BROADCASTING COMPLAINTS
COMMISSION OF SOUTH AFRICA

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CASE NO: 19/2001

DATE OF HEARING: 18 MAY 2001

A RUSSELL — **FIRST COMPLAINANT**
AJ SZOKOLAY — **SECOND COMPLAINANT**

vs

567 CAPE TALK — **RESPONDENT**

TRIBUNAL: **PROF KOBUS VAN ROOYEN SC (CHAIRPERSON)**
PROF WILLEM DE KLERK
PROF PRAGASHEN NAYAGAR

FOR THE RESPONDENT: MS LUCIA VENTER

THE COMPLAINANTS WERE INVITED BUT DID NOT ATTEND.

Racism – "bonehead" not referring to race, but to stupidity. In the circumstances not offensive or in violation of dignity of rugby hero. Typical criticism of public personality. Russell & Szokalay vs 567 Cape Talk, Case No: 19/2001.

Sexism – slang reference to physique of a woman in particularly questionable taste but not amounting to advocacy of hatred based on gender. Russell & Szokalay vs 567 Cape Talk, Case No: 19/2001.

SUMMARY

Reference to sport hero as a bonehead not racist. Bonehead not having reference to race of hero but to his (alleged) stupidity in the circumstances. This amounting to mere expression of a view by the commentator. A view, which could be summarily rejected by listeners, if they differed from the presenter. Matter not of "public importance" in terms of the Broadcasting Code.

Slang reference to physique of a woman in particularly questionable taste, but did not amount to the advocacy of hatred based on gender. Since lady involved did not file a complaint, it was impossible for the Tribunal, in this case, to come to a decision as to whether her dignity had been invaded unjustifiably. Internal review of stereotyping policy, howe ver, recommended.

JUDGMENT

JCW van Rooyen

We deal with two separate complaints against Cape Talk in this judgment.

The first complaint read as follows:

"I wish to formally lodge a complaint against comments made by Martin Gillingham on Cape Talk Radio. In the past few days, inter alia, the following has occurred:

1. He referred to Ray Jennings insultingly as a "pratt".
2. He used offensive language such as "arse" and "pisses" in one session.
3. Today he referred to Joost van der Westhuizen as "Joost van der Bonehead."

There are other times when he purposefully sets out to belittle our sportsmen and women, particularly our tennis players. But this morning's comment is my main gripe. This comment is racist; it is an insult to Afrikaners; it is akin to calling Breyton Paulse "Breyton Kaffir". If he had made this comment, he would have been in serious trouble: but the Joost one seems to go unnoticed by Cape Talk authorities. We do not need him on the air abusing people like this. He thinks that because he has a microphone that he is untouchable and unaccountable. I object and would like Gillingham to be censored. In fact I find him so offensive; so anti-South African; so pro-British that he is bad for this country. He never has a decent or encouraging word to say about South African sports people and I wish he could be removed from air. I know Cape Talk want him to be controversial in order to bolster listenership; but this morning was unacceptable. Just the other morning Martin Bailie read out a few emails re Gillingham and what people think. I get the distinct feeling I am not the only listener who finds him offensive and unacceptable. Look forward to hearing from you. I will be forwarding this e-mail in its entirety to Joost van der Westhuizen as well."

The Respondent reacted as follows:

"We are of the opinion that we did not contravene the BCCSA Code of Conduct. The comment, "Joost van der Bonehead" has nothing to do with his ethnicity, it is a term generally used in rugby

when players do stupid things on the field. We fail to see how this can be seen as racist and harm relations between sections of the population. The word "pratt" is also a term used to describe people generally. The station has a right to comment on the way sports people play and behave. Martin Gillingham often makes comments on the way sports people play or behave, but it is never intended to harm any relations.

With reference to examples quoted as offensive language. Unfortunately the listener did not note specific times, which makes it very difficult to comment. It is important to listen to the examples quoted in context. It is further important to note that the station has a policy of no swearing. Martin Gillingham is known amongst listeners for his cynicism and controversy. His programme between 09:00 and 10:00 in the mornings is adult entertainment; the intention is never to offend listeners. Cape Talk further targets an adult intellectual audience that can appreciate adult humour."

We are not convinced by the argument that "bonehead" has a racially derogatory meaning in the present context. The comment was clearly inspired by an honestly held off the cuff opinion by the presenter. The comment clearly relates to the actions of the said sport hero. One would be suspicious of the motives and quality of opinion of a presenter who constantly employs this kind of language. There is no evidence that this is the case. One of the characteristics of talk radio is the provocative nature which the opinions expressed by presenters have. They have to get the listeners talking. Their views are, accordingly, often outrageous or on the brink of indecency or in conflict with what a Victorian household would have regarded as appropriate in mixed company.

The reference to "bonehead" is, of course, very critical and, under circumstances, could even be regarded as derogatory to the extent that it would unjustifiably invade the dignity of a person. On the other hand it should be taken into consideration that Joost van der Westhuizen is a public figure and that the law affords public figures less protection than it affords persons who do not take part in public activities. This is the kind of risk which a person assumes when being active in the public sphere. And, of course, all South Africans know that sport is a controversial subject and that people, including presenters, hold strong views on what happens in sport. There is no reason why the freedom of speech of a broadcaster should not extend to such views. The view of the broadcaster is, in any case, not a final view. It is open to rejection by the listener.

Of course, it is also true that as soon as a matter moves into the sphere of public importance there is a duty to be fair and, under circumstances, even to grant a person

criticized a right to respond on air. We do not believe that the alleged conduct of the sport hero in this instance has moved into the field of public importance, as intended by clauses 3 and 7.2 of the Broadcasting Code. We also did not receive a complaint from Mr. Van der Westhuizen.

The other references to alleged coarse language are not supported by detail as to the times of broadcast. We accordingly cannot deal with them.

The Second complainant filed the following letter with the Registrar:

"On 20.12.200 at about 10h30 Cape Talk Radio's (567) talk show host Martin Gillingham read out a poem by Ms X, a continuity announcer… Mr Gillingham expressed his view that the poem had no literary merit and invited opinions by callers. Mr Gillingham then drew listeners' attention to the fact that Ms X's breasts were large and then later referred to them as "jugs".

In my opinion, throughout this matter Mr Gillingham's tone and choice of words was defamatory, insulting, derogatory and sexist. I fail to see any good reason for Mr Gillingham to have contemplated the relative size of Ms X's breasts whilst ostensibly conducting a debate about her literary abilities. The further reference to her breasts as "jugs" was clearly intended to be hurtful and derogatory. In trying to deal with our rape crisis it is exactly this kind of blatant sexism and disrespect towards women that we are attempting to remove from our society.

The Charlize Theron anti-rape advertisement is regularly flighted on 567 and amongst other things identifies male sexist attitudes as an aggravating rape factor. I voice my strongest objection to this matter and in my opinion find it disgraceful that this so-called debate was allowed to degenerate into what is did and that no public apology, to my knowledge, appears to have been issued."

The response of the Broadcaster was as follows:

"We are of the opinion that we did not contravene the BCCSA Code of Conduct and that the programme was not defamatory, insulting or sexist. We further believe that the programme did not at all demean women and fail to see how it can aggravate rape in the country. Martin Gillingham merely stated his personal opinion on the quality of Ms X's literary capabilities and the references to her size of her breasts was incidental. Martin Gillingham is known amongst listeners for his cynicism and controversy. His programme on Saturday mornings was one of light entertainment. The intention was not to offend listeners and most certainly not to demean women. Cape Talk further targets and adult, intellectual audience that can appreciate "tongue" in cheek humour."

(We have substituted the name of the relevant lady with X)

Sections 9 and 16 of the Constitution of the Republic protect gender against unfair discrimination and what could be termed to be hate speech. By referring to the breasts of

the poet in this manner, we have no doubt that the observation was in particularly questionable taste. Since the lady referred to did not file a complaint herself, we do not have evidence of her reaction to the comment and we are accordingly not expressing a view on whether her dignity was invaded upon unjustifiably. We can only address the issue from an objective, gender-orientated, perspective.

By referring to the physique of the poet in this manner, we believe that the comment amounts to stereotyping and that the Respondent should address the matter critically within the ambit of its internal Code of Conduct. Not all forms of stereotyping amount to material which could be regarded as amounting to unfair discrimination or hate speech.

We have come to the conclusion that the stereotyping in this case did not go so far as to amount to material which is likely to harm relations between men and women as sections of the community, in terms of clause 7.1 of the Broadcasting Code. The expression was used in a humorous manner, was not motivated by malice and was off the cuff. It also did not amount to hate speech. There was no evidence of advocacy of hatred based on gender in terms of section 16 of the Constitution. "Hatred" requires much more than words which are in particularly questionable taste. Repetition on a frequent basis could amount to such an advocacy. There is no such evidence in this case. Compared to the case *of V Fouche* vs *Highveld Stereo (case16/2000),* where it was held that stereotyping had contributed to the finding of hate speech, the present reference to breasts pales in significance and emotive effect.

The complaints are accordingly not upheld. The Respondent is, however, requested to discuss the matter of stereotyping internally, and to let us have its view on its policy in this regard in due course.

JCW VAN ROOYEN SC
CHAIRPERSON

18 JUNE 2001