

In the matter of a complaint to the Media Council of Bermuda

Complainant: Kentucky Fried Chicken (Bermuda) Ltd.

Publisher: The Bermuda Industrial Union, as publisher of the Workers Voice

The complaint

On May 28, 2012, the Media Council of Bermuda reviewed a complaint by Kentucky Fried Chicken (Bermuda) Ltd. ("KFC") against the Bermuda Industrial Union (BIU) as publisher of the Workers Voice.

KFC alleges that an article appearing in the Workers Voice dated 30 January 2012 was incorrect and in breach of [Clause 3 of the Code of Practice](#) . Clause (A) and (C) states:

“The media shall take care not to publish/broadcast/post inaccurate, misleading or distorted information, including photographs, video and voice recordings.

The media, whilst free to be partisan, shall distinguish clearly between news, comment, conjecture and fact. Facts are not always clear-cut and often open to interpretation but the media shall present factual information fairly and with due regard to context and importance. Where a report is not based on facts or is founded on opinions, allegation, rumour or supposition, it shall be presented in such manner as to indicate this clearly.”

KFC is seeking a retraction and an apology. Efforts to reach a mediated solution have failed and the matter was formally referred to the Council.

Background

Currently, KFC and the BIU are engaged in a dispute arising out of a Collective Agreement between the parties which expired in 2011. In this ruling we make reference to the dispute by way of background only. Nothing in this ruling is intended to prejudge or in any way decide the issues in dispute between the parties. That will take place in the context of the arbitration. We have to decide only whether there has been a breach of the Media Council's Code of Practice.

We must assess the accuracy of a statement made by Mr. Alvin Williams in an article which appeared in the Workers Voice on 30 January 2012. The Complaint was filed on 30 March 2012. On 9 April 2012, the Complaint was delivered to the Workers Voice assistant editor. On 10 April 2012, the Workers Voice responded to the complaint by email. This produced a reply on 3 May 2012 from KFC. The Workers Voice submitted a further letter on 28 May 2012.

In the article in question the writer was describing what he believes are faults of the "*employer class*" in relation to the Bermudian workforce. He stated,

"... one example in that regard was the recent attempt to decertify the workers organization (BIU) without the permission of the workers at KFC."

The alleged inaccuracy is an assertion that KFC made an "*attempt to decertify*" the Union. KFC categorically denies that this is the case and says it is simply trying to renegotiate its collective bargaining agreement.

In the Council's view, the test to be applied is:

Is the statement demonstrably factual?

If not, then does the presentation make it clear that it is comment, opinion or conjecture.

Was the statement demonstrably factual?

In support of the complaint, the Council was provided with a letter dated 9 September 2011 that KFC sent to the BIU. The letter cites the history of negotiations between the two parties and gives three months' notice of termination of the Collective Agreement. It concludes,

"...we are prepared to work with you and your members over the next three months to reach terms for a new collective agreement between KFC and the BIU. We hope you and your members will partner with us to overcome the challenges that KFC is facing and allow us to move forward together for the foreseeable future."

When asked to respond to the Complaint, the editor of the Workers Voice sent an email to the Council which states:

"The Union contends that Mr. Williams was correct in his assertion that KFC attempted to decertify the BIU without the permission of the workers at KFC ."

The email referred to the same letter of 9 September in support of this interpretation. It then goes on to note that,

"The BIU continues to represent the employees at KFC only because the workers have not accepted the proposals by the KFC management for termination of the agreement."

We were also referred to a joint press release that was issued by the two parties on 23 December 2011. The press release confirmed the parties' commitment to engage in discussions until, "*at least 16 January 2012...*" The release affirmed the intention of the parties to work towards resolution.

The Council reviewed the relevant section of the Trade Union Act during its deliberations. A trade union will be certified by the provisions of the Trade Union Act 1965 when there has been a vote by a designated collective bargaining unit that the respective trade union be recognised as the exclusive bargaining agent for a collective bargaining unit. The Act states,

“to certify”, in relation to a union, means to certify that union under section 30F or

30G, as the case may require, as the exclusive bargaining agent in respect of a

bargaining unit; and “certification” and other cognates of “certify” have

corresponding meanings;”

The same act contains a process for withdrawal and cancellation of certification. Cancellation will take place where the collective bargaining unit applies for the “*cancellation of the certification*” on the basis that 35 per cent of employees no longer support the trade union.

“Decertification” therefore is a formal process which would then take away the union’s right to be recognised as the exclusive bargaining unit of KFC employees that they represent.

The Council has not been shown any material relied on at the time of the article or before which would evidence an intention on the part of KFC to decertify or attempt to have the union’s statutory recognition as the exclusive bargaining unit revoked. We have not been provided by the Workers Voice with any evidence that suggests that Mr. Williams had any evidential basis for asserting that the KFC was seeking to “decertify” the Union.

When a complaint is made as to alleged inaccuracy, it is incumbent on the complainant to satisfy the Council that the statement was, on the balance of probabilities, inaccurate. The publication must produce such evidence in support of the contention that the article was

accurate as it considers appropriate. The evidence in support of the complaint shows that at the relevant time KFC recognised the BIU as the exclusive bargaining agent authorised to negotiate on behalf of KFC staff.

The article creates the impression that the KFC was seeking to do more than renegotiate their Collective Bargaining Agreement, i.e. obtain (to the extent that it had the power to do so) the decertification of the Union.

The 9 September letter from KFC to the BIU affirms KFC's intention to continue negotiations with the Union as the agent of the workers. The January press release implicitly recognises the Union as the agent in that the parties are committing to future conduct. In so doing, KFC was recognizing the union as the agent for the workers. We have seen no evidence of any application to decertify and no other evidence has been provided by the Workers Voice that it had any such evidence. In our view, the article was not demonstrably factual.

Did the Publication properly distinguish fact from comment or conjecture?

The Code requires that the media outlet distinguishes clearly "*between news, comment, conjecture and fact*" ([see Section 3\(C\)](#)). In this case the writer failed to do so.

We further understand that Mr. Williams wished to assert an opinion that KFC was seeking to "bust" the union and that one should not apply a strict legal definition to the words used. If that is what Mr. Williams meant he ought to have said so and based on the correspondence we have seen, KFC was not seeking to do so. It appears to have recognised the Union as the bargaining agent throughout. If he was expressing an opinion the writer ought to have made it clear in the article that this was his opinion. He did not.

In our judgment the writer failed to distinguish clearly between fact and comment and conjecture.

Conclusion and Remedy

In the circumstances we conclude that the article infringed [Clause 3 \(A\) and \(C\) of the Code](#) in that the article contained an inaccuracy and the writer failed to distinguish clearly between comment and conjecture and fact.

We therefore direct that the Workers Voice publish without comment a correction which states,

“In our 30 January 2012 issue we published an article by Mr. Alvin Williams which stated that KFC made a recent attempt to decertify the union. That statement was inaccurate.”

Dated 12 June 2012