

Decision No. 16/85

Com. 5/85

Before the Broadcasting Tribunal

IN the matter of the Broadcasting Act 1976, and in the matter of a complaint by ANTHONY JON SIMPSON of Wellington, writer:

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

Chairman: B. H. Slane.

Members: A. E. Wilson and R. Boyd-Bell.

RULING ON JURISDICTION

Mr Simpson complained that on 1 June as part of a scheduled sporting item on "Sport on One", Television One broadcast live coverage of the first rugby test between New Zealand and England. Mr Simpson complained that the broadcast was not in accordance with section 24 (1). The relevant portions of section 24 read:

"24. Responsibility of corporation for programme standards—

(1) The corporation shall be responsible for maintaining, in its programmes and their presentation, standards which will be generally acceptable in the community, and in particular it shall have regard to—

(a) The provision of a range of programmes which will cater in a balanced way for the varied interests of different sections of the community:

(b) The need to ensure that a New Zealand identity is developed and maintained in programmes:

(c) The observance of standards of good taste and decency:

(d) The accurate and impartial gathering and presentation of news, according to recognised standards of objective journalism:

(e) The principle that when controversial issues of public importance are discussed, reasonable efforts are made to present significant points of view either in the same programme or in other programmes within the period of current interest:

(f) The maintenance of law and order:

(g) The privacy of the individual."

Mr Simpson complained that the broadcast was in breach of section 24 (1) (a).

"It seems to me that taken in conjunction with the total amount of time devoted in your broadcast to rugby football and others of the same ilk retailing the activities of the same sport fails to meet the criteria of range, balance and variety. I say this because I believe it is the responsibility of the corporation to reflect in its programmes the leisure interests of the community (which includes sport) and that rugby is taking up far too great a proportion of the programming. This means conversely the exclusion of other activities which might as validly feature but which are rarely seen or heard in your programmes if at all."

He then quoted some figures to support his argument and pointed out that "knitting, which emerged as being as popular as rugby, has never been featured as far as I am aware." He then dealt with other sports and their coverage.

Section 95B governs formal complaints about the corporation's programmes.

95B. *Formal complaints about corporations' programmes:*

(1) It shall be the duty of the Broadcasting Corporation—

(a) To receive and consider formal complaints about any programme broadcast by the corporation where the complaint constitutes, in respect of that programme, an allegation that the corporation has failed to comply—

(i) With the obligation (imposed by section 24 (1) of this Act) to maintain in its programmes and their presentation, standards which will be generally acceptable in the community:

(ii) With the obligation (imposed by section 24 (1) (c) of this Act) to have regard to the observance of standards of good taste and decency:

(iii) With the obligation (imposed by section 24 (1) (d) of this Act) to have regard to the accurate and impartial gathering and presentation of news, according to recognised standards of objection journalism:

(iv) With the obligation (imposed by section 24 (1) (e) of this Act) to have regard to the principle that when controversial issues of public importance are discussed, reasonable efforts are made to present significant points of view either in the same programme or in other programmes within the period of current interest:

(v) With the obligation (imposed by section 24 (1) (f) of this Act) to have regard to the maintenance of law and order:

(iv) With the obligation imposed by section 24 (2) of this Act in respect of the broadcasting in cinematograph films:

(b) To establish procedures for investigating any complaint under paragraph (a) of this subsection and any complaint under section 950 (1) (b) of this Act.

(2) Every complaint under subsection (1) (a) of this section shall be lodged in writing with the secretary.

(3) Nothing in subsection (1) (a) of this section applies in respect of—

(a) An alleged failure to comply with the obligation imposed by paragraph (a) or paragraph (b) or paragraph (g) of section 24 (1) of this Act; or

(b) A complaint to which section 950 (1) (b) of this Act applies.

Subsection (3) of section 95B clearly states that an alleged failure to comply with section 24 (1) (a) of the Act is excluded from the formal complaints procedure. Mr Simpson accepted the corporation's response to that effect. But he noted that under 95B (1) (a) (i) he was entitled to complain about an alleged failure to comply with the obligation to maintain in its programmes and their presentation, standards which will be generally acceptable in the community. Mr Simpson argued that those standards required balance and variety in what was broadcast.

He referred the complaint back to the corporation which did not uphold it.

The corporation noted that 1 031 000 viewers aged 5 and over or nearly a third of the population watched the game about which he complained. It also said an analysis of coverage given to all sports events in 1984-85 showed that rugby coverage amounted to 6.06 percent of the output which was not considered excessive or unacceptable. His complaint was not upheld. Mr Simpson claimed that the response was not a proper one, writing again to the corporation stating:

"My complaint did not deal with the appropriateness of carrying rugby football items *per se*. It dealt with the relative coverage of that sporting activity in comparison of the coverage of other activities both sporting and more generally in the field of leisure. It was in relation to these that it was remarked that the coverage of rugby football was disproportionate, i.e. excessive in that sense rather than as an isolated phenomenon."

The corporation would not again reconsider the complaint and suggested Mr Simpson exercise his right to refer the complaint to the Broadcasting Tribunal.

On 9 September 1985 Mr Simpson filed a formal complaint with the Tribunal. However Mr Simpson made no further attempt to articulate his complaint, merely referring the Tribunal to the correspondence—an unsatisfactory approach—and the Tribunal has first to decide whether or not it has any jurisdiction to deal with the complaint.

Section 24 (1) sets out the responsibility of the corporation generally to maintain standards which will be acceptable in the community. It then requires the corporation in particular to have regard to the matters listed (a) to (g).

Part XIA provides a code for complaints. Section 95A sets out some principles which include:

Broadcasting attracts complaints.

Warrant holders have a responsibility to deal with them and must establish a proper procedure to do so.

An independent complaints procedure must also be available.

Complaints based merely on a complainant's preferences are not, in general, capable of being resolved by a complaints procedure.

Section 95B sets out the corporation's obligations in relation to formal complaints. It must receive and consider formal complaints about any programme broadcast by the corporation where the complaint constitutes an allegation that the corporation has failed to comply with the obligation imposed by section 24 (1) of the Act to maintain in its programmes and their presentation the standards which will be generally acceptable in the community. This is a general obligation.