



P.O.Box 412365 • Craighall • Tel (011) 325-5755 • Fax (011) 325-5736 • e-mail: bccsa@nabsa.co.za
No 2 Albury Park • Magalieszicht Ave • Dunkeld West • 2196 • www.bccsa.co.za

CASE NUMBER: 18/2014

DATE OF HEARING: 25 JUNE 2014
JUDGMENT RELEASE DATE: 17 JULY 2014

SWART

COMPLAINANT

VS

JACARANDA 94.2 FM

RESPONDENT

TRIBUNAL: **PROF KOBUS VAN ROOYEN SC (CHAIRPERSON)**
 PROF V BRONSTEIN
 MR B MAKEKETA (DEPUTY CHAIRPERSON)
 ADV B MMUSINYANE.

Complainant: The Complainant was invited but could not attend.

For the Respondent: Mr Naveen Singh, Programming Manager.

Bestiality – reference to this in circumstances which did not justify such reference – contravention of Broadcasting Code; alternatively harmful to children - Swart vs Jacaranda 94.2 FM, Case no: 18/2014(BCCSA).

SUMMARY

Reference to conduct which would be understood as bestiality not acceptable in terms of the Broadcasting Code. No circumstances excusing such reference. Alternatively, harmful to children

Complaint upheld. Fine of R5000 imposed.

JUDGMENT

JCW VAN ROOYEN SC

[1] A complaint was received regarding a remark made by a presenter. The remark amounted to a description of bestiality. I referred the matter to a Tribunal since descriptive references of bestiality are generally not permitted by the Broadcasting Code. Of course, there are instances where, considered in context, such references might be permissible, but on the face of it, the reference in question could only have been intended to draw vulgar laughter. Alternatively, since the act described did not, in fact, constitute actual bestiality, the issue was whether the vulgar joke might not be harmful to children in terms of clause 6(1) of the Broadcasting Code.

[2] **The complaint read as follows:**

“I have been a listening to JacarandaFM for many years, but today I have to report an extremely offensive comment made by one DJ’s, Ron Olivier.

I live in Nelspruit and my car radio is tuned to JacarandaFM. I pick my daughter and two friends up from school and we were in the car this afternoon at about 13:36 when Olivier read comments from listeners about their most embarrassing moments at work, when he related a message about a guy who caught his Cook in the kitchen “making out with a chicken”

He thought that it was very funny but I think it is totally unacceptable to make such jokes during the day with such a young audience listening.

I had to explain to the children what he meant by “making out with a chicken”....

I don’t think he applied his mind at all and never considered who his audience is when he read that remark, he is an amateur and should be refused entry to any radio station.

I expect that he be suspended with immediate effect as we don’t need his foul mouth in the vicinity of children.”

[3] **The Broadcaster responded as follows:**

"The presenter has exercised poor judgement on this comment. However, in his defence, he did not labour the issue and was basically acknowledging some of the comments he had received.

I do not believe he contravened clause 6.1 as he was targeting the working audience and the comment would not be easily understood by children in order to be disturbing or harmful. The presenter has subsequently left the radio station.

In terms of 8.1 we have erred and we do apologise for the poor judgement exercised. As aforementioned, this presenter has subsequently resigned."

EVALUATION

[4] The facts referred to by the presenter did not in actual fact amount to bestiality, since the animal (a chicken) was already dead, having been slaughtered for consumption. The Code does not refer to necrophilia and the crime can, in any case, only be committed with a human corpse.¹ Nevertheless, the slang term (making out, i.e. having sex) amounts to a verbal description of what may have amounted to bestiality. Clause 8 of the Broadcasting Code lists bestiality as a prohibited subject. Of course, dramatic, scientific or literary merit would exclude a contravention, since a contextual approach to all material – even child pornography² – is always necessary. However, in the present instance no such justification was present. It was nothing other than dirt for the sake of dirt³ in a poor attempt at being funny.

[5] The Representative of the Broadcaster conceded that a contravention of the Code had taken place and apologised.

[6] Our conclusion is that the Broadcasting Code has been contravened. In so far as sanction is concerned, the Complainant submitted that it would be an exercise in futility to expect an apology on air, since the words would have to be repeated. He

¹ See Milton South African Criminal law and Procedure (1996); Snyman Criminal Law (2002) 367.

² Compare *De Reuck v Director of Public Prosecutions* 2004(1) SA 406(CC).

³ Compare Clor *Obscenity and Public Morality*(1972) 222; Moore & Lawrence *Sex Literature and Censorship* (1959 edition) 69.

argued that a reprimand would be in order, especially in the light of the fact that the Respondent noted an apology at the hearing and the presenter had also left the services of the Respondent. We have, however, decided that this kind of contravention should clearly be discouraged and that a mere reprimand would not have the effect which a fine would have. We have, accordingly, decided to impose a fine of R5000 payable on or before 30 August 2014.

A handwritten signature in black ink, reading "J. C. W. van Rooyen". The signature is written in a cursive, flowing style.

PROF KOBUS VAN ROOYEN SC
CHAIRPERSON

Commissioners Bronstein, Makeketa and Mmusinyane concurred with the judgment of the Chairperson.