

Decision No. 16/82  
Com 29/82

*Before the Broadcasting Tribunal*

IN the matter of the Broadcasting Act 1976, and in the matter of a complaint by Jonathan Lucas Hunt:

Warrant Holder: Broadcasting Corporation of New Zealand (Television):

B. H. Slane, Chairman; Lionel R. Sceats, Member.

DECISION

ON 7 September, Mr Hunt complained that the Broadcasting Corporation has excised part of an episode of "Brideshead Revisited" scheduled for transmission on Television ONE on Sunday, 11 September.

When the question of jurisdiction of the Tribunal to deal with a complaint before it is broadcast arose, Mr Hunt was invited to make submissions on the point.

He has not done so except to say that the Tribunal "is the review authority for complaints. Whatever legalistic niceties may be introduced, a common sense re-examination of this censorship is called for".

The Tribunal's jurisdiction to deal with complaints arises from section 67 (1) (b), which defines the function of the Tribunal to receive and determine complaints from persons who are dissatisfied with the outcome of complaints under section 25, Broadcasting Act 1976.

Section 25 refers only to complaints about programmes broadcast by the Corporation. The programme Mr Hunt complains about has not yet been broadcast.

Mr Hunt did not initially follow the correct procedure if he had wished to take a complaint on to the Tribunal, namely, to have lodged the complaint with the Secretary of the Corporation. However, the Tribunal does not consider that point important in the present context. The reason is that the Corporation cannot consider under section 25 a formal complaint (which Mr Hunt could take on to the Tribunal if he was dissatisfied with the outcome) because the formal procedure for complaints is, with one exception, only available in respect of programmes that have already been broadcast.

There is, of course, nothing to prevent the Corporation considering or acting on Mr Hunt's representations, but it cannot treat them as a formal complaint under its statutory obligations to deal with complaints because the right to lodge formal complaints arises only when a programme is broadcast.

Our interpretation of this section is reinforced by the provision in section 25 (6) permitting the Minister to refer to the Tribunal a programme which has not yet been broadcast. The Minister must first consider the intended broadcast that has been recorded or filmed will be in breach of one of the provisions of sections 24 (1) (c) to (g) or of the Programme Rules. It appears from Mr Hunt's complaint that he does not allege there would have been any such breach in the intended broadcast. Also, the Minister must consider that, in the special circumstances of the case, it is in the public interest that the question be referred to the Tribunal. These would appear to be the only circumstances in which the Tribunal can consider any material before it is broadcast.

The reasons appear obvious. The legislation is built around the responsibility of the warrant holders, their self-regulation (with specific rule making capacities) and with this one exception in special circumstances a clear indication that there is to be no interference by outsiders in the programming of radio and television stations by any statutory authority.

Mr Hunt's complaint is to oppose censorship. If the statutory right existed to complain to the Tribunal about programmes before they were broadcast, it would be used by those wishing to prevent the broadcast of programmes and would, in effect, constitute the Tribunal a censorship body which under the Act it clearly is not.

The provision for the Minister to refer a programme appears to be a special one which might arise in special circumstances and it is impossible to see a situation arising where the Minister could use that power when it is alleged that the programme intended to be broadcast will not in either its "censored" or "uncensored" form breach any of the provisions of the Act or the Programme Rules.

Mr Hunt's complaint is misconceived and the Tribunal must rule that it has no jurisdiction under the Act to decide his complaint which has therefore not been considered in substance by the Tribunal.

Dated the 9th day of September 1982. For the Tribunal:

B. H. SLANE, Chairman.

Decision No. 17/82  
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*Before the Broadcasting Tribunal*

IN the matter of the Broadcasting Act 1976, and in the matter of an application by Radio Avon Limited, pursuant to section 81 of the Act for amendment of a term and condition of Sound-Radio Warrant BRO 3XA:

B. H. Slane, Chairman; Lionel R. Sceats, Member.

ORAL DECISION

THE application has been made to delete the existing provision:

"That the total aggregate shareholding by one or more news companies as defined by the News Media Act 1965 whether as beneficial owner or otherwise in Avon Broadcasting Company Limited shall not exceed 30 percent of the issued capital of the company."

The proposal is that that is replaced by a clause in the form advertised with the addition of the words at the beginning:

"Except with the prior written consent of the Tribunal" and the deletion of the word "that" and then continue with "the total aggregate shareholding . . ."

The Tribunal has been told of the reasons for the proposed amendment. They can be summarised as a provision to make effective an existing clause in the warrant and it appears to the Tribunal to be desirable that such an application should be approved. The application is granted as amended.

It is also appropriate to make 1 or 2 amendments at the same time to the form of the warrant which as will be seen from the clause mentioned above which is now out of date as to the name of the company and other provisions. The applicant has filed a letter which sets forth the provisions which the company will consent to have amended for a re-issued warrant and the Tribunal is happy with those except for the final one which will not be put into effect.

The Registrar will submit the amended warrant for checking before issue. The redundant provisions of the warrant are deleted and amended by consent.

Dated the 22nd day of September 1982.

For the Tribunal:

B. H. SLANE, Chairman.

BROADCASTING ACT 1976

NOTICE OF RECEIPT OF APPLICATION

NOTICE is hereby given that the Broadcasting Tribunal has received an application by Radio Avon Limited to amend a term and condition of its warrant by deleting the requirement—

"That the total aggregate shareholding by one or more news companies as defined by the News Media Act 1965 whether as beneficial owner or otherwise in Avon Broadcasting Company Limited shall not exceed 30 percent of the issued capital of the company."

and replacing with the following—

"That the total aggregate shareholding by one or more news companies as hereinafter defined, whether as beneficial owner or otherwise in Radio Avon Limited shall not exceed 30 percent of the issued capital of the company, the term "news companies" meaning any of the following:

- (a) Any company that operates a private broadcasting station.
- (b) Any company that publishes a newspaper.
- (c) Any company that or person who holds 20 percent or more of the issued capital carrying a right to vote of any company referred to under (a) or (b) above.
- (d) Any wholly owned subsidiary of any company referred to under (a), (b) or (c) above or any company or person under the control of any person referred to in (c) above or any company under the control of any company referred to under (a), (b) or (c) above.
- (e) Any company or person with control over any company referred to in clauses (a) or (b) above or with control over any company or person referred to in clause (c) above.

and "control" in relation to a company means the power of a person or company to secure, whether by means of the holding of shares, the possession or control of voting power, the membership of the board of directors, a number of subsidiary and subsidiary companies in or in relation to that or any other company or by virtue of any powers conferred by the Articles of Association or other instrument regulating that or any other company or otherwise that the affairs of the