



# GREG REIFFEL CONSULTING

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### Quote:

“Winning isn’t everything...but wanting to win is”. Vince Lombardi 1913-1970), US football coach.

### In this edition

Is Michael Jackson’s father “a big black bast\*\*d”? He was to an apologetic radio announcer, who lost his job because of the on-air comment.

Use article link to **Domestic Violence Guide:**

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### **Michael Jackson’s father “a big black bast\*\*d”? Radio announcer unfairly dismissed.**

Peter Hand v Campbelltown Radio Pty Ltd T/A C91.3FM Radio, [2019] FWC 764. (U2018/7760). Hamberger, SDP, 11 February 2019.

This matter relates to a radio announcer who during an “on-air” radio program described a person as a **“great, big, black bast\*\*d”**. The announcer was sacked for serious misconduct because, according his employer he breached the company’s policies and the Commercial Radio Code of Practice. The announcer failed to report his on-air indiscretion promptly to management.

The announcer, a senior journalist, was provided with a “show-cause” letter; and subsequently dismissed, with payment in lieu of notice.

The incident that led to the applicant’s dismissal took place on 25 June 2018, during an afternoon radio program on C91.3FM. That program is hosted by Christian McEwan and Annabella Leone. The applicant was the newsreader for the program, so his on-air participation was mostly limited to the periodic news bulletins. However, the applicant would occasionally interject outside of those bulletins to provide light-hearted ‘fact checking’, while the hosts were conversing.

An excerpt of the transcript of the incident:

‘MS LEONE: Joe Jackson, which is Michael Jackson’s dad, the Jacksons’ dad, he was hospitalised over the weekend. Did you see this?’



MR McEWAN: Yeah, apparently he was - he was a terrible man, from what I've heard.

MS LEONE: Was he?

MR McEWAN: Yeah, Joe Jackson, the dad. Hold on, wait – is Joe Jackson his dad, or is he that guy that sings 'is she really going out with him'? You know that song?

MS LEONE: No, I think it's the dad. That's why they're saying –

MR McEWAN: I think his name is Joe Jackson as well! Is it the same person?

MS LEONE: No.

MR McEWAN: Illuminati confirmed!

MS LEONE: [laughs]

THE APPLICANT: Joe Jackson is a pale little... fellow,

MR McEWAN: OK –

MS LEONE: Yes?

THE APPLICANT: And Jackson, the father of Michael, is a great big black bast\*\*d.

MR McEWAN: But they're both called Joe. Right?

THE APPLICANT: I don't know, but, ah, you don't want to be confused. And when I say bast\*\*d I mean he's a bastard, it's on the record. He treated his kids badly and...

MS LEONE: That's what I've heard.

THE APPLICANT: That's what caused Michael's problems.

MR McEWAN: Annabelle's face...

THE APPLICANT: The other Joe Jackson will never have babies, if you know what I mean.

MR McEWAN: Yes.

MS LEONE: Ah.

MR McEWAN: Ah...Annabelle's face just went the palest white you've ever seen in your life. But no, I understand what Peter Hand is saying.

MS LEONE: I get where you are coming from Pete.

MR McEWAN: It's well recorded that he was a terrible, terrible person.

MS LEONE: Yes.

THE APPLICANT: Yes I didn't mean that he was ah...

MR McEWAN: Of course, he was a terrible, terrible person, beatings ... anyway.

THE APPLICANT: Bast\*\*d he was.'

According to the SDP:

- After using the phrase 'great big black bast\*\*d', the applicant was immediately aware he had made an error in so doing – Mr McEwan said he looked 'very upset' and 'shocked';
- The applicant's intention in using that phrase was to distinguish between two people named Joe Jackson, one of whom is white, and one of whom is black; he did not intend to make a racial slur implying that all black people are bast\*\*ds or that Joe Jackson, the father of Michael Jackson was a bast\*\*d because he was black; and
- The program hosts immediately attempted to downplay and move on from the phrase.
- Almost immediately afterwards, the applicant told the hosts that he wanted to apologise on-air. Mr McEwan was reluctant, but the applicant insisted. This is what the applicant said, as well as the brief exchange with the presenters that followed:

'THE APPLICANT: Yeah, I just want to apologise for something that came out, and ah, about Michael Jackson's dad that I said. Anyone who knows me would know that I did not mean it the way it could be taken. He was, and it's fully on the record, that he was a terrible man to his children and in many ways. So what I said was to ... to highlight that, not to highlight anything else. I am personally upset about what came out but, ah, I apologise.

MR McEWAN: I don't think you need to mate, don't you worry about it. It's fine.

MS LEONE: It's all right, mate. It's all good. It's all good.

MR McEWAN: And you know, no one listens to you anyways.

MS LEONE: laughing.

THE APPLICANT: Ok, I take it all back.

MR McEWAN: He's gonna throw it down now. Anyway he's done now, thank you and thank you for your apology. You didn't need to. I don't think you needed to but, you know, he's a big man.

MS LEONE: No, that was very big of you.

THE APPLICANT: I apologise for apologising.'

The applicant submitted:

- That his dismissal was harsh 'because it was disproportionate to the true gravity of the offence and its consequences for my personal and economic situation. I relied on that job.'
- That his dismissal was unjust because it was 'based on one four-second mistake over five years of impeccable service'.

- That his dismissal was unreasonable because the respondent ‘refused to fairly examine the matter...’ and that ‘proper process was not followed in several important ways’.

The SDP finding:

“It is clear from the evidence concerning previous use of the term ‘bast\*\*d’ on air by another presenter without any action taken against them, Mr McEwan’s testimony about the use of the term, and the concession made by Mr Giblin, that the applicant’s use of the word ‘bast\*\*d’ in and of itself should not be seen as misconduct, let alone part of a valid reason for dismissal. If the respondent wishes to stop its presenters from using the word, they need to make this very clear to their employees.

“The more serious matter is the applicant’s use of the phrase ‘black bast\*\*d’ to describe Michael Jackson’s father.

“It is completely clear that no racist slur was intended. Michael Jackson’s father was reprehensible because of the way he had (allegedly) treated his children – it had nothing at all to do with his colour.

“Nevertheless, it is inappropriate for phrases such as ‘black bast\*\*d’ to be used on the radio (or anywhere else) in any circumstances, because they could be seen as racially derogatory, even though the phrase was not intended to be so in this case.

“In summary, the applicant used the offending words by mistake. The words, when considered in their context, did not amount to a ‘racial slur’ (though it was nevertheless wrong for the applicant to use them, and as a senior journalist he should have done better). The applicant immediately realised his error and insisted on apologising on-air. He reported the incident to management – though later than he should have. He was remorseful and understood the error he had made.

“In conclusion, I am satisfied that the applicant’s dismissal was harsh because it was **disproportionate to the gravity of his misconduct**”. [Emphasis added].

As the Applicant did not seek reinstatement, the SDP awarded the Applicant \$28,782, plus superannuation.

### Commentary

Taking into consideration the SDP’s finding that the punishment did not fit the crime, and despite the radio station being represented by counsel and the applicant was on his own, maybe the radio station should have taken a different course of action. Maybe extended leave?

Until next time...

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