two documents” and “Samwu says the outgoing board led by Camay and Baath have failed to transform the organisation.”

7.4.1 The true facts are that the respondent’s reporter, Mr Snuki Zikalala, initially sought an interview with Mr Camay to discuss the appointment of a new CEO. It was conveyed to him that Mr Camay could not comment thereon until the appointment had been confirmed by the Minister. When the reporter indicated that he wished also to obtain comment as to the two reports, the complainant’s media relations manager, Mr Nxasana, advised him that Mr Baath could not give comment on such short notice and would be in a position to do so in approximately one week’s time. Mr Zikalala was requested to defer his report for such period, in order to allow Mr Baath to again study the reports. He refused to do so.

7.4.2 The complainant contends that the statement that Messrs Baath and Camay declined to comment is factually incorrect and that, in the circumstances, the respondent did not afford the complainant a reasonable opportunity to reply to the serious allegations levelled against it.

8. As regards the radio reports:

8.1 It was stated: “Two damning reports commissioned by Rand Water has concluded that racism does not exist with the organisation and that the transformation has not been successful and “Reports commissioned by Rand Water have concluded that racism still exists within the organisation.”

8.1.1 It is contended that, for the reasons as set out above, these statements are false and misleading.

9. The complainant will, if required, provide the Commission with copies of the Mokhobo and Succinct reports, referred to above, as well as affidavit evidence as regards the facts referred to in paragraph 7 above.”

Ms De Kock, on behalf of the Complainant, argued that the impression was incorrectly created that the reports were “damning” and that the view of a spokesperson at the Rand Water Board should have been obtained.
Mr Rosin argued that it would be wrong to conclude that a broadcaster could not say that reports were “damning”. The first workshop overview in reality reflected evidence of racism, which could not be ignored. The Mokhobo document was a report from two investigators whose terms of reference included the task to inquire into whether racism in any form existed within the structures at the Rand Water Board. The reporter was justified in making the deduction that this report was “damning” since there was a finding by the investigators that racism existed, even if only as a symptom. Transformation was, in any case, closely related to racism.

The complaint was also that a view from the Rand Water Board should also have been obtained and broadcast. The parties agreed that the SABC had attempted to get interviews. There was, however, a difference of opinion between the parties as to whether further attempts that week would have been successful: Ms De Kock contended that further attempts should have been made and that the SABC could have waited longer before publication. Mr Rosin explained that sufficient steps had been taken. Interviews were cancelled or not obtainable from senior staff and then the reporter decided to publish.

**Clause 2 of the Broadcasting Code provides as follows:**

**Reporting of news**

2.1 The electronic media shall be obliged to report news truthfully, accurately and with due impartiality.

2.2 News shall be presented in the correct context and in a balanced manner, without any intentional or negligent departure from the facts whether by:

2.2.1 distortion, exaggeration or misrepresentation;

2.2.2 material omission; or

2.2.3 summarisation.

2.3 Only what may reasonably be true having regard to the source of the news, may be presented as facts, and such facts shall be broadcast fairly with due regard to context and importance. Where a report is not based on facts or is founded on opinion, allegation, rumour or supposition, it shall be presented in such manner as to indicate this clearly.

2.4 Where there is reason to doubt the correctness of a report and it is practicable to verify the correctness thereof, it shall be verified. Where it has not been practicable to verify the correctness of a report, it shall be mentioned in such report.

2.5 Where it subsequently appears that a broadcast was incorrect in a material respect, it shall be rectified spontaneously and without reservation or delay. The correction shall be presented with a degree of prominence which is adequate and fair so as readily to attract attention.

**Clause 3 provides as follows:**
Comment
3.1 The electronic media shall be entitled to comment upon or criticise any actions or events of public importance provided such comments or criticisms are fairly and honestly made.

3.2 Comment shall be presented in such manner that it appears clearly that it is comment, and shall be made on facts truly stated or fairly indicated and referred to.

3.3 Comment shall be an honest expression of opinion, without malice or dishonest motives, and shall take fair and balanced account of all available facts which are material to the matter commented upon.

Clause 7.2.2 provides as follows:
A person whose views have been criticised in a broadcasting programme on a controversial issue of public importance, shall be given reasonable opportunity by the broadcasting licensee to reply to such criticism, should that person so request.

We have studied the confidential inhouse reports handed in to us at the hearing and which had come into the possession of the SABC’s reporter. The Succinct document provides the results of workshops which were held so as to establish the reasons for concerns amongst employees. Although Mr Rosin is correct in arguing that almost each page reflects evidence of unhappiness based on racism, we believe that it was incorrect to refer to the this report as “damning”. Within the context of a large number of employee complaints related to other matters than racism, it is hard to see how one could say that the report was “damning” on this one aspect.

The Mokhobo report found that the inability of management to deliver real transformation was the crux of the problem. The Committee found that racism and marginalisation were merely symptoms and that long term solutions were necessary to determine the underlying cause.

Although the Mokhobo report did find racism as a symptom and that transformation had not succeeded, it was incorrect to have stated that the report was “damning”. It is difficult to see how one can conclude that a report is damming on racism, when the report stated that racism was merely a symptom and that inability of management to deliver real transformation was the crux of the problem.

Nevertheless, we are prepared to accept that there was a finding of racism and that it was reasonable for a journalist to have chosen this to be at the core of the problem. Transformation amounts to transformation from a racial divide and white superiority to sharing of power in such a manner that new structures are in place which would accommodate all views, with recognition of the necessity to give special accommodation to persons who were disadvantaged in the white and male dominated society during the Apartheid years.
We, however, find that it was an overstatement to have referred to the reports as *damning insofar as racism is concerned*. Generally such comments should not be made by newsreaders and journalists during news items. News should state the gist of what has happened and generally, only when an outside person’s view is broadcast, would a view be appropriate. Then such a view would have to balanced by a further view, if it was practical to obtain such a view. If such a view cannot be obtained, it should clearly be stated to have been the case. At times, of course, what has happened is so clearly shocking, that the facts speak for themselves and a further view becomes unnecessary.

The problem in the present case is that the reports were not “damning”. The Mokhobo investigators reported with sensitivity and diplomacy. They put the propositions in an objective fashion, which could not be regarded as “damning”.

We accordingly hold that the Code had been contravened insofar as the summarisation of the report as “damning” was inaccurate. Although we realize that the task of a journalist is an onerous one, we believe that the report should have been studied more closely before the conclusions were reported. We must, however, emphasize that the reporter was not actuated by malice at all. Mr Zikalala is one of South Africa’s most successful investigative journalists and his record is impeccable.

Insofar as balance is concerned, we find that Mr Zikalala had done all that is expected from a reporter. We accept his evidence of his unsuccessful attempts to obtain the views of executives at Rand Water and noted at the hearing that he had an appointment to interview the new CEO shortly.

In the light of the planned interview with the CEO, we have decided to note the contravention and leave it at that. No additional sanction is imposed.

The public does not seem to realize that a right to reply exists in terms of clause 7.2.2. We believe that had an executive of the Rand Water Board requested the opportunity to respond to the criticism after the broadcast, the SABC would have been obliged to have granted that opportunity in terms of the said sub-clause. No such request was, however, made.

The complaint as to contravention of the news clause is upheld. The complaint in regard to not having obtained a Rand Water Board response, is not upheld.

**JCW VAN ROOYEN SC**  
**CHAIRPERSON**  
**3 MAY 2002**

*The other two Commissioners concurred in the above judgment*