

Decision No. 1/85  
Com. 2/84

*Before the Broadcasting Tribunal*

IN the matter of the Broadcasting Act 1976, and in the matter of a complaint by NATIONAL UNION OF RAILWAYMEN:

*Warrant Holder:* BROADCASTING CORPORATION OF NEW ZEALAND (Television New Zealand).

*Chairman:* B. H. Slane.

*Members:* Lionel R. Sceats and Anne E. Wilson.

*Co-opted Members:* N. L. MacBeth and P. J. Downey.

DECISION

*Background*

The National Union of Railwaymen was concerned in March 1984 to learn that the New Zealand Railways Corporation proposed to hire the use of broadcasting facilities of TVNZ, outside normal broadcasting hours, to convey a message to railway staff. This was being done because of the Government's so-called deregulation of the transport industry and the proposed release of the study by the American consultants, Booz-Allen and Hamilton. Effectively this type of broadcast would enable the General Manager of Railways to communicate to all of his staff who watched in a direct manner rather than indirectly through union representatives.

The Union wrote to the Chairman of the Broadcasting Corporation on 20 March 1984 claiming that the Union should have the opportunity to present its views, by the Corporation "providing an equal period of time within the programme" to enable this to be done. This was on the basis of an alleged statutory responsibility of the Corporation to preserve balance in its programmes and the requirements of the relevant rules. The Corporation declined to provide such time. For no reason that is clear in the papers the question of the Union hiring time immediately before or after the broadcast does not seem to have been raised by the Broadcasting Corporation or the Union.

On 20 March the Chairman of the Corporation replied to the Union, which wrote again on 28 March 1984. The broadcast by the Railways Corporation was made on TV1 shortly after 11 p.m. on 29 March 1984, following the close of normal broadcasting. The broadcast was aimed at all who worked for the Railways Corporation. Apparently the staff had been given notice of the television broadcast and requested to tune in. The fact of the broadcast was conveyed to the general public as a news item, but was not trailed by TVNZ.

The broadcast was in the form of a statement by the General Manager of Railways in which he told the staff (and anyone else who happened to be looking) that the Railways Corporation chairman would be announcing what were described as new business strategies and releasing the Booz-Allen Report to the union leaders and the public the following day. The general manager outlined these new strategies including a new management structure.

The broadcast spoke of having negotiations with union leaders; of the need for improved productivity; of adjusting manning levels; of increasing weekend operations; of eliminating light density lines; of reducing staff levels; of early retirement; of redundancies; and of limiting retraining opportunities. There were other matters but this list will indicate that many questions were referred to that would generally be regarded as contentious industrial issues. While these issues could be said to be of primary concern to the Railways Corporation and its employees, they could also have implications for the general public as taxpayers and users of Railways services. The tone of the broadcast was matter-of-fact and largely along the lines of giving information about decisions already taken and asking for staff support in a new competitive environment.

On 30 March 1984 the Union wrote to the Secretary of the Broadcasting Corporation and laid a formal complaint with the Broadcasting Corporation "that in broadcasting the Railways Corporation advertising programme your Corporation failed to comply with the rules made under section 26 of the Act", being the Broadcasting Act 1976.

The complaint was duly considered by the Complaints Committee of Television New Zealand and its recommendation that the complaint not be upheld was considered and adopted by the Broadcasting Corporation at its meeting on 8 May 1984.

The decision of the Broadcasting Corporation was conveyed to the Union by the Corporation's Secretary on 21 May 1984. The letter concluded as follows:

"The Corporation considered that the commercial fell within both the Advertising and Programme rules, and that, within the period of current interest the obligation to present other views (in reaction to the controversy created by the announcement) was fully met in broadcasts. Accordingly it was unable to uphold the complaint."

*Formal Complaint to Broadcasting Tribunal and Response*

A formal complaint was made by the Union to the Broadcasting Tribunal. The actual complaint made was:

"That in broadcasting an advertising programme on a controversial industrial/political issue the BCNZ breached Rule 1.1 of the Broadcasting Rules which requires broadcasters in the preparation and presentation of programmes 'to show balance impartiality and fairness'."

In support of this contention the Union added that the particular broadcast had important industrial and political implications, and that on such a programme fairness required that all significant points of view be presented rather than relying on subsequent coverage by news and current affairs programmes to achieve balance (emphasis added).

The complaint was considered by the Tribunal on the papers, there being further letters from the Broadcasting Corporation and the Union, the earlier correspondence between the two, and copies of two internal reports of the Broadcasting Corporation that had also been supplied to the Union.

Rule 1.1(g) of the Television Programme Rules requires broadcasters:

"To show balance, impartiality and fairness in dealing with political matters, current affairs, and all questions of a controversial nature."

Rule 1.2 of the separate Television Advertising Rules requires that:

"Advertisements which are a form of programme material, must meet all standards and requirements laid down in the programme rules."

For the sake of completeness it is necessary to record also a recent rule relating to industrial and political advertising. Rule 1.17.1 provides:

"Industrial relations advertising is permissible but will not:

- (a) include material which denigrates any other party to a dispute;
- (b) imitate in any way an existing programme, format or any identifiable personality."

These various rules are based on and give effect to section 24 of the Broadcasting Act. Section 24(1)(e) stipulates:

"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." (emphasis added).

This complaint was made on the basis of a breach of the Rules and not on section 24. The union submitted quite correctly that the Rules can, as in some cases they no doubt do, establish higher standards than the Act itself requires. The Rules however must obviously be read in the light of as well as being subject to the express provisions of the statute.

*Decision*

This broadcast was undoubtedly one that dealt with controversial issues concerning such matters as redundancy, staff levels and changes of services, but it did so merely by way of introduction and information about a full public announcement concerning them that was to be made the following day. The mere fact of the inclusion of material that was in some degree controversial was not such as to require immediate balancing material in the same programme. The obligations of the warrant holder could be met in various ways such as in news and current affairs programmes.

If this was not going to be the case then the Broadcasting Corporation would have been obliged to have found some appropriate way in which to have achieved a programme balance in respect of those controversial issues that were of public importance. In the particular situation here the Corporation knew that the Booz-Allen Report was to be released the day after the broadcast and would be available to the Union, and that the Union would obviously be making public statements on the issues.

There is a complicating factor in the particular situation here. This broadcast was not simply a normal programme or advertisement intended for the general public. It had a restricted target audience, namely employees of the Railways Corporation, which of course would have included all the members of the Union. At the same time any member of the public would have been free to have watched the broadcast. If the broadcast was substantially restricted in its content merely to matters of concern to the target audience only, then special considerations might apply. But in this decision the Tribunal leaves that matter open and deals with this complaint on the basis that some of the matters discussed were of public importance.

This type of broadcasting, with industrial and political overtones, is new. The Tribunal would not wish to see it unduly restricted at this stage of development. It would become an anomalous situation