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CASE NUMBER: 40/2006

DATE OF HEARING: 31 OCTOBER 2006

S ROSENSTEIN

COMPLAINANT

vs

5FM

RESPONDENT

TRIBUNAL: Prof Kobus van Rooyen SC (Chairperson)
Prof Sunetter Lötter
Adv Iyavar Chetty
Prof Jacqueline Heaton

Complainant: The Complainant did not attend

Respondent: Mr Fakir Hassen, Manager, Broadcast and Compliance, accompanied by Ms Veronica Barnard, Compliance Officer, Mr Nick Grubb, Programme Strategist of the SABC and Mr Carlito Sheikh, Programming Manager, 5fm

Dignity – caller willingly taking part in war of words with presenter – dignity of caller not infringe upon. Rosenstein vs 5fm, Case No: 40 /2006.

SUMMARY

The Registrar received a complaint concerning alleged derogatory treatment of a listener by a presenter on 5FM during the Drive Time show at 17:35. Clause 38 of the Broadcasting Code protects the dignity of persons. On having listened to the debate which took place between the presenter and the caller it is clear that the caller voluntarily took part in a war of words and demonstrated a sense of humour

by sparring with the presenter. It is, indeed, significant that the caller did not complain about the broadcast himself. The Tribunal dismissed the complaint.

JUDGMENT

PROF JCW VAN ROOYEN

[1] The Registrar received a complaint concerning alleged derogatory treatment of a listener by a presenter on 5FM during the Drive Time show at 17:35. I referred the matter to a Tribunal for the adjudication of the matter.

[2] The Complaint reads as follows:

DJ Fresh openly and publicly ridiculed the caller who claimed to have been an avid "5" supporter for 10 years because his opinion was that DJ Fresh "sucked". He stated that the caller was "the type of person who the minister of crime was talking about". The caller phoned in "off-line" and did not publicly insult Fresh. Fresh insinuated that "5's" loyal supporters were no longer important and that he did not respect the past. He has not earned the right to insinuate that all the old drive time listeners are of the same opinion as the caller in question. And if we were of the same opinion, to just turn our radio's off. He is working for US! He offended all those I spoke to. And has disgraced the SABC by his hot-collared actions. We feel that he needs to be reprimanded and action taken against him."

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

The caller in question sent an abusive SMS to the studio SMS line. This line is a common way for listeners to send their input to the shows. Thus the assertion that the caller's opinion was made "off line" is fallacious. It is as common an interactive tool for the listener as a phone call.

The presenter decided to call this person on the air and question the nature of his complaint. During this conversation the presenter does indeed refer to the fact that he has a long term contract with the station and if he doesn't like him, the caller should rather change channels.

Our position is that the caller's opinion was not constructive, but abusive ("you suck"). The caller interacted with full knowledge that the SMS line has at least the potential to be discussed publicly and therefore voluntarily participated in this interaction. Furthermore he could have refused to go on air when called. We

therefore cannot find it to have been in contravention of the Code, or the SABC's editorial policies. The caller himself is also not the complainant here!

5FM does not condone humiliating or belittling its listeners, but in this instance the caller was "baiting" the presenter and got as good as he gave. Every DJ will have people who love them, and those that do not.

We do not believe that here has been any transgression of the Code."

- [4] Clause 38 of the Broadcasting Code protects the dignity of persons. On having listened to the debate which took place between the presenter and the caller it is clear that the caller voluntarily took part in a war of words and demonstrated a sense of humour by sparring with the presenter. It is, indeed, significant that the caller did not complain about the broadcast himself. In the result there was no infringement of dignity of the caller.

The complaint is dismissed.

**PROF KOBUS VAN ROOYEN SC
CHAIRPERSON**

Commissioner Lötter and ad hoc members Chetty and Heaton concurred.