

COMPLAINTS AND COMPLIANCE COMMITTEE¹

Date of hearing: 28 June 2007

Case number: 4/2007

**Monitoring and Complaints Unit of
the Independent Communications
Authority of South Africa**

Complainant

Vs

Radio Platorand

Respondent

The Complaints

- 1. Submission of Blank Tapes**
- 2. Failure to submit recordings on request by the MCU**
- 3. Failure to respond to complaints**
- 4. Failure to respond to MCU communiqué**

Summary

Failure of Radio Platorand to comply with licence conditions by submitting its audited Financial Statements and Minutes of Programming Committee Meetings.

Held, that

1. In the circumstances the CCC is satisfied that the representatives of Radio Platorand conceded that it contravened clause 11.8 of its licence conditions and Section 72 of the IBA Act 153 of 1993, placing a duty on the station to retain recordings of programmes for a period of not less than 40 (Forty) days

¹ Established in terms of s 17C of the ICASA Act 13 of 2000 as amended

and to furnish the MCU and ICASA with such recordings when called upon to do so by ICASA in terms of Section 72 of the IBA Act.

2. With regard to Charge 2, 3 and 4 the CCC is not satisfied that the MCU was able to prove that Radio Platorand contravened clauses 12.1 & 1.4 of its license conditions and therefore finds that the station did not contravene these conditions

[1] Radio Platorand is a community radio station, licensed by the Independent Communications Authority of South Africa (ICASA). The Monitoring and Complaints Unit (“MCU”) of ICASA has referred the complaints set-out in the charge sheet against the station to this Committee for a hearing.

[2] The hearing commenced with Mr. *Mkhize* putting the complaints to the Representatives of the radio station which state that:

Charge 1: Submission of blank tapes – This is a contravention of clause 11.8 of Radio Platorand’s license conditions which states, that *“the licensee shall retain as required but the Act, recordings of programmes in a form acceptable to and compatible with the equipment used by the Authority for not less than forty (40) days. In order to ensure that the manner of recording is acceptable, the licensee shall inform the Authority in writing as soon as possible after receipt of these conditions, of the recording method to be used.”*

Charge 2: Failure to submit recordings on request by the MCU, this is a contravention of clause 72 of the IBA Act 153 of 1993 which states, *“The Authority may by notice in writing direct a licensee to produce or furnish to the Authority, at relating to any matter in respect of which a duty or obligation is imposed on the licensee by or in terms of this Act or the regulations, or by the relevant license”*.

Charge 3: Failure to respond to complaints, this is a contravention of clause 12.1 of Radio Platorand’s license conditions which states *“the manager or any other person designed by the station and in the station’s full time employ shall deal with complaints concerning the station from any source whatsoever and liaise with the Authority in regard to all complaints in relation to the licensee”*.

Charge 4: Failure to respond to MCU communiqué, this is a contravention of clause 1.4 of the MCU Complaints Procedures which states, *“a request made by ICASA in terms of Regulation 1.3 must be complied with within 48 hours of the receipt of such a request.”* Regulation 1.3 further states; *“the Authority can request for the licensee at*

any time copies of the records of complaints, correspondence with people who have complained or any other documents relating to complaints. These must be made available”.

Judgment

K E Moloto-Stofile (Chairperson)

[1] Mr Mkhize put complaint 1 to Mr Danie Sauer the representative of the Radio Platorand Board. He admitted that the station had submitted blank tapes to the MCU. He, however, explained that the station had not been aware that the tapes were blank because at the time of recording the recording equipment which was operated by a technician seemed to be operating properly. It was not a deliberate act but an omission. They simply had no idea that the tapes were blank.

He also indicated that the station had undergone several changes to its management under acrimonious conditions. He stated that once it came to the Radio Station's notice that blank tapes had been submitted, a team of executives from Radio Platorand was dispatched to meet the MCU at ICASA with the intention of resolving the dispute regarding the blank tapes and having the complaints against the station dropped. They also indicated that they no longer used a technician but that they now employed a properly qualified engineer to maintain the station equipment and that, at the time of the blank tapes, they were using volunteer technicians. Mr Moalosi enquired whether Mr Sauer was aware that safe-keeping proper recordings of programmes was a core function of the station and failure to keep proper recordings may result in their licence being cancelled, and therefore employing an under-qualified staff member could never be an acceptable proposition. Sauer admitted that they were aware of the fact.

[2] Charges 2, 3, and 4 were put to the representative of the radio station and they pleaded not to be in contravention of their licence conditions and explained that:-

The radio station had not been properly managed by Rita Groenbeek who was the manager at the time. Furthermore she failed to respond to communications from the Authority. After she left, however, there were three meetings between the MCU and its management, since August 2006. The meeting was confirmed by the MCU. Mr Mkhize further stated that the meetings were held after the contravention had occurred and as a result could not rectify the fact that they had failed to make the appropriate recordings and to supply the MCU with proper recordings, when called upon to do so. After August 2006 the Programme scheduling and recordings were regularly sent to

ICASA. This was confirmed by the MCU. Mr Sauer further stated that the Station burnt down in January 2007 and was subsequently rebuilt and re-equipped. With regard to the future of the station, Mr Henrich Marnitz and Nick van Rensburg stated that, currently the station is under new management and is operating optimally. It is complying with all its licence conditions. They are in the process of appointing a new Board, they have good community participation and the business community is taking interest in the station. They currently have a staff complement of 6 full time employees and 30 volunteers. They don't owe the staff anything and have an advertising income of R80 000.00. They also involve high school students in their operations.

[3] In reaching a finding on the merits of the matter, the CCC has noted the plea of guilty entered by Radio Platorand to having wrongfully submitted blank tapes to MCU. The plea, however, renders the radio station guilty of having contravened clause 11.8 of its licence conditions, placing an obligation on the licensee to retain recordings of programmes for a period of not less than 40 (Forty) days .

Simultaneously, the same conduct renders Radio Platorand guilty of having contravened Section 72 of the IBA Act in that they failed to furnish the authority with information they are obliged to keep in terms of their licence.

[4] Although the two contraventions are separate and independent acts the connection between the two is so closely linked that one would not happen without the other. If the recordings had been properly kept the blank tapes would not have been submitted.

The CCC therefore regards charge 1 and 2 as one and the same conduct and therefore finds Radio Platorand to have contravened on one count only.

It was Held;

1. In the circumstances the CCC is satisfied that Radio Platorand had contravened clause 11.8 of its licence conditions and Section 72 of the IBA Act 153 of 1993, which places a duty on the station to retain recordings of programmes for a period of not less than 40 days and to furnish the MCU and ICASA with such recordings when called upon to do so by the Authority in terms of Section 72 of the IBA Act.
2. With regard to complaints 2, 3 and 4 the CCC is not satisfied that the MCU was able to prove that Radio Platorand contravened clause 12.1 & 1.4 of its licensing conditions and therefore finds it not guilty on the charges.

3. In the light of the seriousness of this breach, and to ensure that there is future compliance with its licence conditions, a recommendation is hereby made by the CCC to Council of the Authority to impose a fine of R 5000.00 on Radio Platorand, suspended for a period of 2 years on condition that it is not found to have breached the same licence condition during the period of suspension from the date upon which the Council orders that the said sanction must apply.

4. The co-ordinator of the CCC is directed to communicate the recommendations to Platorand Radio in writing and to advise them that they have an election of accepting the recommendation and, if they do, they should advise him accordingly. **Or**, if they do not accept the recommendations, they should file representations with him to be placed before Council when considering the appropriate order, with due consideration of the recommended sanction. The time periods for submitting their election should be stated by the co-ordinator in the letter to Platorand Radio.

The Committee Members R. Mokwena-Msiza, N.Ntanjana, D.Moalosi, S.Thakur and J.C.W van Rooyen concurred.



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JCW van Rooyen

For: CHAIRPERSON OF THE CCC

22 August 2007

The above Judgment was submitted to Council of the (ICASA) for consideration of its resolve as to sanction in the matter of Radio Platorand —Case 4/2007.

The Council endorsed the recommendation as to sanction on 22nd August 2007.