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Case no: 55/2002

Date of Hearing: 25 October 2002

B JOUBERT **Complainant**

vs

RADIO 702 **Respondent**

TRIBUNAL: **Prof JCW van Rooyen SC (Chairperson)**
Ms L Gower
Prof HP Viljoen
Dr L Gilfillan

For Complainant: **In person**

For Respondent: **Mr Abrahamjee (Station Manager) & Mr Charl Van Niekerk**

Secretariat: **Ms S Martin (Registrar) & Ms D Mohammed (Secretary)**

Reference in early morning talk show to fat people as "a bunch of pigs" - considering the style of the talk show host and the context, found not to comply with definition of hate speech - no contravention of the Code. B Joubert vs Radio 702. 55/2002.

SUMMARY

Reference in early morning talk show to fat people as "a bunch of pigs" - offending words said in context of discussion of incident at rugby test against the All Blacks when spectator assaulted the referee - considering the irreverent style of the talk show host (Gareth Cliff) and the context in which the words were uttered, found not to be in the nature of hate speech - no contravention of the Broadcasting Code. Remarks in bad taste.

JUDGMENT

Prof Henning Viljoen

On 13 August 2002 on Radio 702, the host for the early morning talk show was Garreth Cliff. One of the big topics of discussion during that time was the sensational event that happened the previous Saturday during the rugby test between the Springboks and the All Blacks. A spectator supporting the Springboks, ran onto the field and attacked the referee.

During the discussion of this event on the talk show, the presenter uttered words to the effect that fat people are a bunch of pigs. The Complainant felt offended by these words and lodged a complaint in writing to the Registrar of the BCCSA. He also appeared in person at the hearing before the Tribunal. During the hearing, he informed the Tribunal that he had a family member who struggled with obesity, caused by a hormonal imbalance, and that the remarks complained of caused offence to him and to such people.

In their response, the representatives for the Respondent argued that the remarks should be seen in context. They were made during the course of the talk show and were made "tongue in cheek". The presenter, according to them, did not intend to offend anyone.

This complaint is similar to other complaints that the Tribunal has to deal with regularly when people feel offended by what is said over the air. The overriding principle here is freedom of expression, which is guaranteed in section 16 of the Constitution of South Africa. This freedom, however, is not unlimited or without any restrictions. A radio presenter may not, for instance, use this freedom to slander anyone. The Constitution itself states, *inter alia*, that this freedom may not be used to advocate hatred based on race, ethnicity, gender or religion and which constitutes incitement to cause harm.

The remarks must be judged in the context in which they were made. The nature of a talk show is to discuss events of the day and matters which interest people, but in a light hearted and entertaining way. The host or person who presents the show acquires

a certain reputation over the time and people later on know what to expect when they tune in to his or her programme. Some talk show hosts may think that the sharper, more daring, or more controversial they are, the higher they rise in the popularity stakes. However, this does not mean that they may say what they like on air. The limitations on what may be said, have been spelt out above.

Applying these principles to the present case, we do not think that the Broadcasting Code has been contravened. The remarks about fat people should be judged in context and regard should be had to the person who made the remarks. The presenter, Gareth Cliff has built up a reputation for being irreverent, someone who makes a joke of everything. The remarks complained of were clearly not intended to offend anyone, nor could it be said that they advocated hatred based on race, ethnicity, gender or religion and constituted incitement to cause harm. We have been informed that he has made jokes on previous occasions on the air about his overweight friend at the same radio station. This type of thing has to be accepted in the spirit in which it is said.

In the result we find that, although the remarks were obviously in bad taste, there was no contravention of the Broadcasting Code and the complaint does not succeed.

PROF HENNING VILJOEN
BCCSA COMMISSIONER

4 NOVEMBER 2002

The Chairperson and other Commissioners concurred with this judgment.