

The solicitors complained that although Mr Lyle had been interviewed in Rotorua Mr Aston was not contacted at the same time. They claimed Mr Aston had been assured of the opportunity of putting forward his version of the facts but he was not given the opportunity to do so. The solicitors asked that the complaint in respect of the programme be dealt with independently of a defamation claim.

There was subsequent correspondence between the Corporation and the solicitors which culminated in a decision by the complainant to proceed with the complaint and not with the defamation action.

On 21 July 1978 the solicitors were requested to supply further information which was done fully in a letter dated 1 September 1978. The complaint officially lodged with the Secretary of the Corporation was two-fold. First, that the company was not given an opportunity of appearing by Mr Aston on the programme to rebut the statements made by Mr Lyle, and secondly, that the programme itself contained untruthful allegations.

On 14 September 1978 the Corporation wrote to the solicitors for Astons Ltd. and informed them as follows:

"We have now had an opportunity to consider these details and it is evident that they are of a nature that would make it extremely difficult, if not impossible, for the Corporation to reach a conclusion on the complaint. The Corporation's complaints procedure is one of internal investigation. It does not provide for parties or witnesses to appear, or for the testing of evidence by examination. The nature of the facts set out in your letter of 1 September 1978 appears to require this procedure.

"However, as you are aware section 25 of the Broadcasting Act 1976 provides in certain instances for a complainant to make his complaint to the Broadcasting Tribunal. The Tribunal is properly equipped to consider disputed evidentiary situations and you may prefer to have the matter adjudicated by it. Your letter of 20 June 1978 to the Director-General of Television One clearly contemplated that course.

"To enable you to invoke the provisions of subsection (5) of section 25, I think it might be helpful if I advised you formally, that for the reasons given, the Corporation is unable to reach a decision on the matter of your complaint. I do so, now."

The Tribunal sat in Rotorua to hear the complaint and had the benefit of evidence from Mr Aston, his office manager, Mr E. T. Louisson, and his workshop foreman, Mr L. G. Fish.

Mr Desmond Monaghan, Controller of Programmes, represented the Corporation and Mr M. R. McDonald, a researcher for *Fair Go* gave evidence.

It was Mr McDonald who discussed Mr Lyle's criticisms of Astons Ltd. with Mr Aston on the telephone. But before they spoke, Gillian McGregor, reporter for the programme, had been asked to see Mr Lyle while she was in Rotorua for another purpose and to film an interview with him for possible use in the programme. Mr Monaghan told us it was common practice to film such an interview in order to present succinctly the complainant's story. It cannot always be done in a studio setting. She was not instructed to see Astons Ltd. to put any of the allegations to them. This decision led to the complainant feeling there was discrimination.

After some discussion (initially on 14 November) with Mr Aston, Mr McDonald understood the programme was likely to be broadcast on 17 November. He claims that Mr Aston was invited to go to Wellington to take part in the programme in the studio.

Some persuasion was apparently used to encourage him to attend, Mr McDonald promising him that he would enjoy himself!

It is apparently the policy of the programme to tape record all such telephone interviews and, of course, to inform the person concerned that his conversation is being taped in accordance with normal broadcasting ethics. From that tape, extracts would be taken, which were used in the programme and the accuracy of which was not challenged by Mr Aston in this case. Their completeness was, however, challenged and will be discussed later.

It was the second conversation, the next day, lasting for about three-quarters of an hour which led to misunderstandings. There is a dispute as to what was decided by that conversation. Mr Aston is very clear in his mind that he had indicated he did not want to go to Wellington but that he did want the opportunity to go if the matter was to proceed in the programme. In support he claims that their conversation ended with Mr McDonald saying that he understood that Mr Aston would be holding himself in readiness. This he certainly did and had Mr Fish available to travel with him.

That was not Mr McDonald's understanding. He duly reported to his producer that Mr Aston did not want to appear on the programme.

It is quite clear that there was confusion and we have no reason to suspect that either party to the telephone conversation was endeavouring to mislead us in his statements made about this conversation. In fact each had a colleague listening to the conversation at his end.

The result was, however, that no step was taken by Mr Aston because he expected to be informed if the item was to proceed on the programme but had hoped that the full information that he had given would result in the dropping of Mr Lyle's complaints by *Fair Go*.

The office manager for Astons Ltd., Mr Louisson, however, heard a trailer for the programme on 24 November and became alarmed causing Mr Aston to telephone Television One where he managed to speak to Mr McDonald. Mr McDonald said that he had had a call in all day to Astons which had been unsuccessful. He thought that when he eventually did speak to Mr Aston that it was as a result of his toll call. In any event it was only intended by Mr McDonald as a courtesy call to inform him that the item would be used on *Fair Go* at 7.30 p.m. that evening. Mr Aston protested and eventually spoke to some unidentified person higher in the programme hierarchy. But it was to no avail. The producer made a decision not to drop the item from the programme in order to allow him to appear. It was the final programme of the year.

After carefully considering the evidence we are satisfied:

- (1) *Fair Go* genuinely wanted Mr Aston to appear on the programme.
- (2) The manner in which Mr Aston put his wish not to have to go to Wellington could have led Mr McDonald to believe that he was unwilling to appear on the programme and that no further steps needed to be taken to persuade him to do so.

Because we consider the confusion was genuine we cannot uphold the complaint in this respect.

It is, however, pertinent to make one or two observations. The first is that an invitation to a representative of a firm whose reputation is at stake in a programme, is an important matter. Consideration should be given to issuing such invitations formally in writing by letter or telegram so that there is no confusion about:

- (1) The nature and extent of the matter to be dealt with on the programme, and
- (2) The specific invitation to attend.

It may even be appropriate on such occasions to confirm in writing a refusal of a person to appear.

It is a practice well established in organisations such as the Corporation and in business generally to make full file notes of telephone conversations on important matters and to confirm some of them in writing to the party concerned.

As the programme was not broadcast on the 17th but on the 24th of November, the delay could have led Mr Aston to believe that it was not being proceeded with. In the circumstances there was ample time in which to have written confirming that Television One had noted his desire not to appear on the programme to discuss specific complaints of Mr Lyle.

Secondly, when such a situation has occurred, and it is discovered late in the day, consideration should be given to dropping the item. In this case we were told by Mr Monaghan that a decision was made not to drop the item. We were not told whether this was because of a time factor or because the producer thought that Mr Aston had simply changed his mind. We are conscious of the fact that, as Mr Monaghan told the Tribunal, decisions have been taken to drop items in the course of the broadcast of this programme. The Tribunal cannot determine at what stage such a decision could have been made in the present instance. In the absence of full information of considerations which the producer would have had to take into account, we cannot say with confidence that the item should have been dropped.

We would also point out that, if during the period she was in Rotorua, Gillian McGregor had interviewed Mr Aston personally and had been given the opportunity of speaking personally to Mr Fish this investigation might have been more thorough and certainly a good deal fairer. It is much less likely that there would have been confusion about whether or not Mr Aston was to tell his side of the story on television.

The second part of Astons Ltd. complaint, relates principally to statements made by Mr Lyle on the programme which Mr Aston felt had not been a fair summary of the facts and did not disclose that some matters of fact were in dispute. Principally the complaint centred about the clear innuendo in the programme that the faults were due to bad workmanship on the behalf of Astons Ltd. who were incompetent to deal with the particular set.