



COMPLAINTS AND COMPLIANCE COMMITTEE

DATE OF HEARING: 10 FEBRUARY 2022

CASE NO: 434/2022

CCA

COMPLAINANT

V

Radio Overberg

RESPONDENT

CCC MEMBERS:

Judge Thokozile Masipa – Chairperson
Councillor Yolisa Kedama- Member
Mr Monde Mbanga - Member
Mr Peter Hlapolosa - Member
Mr Thato Mahapa - Member
Mr Paris Mashile - Member
Ms Ngwako Molewa – Member

FROM THE OFFICE OF THE CCC:

Lindisa Mabulu - CCC Coordinator
Meera Lalla - CCC Assessor
Xola Mantshintshi - CCC Assessor
Thamsanqa Mtolo - CCC Assessor
Amukelani Vukeya – CCC Administrator

LEGAL REPRESENTATION FOR PARTIES

For the Complainant - Ms B Mashigo
and Ms F Hlongwane

For the Respondent - No legal representation
Mr De Waal, in his capacity as the station manager, made submissions on behalf of
the Respondent.

JUDGMENT

Judge Thokozile Masipa

INTRODUCTION

[1] The complaint in this matter concerns a breach of section 58(6) of the Electronic Communications Act No. 36 of 2005 ("the ECA"). The Respondent (Licensee) is Radio Overberg FM, a community special event sound broadcasting service, which operates on a class broadcasting service licence No: Class/Re/Com/R160/Nov/2021.

DETAILS OF THE COMPLAINT

[2] The allegation is that during the election period, the Licensee contravened section 58(6) of the Electronic Communications Act No.36 of 2005 ("The ECA") in that it broadcast Political Advertisements (PAs) for the Kaapse Onafhanklikheid's Party in contravention of the above provision.

[3] Section 58(6) provides that:

"No Political Party Advertisement may be broadcast later than 48 hours prior to the commencement of the polling period."

THE BACKGROUND

[4] During its compliance monitoring activity in respect of the 2021 Municipal elections coverage, the Licensing and Compliance Division noted that Radio Overberg broadcast the Kaapse Onafhanklikheid's Party PA on 30 October 2021 at 10:34:21. The last day to broadcast political advertisements was 28 October 2021 as the commencement of the polling period was the 1 November 2021.

THE RELIEF SOUGHT

[5] The CCA prays that the CCC imposes appropriate penalties as prescribed by section 17E (2) of the ICASA Act.

THE RESPONDENT'S DEFENCE

[6] The Respondent admits that it contravened section 58(6) as alleged and apologized for what it referred to as "*an oversight*" on its part. Its response is simple and straightforward and appears in its email dated Thursday 20 January 2022. Part of the email reads:

"As instructed we did stop all relevant political ads 48 hours before the start of the elections.

This mishap came as The program "Fabulous 50's" is originally broadcasted on a Monday from 18:00 - 19:00 with a recorded repeat on a Saturday morning, where the unfortunate mistake happened.

... this was a mistake... truly not done to deliberately go against the rules."

[7] The email was signed by Rudi de Waal, the station manager.

[8] The above email was followed by another more detailed email dated 28 January 2022 and signed, once more by the station manager. In part it reads:

"The complaint that was brought before us for the violation of the broadcasting of a PA before the Municipal Elections in 2021 is one that was received with a lot of shock. As a community station we truly did our best and took every precaution, we thought, to ensure we adhere to the regulations in this regard.

Radio Overberg did not have a lot of PAs and the only participating political parties were the DA, FF+ and Kaapse Onafhanklike Party.

We double checked that no PA goes on air after 00:00 on 28 October 2021, and nothing did!

What truly happened was that we have a program, Fabulous 50's, that is aired on a Monday afternoon between 18:00 and 19:00 which get repeated on a Saturday morning between 10:00 and 11:00.

...

In all my efforts to make sure not to play any PAs after the said date, I truly totally forgot to check the programs on repeat. In hindsight I am actually glad we did not have more PAs as there then might have been one or two more violations.

... I would however, in mitigating circumstances mention that this was a mistake that was not done deliberately and personally I have learned a valuable lesson through this all."

THE HEARING

[9] The Respondent was given an opportunity to place the admission as well as the basis thereof on record. Subsequently, the CCC heard submissions in mitigation.

Mitigation circumstances

[10] Mr De Waal made submissions in mitigation on behalf of the Respondent and reiterated that the contravention was an unfortunate, unintended, non-compliance on the part of the Respondent.

[11] As the station manager, he had ensured that no political advertisements were flighted after the deadline. But with all his diligent preparation and vigilance, he forgot to check the repeat programmes. He had learned a painful lesson and would ensure that such a mistake did not happen in the future.

[12] He had been in the employ of the Respondent for nine and a half years, but had been a station manager for a short while when the incident occurred. As far as he was aware, the Respondent had a clean record and he felt terrible at what happened, and apologized for the non-compliance with the regulations.

CONCLUSION

[13] From the facts of this matter, it is clear that this is a genuine case of human limitations having been the cause of the non-compliance with the Regulations. Mr. De Waal's response to the charge was short and to the point. I did not get the impression that he was exaggerating in any way. He was aware of the relevant regulation and did all he could to ensure that the station was in compliance. He,

however, forgot to check the repeat programmes which is what turned out to be the source of the problem in this case.

[14] Mr. De Waal apologized profusely for this oversight and asked for leniency. It is so that the contravention is serious. Equally important is to bear in mind that we are dealing with a remorseful Respondent who is not likely to repeat the transgression.

[15] It is to be hoped, as Mr. De Waal submitted, that the Respondent takes the error as an opportunity to learn from its mistakes. It may be that the Respondent needs to identify areas where it requires to introduce new systems or new ways of doing things. Checklists, for example, might come in handy where memory might fail, for instance.

[16] Furthermore, the importance of the training offered by ICASA to broadcasters from time to time, and especially in preparation for elections, can never be overemphasized. In the present case the Respondent failed to take advantage of the training. The reasons thereof are not clear and the Respondent is urged to ensure that its employees take part in such training in the future.

FINDING

[17] Accordingly, the CCC makes the following finding:

The Respondent is found to have been negligent in that it contravened section 58(6) of the Electronic Communications Act No. 36 of 2005 by broadcasting Political Advertisements later than 48 hours prior to the commencement of the polling period.

ORDER

[18] In the result, in terms of section 17E(2) of the ICASA Act, the CCC recommends that the following orders be issued by the Authority namely:—

18.1 direct the Licensee to desist from any further contravention;

18.2 direct the Licensee to take the following remedial step namely—

broadcast a public apology during the first week after this order is issued. The apology is to be broadcast in Afrikaans once per day for five consecutive days as its first item on its news service between 7h00 and 20h10. On the first two days the broadcast must take place in the first newscast after 7h00. The times of the broadcast must be notified by email to the CCA of the ICASA at the latest 48 hours before the broadcast. The broadcast may not be accompanied by any background music or sounds and the item must be read formally by the Station Manager or his representative who must declare that he is the Station Manager or acting on behalf of the Station Manager.

The apology must be phrased thus:

"The Independent Communications Authority of South Africa has found that Overberg Radio FM has been negligent in its failure to abide by the Municipal Elections 2021. Overberg Radio FM flighted Political Advertisements later than 48 hours prior the commencement of the polling period.

This is in conflict with the ICASA Election Regulations which require that no Political Advertisement shall be flighted later than 48 hours before the polling period commences.

Overberg Radio FM further extends its apology to ICASA and its listeners for having contravened the Regulations."

An electronic copy of each broadcast stating the date and the time of each broadcast must be notified by email to the CCA of ICASA within 48 hours from the last broadcast in the first five days.

- 18.3 direct the Licensee to pay a fine of ten thousand Rands (R10000) in respect of the contravention. The amount is wholly suspended until the next Municipal Elections.

TMMasipa

Date: 22 April 2022

Judge Thokozile Masipa
CCC Chairperson