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Case Number: 18/2004

Date of Hearing: 27 MAY 2004

KEVIN ALLAN **COMPLAINANT**

vs

SABC (SAfm) **RESPONDENT**

TRIBUNAL: **Prof Kobus van Rooyen SC (Chairperson)**
Dr Willem de Klerk (Broadcasting Representative)
Prof Gerrit Olivier (Co-Opted member)

Complainant: The Complainant in person.

Respondent: Mr Fakir Hassen, Manager: Broadcast Compliance, with him Mrs Dorothy van Tonder, Consultant: Regulatory Affairs, SABC.

Hate speech based on race – Irish jokes, depending on the contents, could amount to hate speech against the Irish. Kevin Allan, Case No: 18/2004.

SUMMARY

A complaint was received from a member of the South African Irish community. He had problems with what a presenter had said at about 09:00 on St Patrick's Day with regard to Irish jokes. The jokes boiled down to how stupid/naïve the Irish are. The Complainant found these jokes offensive and argued that jokes stereotyping a nationality as stupid/naïve should not be permitted to be broadcast on the airwaves.

The tribunal held that, depending on the facts, an Irish joke could be regarded as hate speech. In the present circumstances, however, the presenter who happens to be Irish himself, told the jokes in such a manner that it did not amount to the advocacy of hatred based on race. The programme, judged as a whole, also did not support a finding of hate speech. There were sufficient correctives. So even if regarded as offensive by some members of the Irish community, such a result had not been brought about by the advocacy of hatred that constitutes incitement to cause the said harm. If this norm is not satisfied, there is no contravention, even if the material complained about was in questionable taste. The complaint was not upheld but broadcasters were requested to display sensitivity in this regard, even in cases which do not amount to advocacy of hatred. This would seem to be a case of internal ethical policy and not for the tribunal to apply categorically in all cases. The complaint was dismissed.

JUDGMENT

JCW VAN ROOYEN (Chairperson)

[1] SAfm is one of the radio stations of the South African Broadcasting Corporation, which is the public broadcaster in terms of the Broadcasting Act 4 of 1999. On the 17th of March at about 09:00 Will Bernard, who was standing in for Vuyo Mbuli, commenced the programme, since it was St Patrick's Day, by telling a few Irish jokes.

[2] The complainant regarded these "*old favourites*" about how "stupid/naïve" the Irish are, as offensive in that they stereotyped a nationality as stupid/naïve. According to the complainant it has become clear in modern South Africa that jokes reinforcing negative racial stereotypes fuel racism and narrow-mindedness and have no place in our society. They also fuel bigotry and the lack of understanding of different notions of culture. Furthermore the presenter observed

that while Jewish people do not like people telling jokes about them, Irish people don't seem to mind and he wondered if this was because Irish people don't understand the jokes that people tell about them. Apart from the slur that Irish people are too stupid to understand the jokes that people tell about them, Will Bernard obviously, according to the complainant, felt that any Irish person who could understand these jokes should rightly feel offended – so he knew the jokes were offensive.

[3] The SABC responded as follows:

(a) It was conceded that the presenter indeed began the show with two *"very bad"* Irish jokes, which he attributed to Spike Milligan. He then proceeded to tell a story that *"proves the Irish are in fact not at all stupid"*, which actually *"proves"* the opposite. Like all *"tribal jokes"*, these could be interchangeable: Van der Merwe stories and Irish jokes are often the same.

Will Bernard himself responded as follows: *"I was not* 'showing off' *in telling the jokes, but using the skills I have honed over the years as a stand-up comic/compére. The jokes are found funny by most Irish people and I would have no hesitation in repeating them at another appropriate time. We were celebrating St Patrick's Day and I was announcing the pending arrival of an Irish entertainer who was to take part in the show. All jokes of this nature can be found* 'objectionable' *by those who seek this sort of confrontation. But I am extremely sensitive to ethnic slurs and never tell a Jewish joke or a Shangaan joke as these are taboo areas for sociological reasons that we need not go into here. The Irish, from whom I claim descent (by the way) are not at all bothered by their status as putative butts of the world's jokes and rather enjoy it.*"

(b) The SABC ultimately argued that had the complainant listened for longer than the first five minutes, he would have heard Will make some very

well-researched comments on current Irish resurgence, particularly in the IT call-centre field. He would also have heard reference to two current Irish best-sellers, as well as to George Bernard Shaw, Oscar Wilde and John Millington Synge – all well known Irish playwrights. There were other uplifting comments about the Irish, as well as a carefully-plotted analysis of the potato famine.

[4] The complainant replied to the response of the SABC and challenged its claims.

[5] Whatever the dispute is on the question of hate speech, the facts of each matter must be considered against the requirements of Section 16(2)(c) the Constitution of the Republic which has been read into the Code by this Commission. The question is, accordingly, whether the material, judged within context, amounted to the advocacy of hatred based on race or ethnicity and that constituted incitement to cause harm. This Commission's approach to derogatory racial terms has been a strict one. Racial peace in this country, where racial oppression and superiority were part of the Apartheid policy and legislation of the past, demands that race should not, in any manner, form the basis of discrimination or be employed to insult. In fact, the test for incitement is that even if the person addressed did not hear the derogatory word, the language nevertheless amounts to incitement if the words were directed at him or her or a group. The mere fact that such remarks are broadcast, already supports a *prima facie* case, which should be answered by a broadcaster. On the other hand, context is of cardinal importance. Words and remarks cannot, however, simply be considered in isolation. Context is crucial.

[6] This Tribunal believes that, depending on the circumstances and the context, Irish jokes could amount to hate speech. When a programme is of a documentary nature it is, however, unlikely that the material, judged as a whole, could be interpreted as hate speech. The intention of a documentary is often to search for answers and in the process examples are used which, in isolation, could

be regarded as racially offensive. To qualify as a documentary, the material need not be serious; it could approach a matter in lighter vein, as was the case with the programme under adjudication.

[7] When the reference to the Irish as being stupid is considered in isolation, it could readily be regarded as making a mockery of the Irish to such an extent that the very essentials of democracy and equality are placed at risk. However, judging the tone with which the presenter said the words and made the remarks, we conclude they did not go so far as to amount to a promotion of hatred against the Irish. The context, referred to by the SABC in its answer, saves the remarks from the sphere of hate speech.

[8] On the other hand, given the reaction of the complainant in this matter, it would be in the interests of broadcasting to have a closer look at these kinds of jokes once again. This Tribunal, accordingly, urges the SABC to workshop this matter and display the utmost care when derisive jokes are based on race. Some jokes have become so well known, either because of repetition or by way of similarity to previously told jokes, that they have in fact lost their racial or ethnic basis. When, however, the accent of the joke is on the race, as was the case when the remark was made as to the Irish being *"stupid"*, then a different category of joke is present.

[9] In the result the Tribunal has found that the remarks did not, in the light of the specific context of this programme, reach the level of hate speech. Remarks were made in lighter vein and, considered contextually, did not promote the stereotype of "stupid" Irish.

The complaint is, accordingly, dismissed.

JCW VAN ROOYEN SC
CHAIRPERSON

The Commissioners on the Tribunal concurred with the judgment of the Chairperson.