

people to be identified, we do not think there is any community standard which in itself constitutes a bar to a radio station promoting itself by means of some competition or other promotion which involves stopping a person in the street. The circumstances in which this occurs in the present complaints is the context of the streetwalker element which requires a person to put a question which, to say the least, could easily be, or be interpreted as, offensive by the woman.

The fact that the stopping in the street was done by listeners not agents or employees of the station, created the circumstances in which a breach of standards could occur so easily.

We do not find that there is a privacy standard which prevent the stopping of people in the street. The mere stopping and speaking to the people is not, we consider, regarded by most people as a breach of their privacy.

We therefore cannot uphold the complaints on this ground.

This is not to be regarded as support for the promotion which was properly dealt with as in bad taste by Radio New Zealand and the Corporation. Promotions which invite listeners to approach people directly indeed have a potential for annoyance or offence.

Maintenance of Law and Order—Ms Rankin said the promotion promoted conduct which could readily amount to offensive behaviour. Any angry reaction by any woman could, she said, result in a breach of the peace.

It would be easy to condemn any programme for urging or displaying conduct which could lead to or be said to encourage a breach of the peace. On that basis much news coverage such as programmes about male homosexuality, a protest movement, or advocating tougher police action should not be shown because an offence or offences may be committed. We do not accept that.

We see this rule as rather protecting viewers from programmes which constitute a real threat to the maintenance of law and order. This promotion did not. The fact that it was a promotion rather than a news programme should not change the principle.

Action taken by the Corporation—The Act is silent as to what is appropriate action. We consider that in some cases the mere finding on the complaint will be adequate action. In this case, the Corporation states that staff had been advised of the upholding of the complaint and warned against promotions of a similar kind.

District managers and ZM station managers were told by Radio New Zealand on 22 February

- to beware of "sexually orientated promotional ploys"
- to cease the promotion
- the promotion was in "appalling taste"
- district managers should take an interest in ZM promotions.

We do not consider the Act contemplates the Tribunal being able to require the Corporation to make donations to organisations, nor that it publicly spell out new standards. We comment however, that it may be appropriate for the rules committee to consider in each case that a complaint like this occurs, whether or not any amendments might be required to the current rules and standards in the light of changing social conditions and attitudes. At the same time there are advantages in maintaining general rules rather than develop a new rule because of particular complaints.

It is also suggested that the Corporation should have dismissed the manager of 2ZM. It would be quite inappropriate for this Tribunal to become involved in the industrial relations of the Corporation with its staff or to recommend or stipulate any particular action be taken against an individual employee or contractor of the Corporation. Such people are not represented before the Tribunal, nor are staff representatives appointed to the Tribunal. Industrial relations is a matter quite separate from the rights of persons under the Broadcasting Act to have complaints publicly upheld.

We consider the provision for a complainant to be able to complain about action taken by the Corporation refers to any remedial statements, such as apologies or corrections that ought to be undertaken in relation to the complaint and any notification to staff which might be required to prevent further breaches of the same provisions in similar circumstances.

In any case, in view of the action taken on 22 February, the Corporation's action was sufficient.

The complaints are not upheld on this ground.

It would be reasonable to comment that broadcasters like all people in positions of responsibility will from time to time make mistakes. It would be unfortunate if the provisions of the Broadcasting Act were seen by complainants as an opportunity to carry out a specific action against individuals concerned. In the proper context of the Act the responsibility for what is broadcast is that of the warrant holder.

The Corporation's failure to stipulate its reasoning in upholding complaints—The complainants would have liked to have seen some statements by the Corporation which could be regarded as definitive for broadcasters in the future. They would have liked to have seen some statements that went beyond the existing complaint on the status of women. The latter is really a matter for the rules

committee rather than for the Board of the Corporation on the finding on a complaint.

It would be unnecessarily burdensome on the Corporation if, when upholding a complaint that a programme was in breach of a particular rule or provision in the Act that it had to consider 5 or 6 different arguments, some of which it may not agree with and define its attitude on each one. The right that the complainant has is for a ruling whether or not the programme breached the particular provision. In this case the Corporation has noted the provisions which it considers were breached and we do not consider it has to go any further than that.

Nor do we consider the Tribunal is obliged to deal with every argument for upholding a complaint. Once the complaint has been upheld on one ground in relation to one standard or rule, the Tribunal is not obliged to consider finding a breach of the same standard on other grounds. This would turn the procedure into a legalistic one.

It is in borderline cases that the Tribunal can usefully define limits and clear cases of breach are not always the best on which to base definitive judgments.

The Tribunal has a discretion to decide whether or not it should determine a complaint—In general terms the Tribunal may frequently decide not to deal with a complaint if the complaint has been upheld on one ground or another but the complainant seeks that it be upheld on a further ground. This is more likely to occur, when the station has itself dealt with the matter before formal complaints were made, as in the present case.

However in the case of these 2 complainants, they had raised a number of important points for consideration by the Tribunal in a detailed and closely argued fashion.

We thought it appropriate therefore to deal with the complaint and to try and define for the future some of the limitations inherent in the complaints procedure by dealing with what the complainants obviously feel is a very important social issue.

Sight must not be lost of the fact that the officers responsible withdrew the promotion very shortly after broadcasts commenced, that the Corporation upheld the complaints on a number of grounds and that steps were taken to advise staff of the situation and to warn them of the risks of this sort of promotion occurring again.

The complaints are not upheld.

Co-opted Members—Mrs Boyd-Bell and Mrs Easther were co-opted as persons whose qualifications or experience were likely, in the opinion of the Tribunal to be of assistance to the Tribunal in dealing with the complaints. They took part in the deliberations of the Tribunal but the decision is that of the permanent members.

Dated the 21st day of December 1982.

Signed for the Tribunal:

B. H. SLANE, Chairman.

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Decision No. 1051.

Reference No. Ind 32/82.

*Before the Indecent Publications Tribunal*

In the matter of the Indecent Publications Act 1963, and in the matter of an application by the Comptroller of Customs for a decision in respect of the following publication: Look Nos. 9–13, published by Schwarz-gelb, Frankfurt.

Judge W. M. Willis (Chairman); Mesdames H. B. Dick, L. P. Nikera; Messrs J. V. B. McLinden, I. W. Malcolm.

*Hearing:* 16 December 1982.

*Decision:* 14 January 1983.

*Appearances:* Mr McNeice for Comptroller of Customs. No appearance of importer, Mr B. Armstrong.

DECISION

THESE sample copies were imported through parcels post, Hamilton, and were seized in August 1982. Forfeiture was disputed so they were referred for classification.

The magazines consist entirely of full page colour photographs of nude or semi-nude females. There is no accompanying text. In Decision No. 1020, *Look* Nos. 1, 4, 5, 6, 7, and 8 were classified as indecent in the hands of persons under the age of 18. These publications are no different from those previously classified. It was the submission of the Comptroller that this appeared to be a suitable case for the Tribunal to consider the imposition of a restriction order under section 15A. The Tribunal, having had the opportunity to consider a number of these publications, concurs with this view. *Look* is therefore classified as indecent in the hands of persons under the age of 18 years. A Restriction Order is made pursuant to section 15A for a period of 2 years.