

She claimed that her complaint related to "news and sports and weekend sports programmes through period of New Zealand Cavaliers' tour, basically 6.30 and 9.30 p.m."

The only complaint which can be referred to the Tribunal is the one she made to the BCNZ—the BCNZ's announcement that live match coverage would not be broadcast.

The Tribunal cannot deal with complaints that have not first been referred to the BCNZ.

The Tribunal's jurisdiction to deal with complaints of this kind 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 to the Corporation under section 95B (1) Broadcasting Act 1976.

Section 95B (1) casts a duty on the Corporation to receive and consider formal complaints about programmes broadcast by the Corporation.

There is of course nothing to prevent the Corporation considering any complaint whether it contains grounds for formal complaint under the Act or not. The Act makes it clear that the right of any person to lodge formal complaints arises only when a programme is broadcast.

The Tribunal's interpretation of this section is reinforced by the special provision in section 95ZA (1)(a)(i) which empowers the Minister of Broadcasting to refer to the Tribunal a programme which has not yet been broadcast. The Minister has first to consider that an intended broadcast which has been recorded or filmed will be in breach of certain provisions of section 24 or of the programme rules.

We have had occasion twice previously to consider whether the Tribunal has any power to deal with a complaint that a programme ought to be broadcast. In Decision 8/82 the Tribunal dealt with a complaint from H. E. Jensen who was impressed by a programme and wished to have it repeated. The Tribunal found it had no jurisdiction to deal with such a complaint.

In Decision No. 16/82 the Tribunal dealt with a complaint from Mr J. L. Hunt, M.P. (before he was Minister of Broadcasting). His complaint was that a programme (Brideshead Revisited) which he wanted to be broadcast in a particular version, was one which he alleged did not breach the rules. The Tribunal ruled it had no jurisdiction.

As we pointed out in that decision, the reasons for the Act not providing for reference to the Tribunal of a complaint that a programme ought to be broadcast arises out of the structure of the Act which casts responsibility on warrant holders to decide what to broadcast. With the one exception mentioned above, the Act makes it clear that there is to be no interference by any outsiders, whether a statutory authority or otherwise, in the programming of radio and television stations.

If complainants could refer to the Tribunal complaints about programmes that they wanted to have broadcast, we would become the de facto controllers of the BCNZ substituting our opinions for those of the board of the BCNZ which has the statutory responsibility for the BCNZ's programming and the day-to-day decisions of its executives.

Further, as we said in Decision 16/82:

"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."

Mrs Sutherland's complaint therefore falls outside the jurisdiction of the Tribunal.

As far as the decision of the Broadcasting Corporation on her complaint is concerned, the Corporation is correct in its interpretation that an alleged breach of section 22(c) does not establish the basis for a formal complaint.

The Corporation's interpretation of the effect of alleged breach of section 24 (1)(a) is also correct. Section 95B (3)(a) specifically precludes a formal complaint based on an alleged breach of section 24 (1)(a).

We note that section 95A which sets out the principle on which the complaints procedure is based, states, *inter alia*,

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

The Tribunal has found nothing in the complaint which would give it jurisdiction to deal with the complaint. There is no basis therefore for holding the oral hearing requested by the complainant.

In summary:

1. The specific complaints by Mrs Sutherland refer to sections of the Broadcasting Act in respect of which there is no right of access to a formal complaints procedure leading to the Tribunal. The fact that the Corporation has dealt with the complaints in a formal manner does not give the Tribunal a statutory jurisdiction. The Tribunal is unable to deal with the complaint except pursuant to powers given to it under the Act.
2. The Broadcasting Act provides no formal complaints procedure which could enable the Tribunal to consider a programme which—
 - has not been broadcast
 - is said to comply with the Act and rules
 - the complainant wants to have broadcast
 - the warrant holder does not intend to broadcast.
3. The Act does not enable the Broadcasting Tribunal to make general comments or rulings on the reasoning or processes of day-to-day judgments in broadcasting otherwise than in dealing with complaints which can legally be referred to it under the Act.

The Tribunal finds that it has no legal power to deal with Mrs Sutherland's complaint.

Signed for the Tribunal.

B. H. SLANE, Chairman.

Decision No. 7/86
COM. 4/86

Before the Broadcasting Tribunal

IN the matter of the Broadcasting Act 1976, and in the matter of a complaint by ROBERT WALTER DAWSON of Waikanae.

Warrant Holder: BROADCASTING CORPORATION OF NEW ZEALAND (Television);

Chairman: B. H. Slane.

Member: Robert Boyd-Bell.

DECISION

Dated the 15th day of May 1986

By letter dated 2 May 1986, Mr Dawson lodged formal complaints with the secretary of the BCNZ "against the reporting and general coverage by Television New Zealand of the tour of South Africa by a group of leading New Zealand rugby players". His complaint was that the coverage failed to meet the requirements of section 24 of the Broadcasting Act. Mr Dawson then made complaints specifically about news coverage. Those complaints have not yet been finally dealt with by the BCNZ and therefore the Tribunal has no jurisdiction to deal with them at this stage.

Mr Dawson's other complaint which he wished to have referred to the Tribunal, was "the decision to strictly limit or ignore sporting coverage and not to give live coverage of the games against a representative South African team".

Mr Dawson submitted that reasonable efforts must be made to ensure that significant points of view are presented in the period of their interest.

"In not covering the games, while extensively covering other aspects of the tour TVNZ is ignoring a significant New Zealand interest and point of view and is failing to uphold the law of the land," he said.

The BCNZ dealt with that complaint on 8 May as follows:

"It is not necessary to provide live coverage of the tour in order to comply with the requirements of section 24 (1)(e) of the Act that in matters of public controversy, reasonable efforts be made for all significant points of view to be given expression. In any event, the news coverage provided is sufficient to meet the requirements of this section, if this were to apply."

That complaint was not upheld.

Mr Dawson referred his complaint to the Tribunal by letter dated 9 May which was received by the Registrar on 12 May. The Registrar forwarded the complaints form including the required declaration and this was lodged with the Registrar on 13 May 1986. In completing that form Mr Dawson made it clear that he was not complaining about specific programmes but about "inadequate coverage of the Cavaliers' rugby tour of South Africa by TVNZ". In his letter of 9 May to the Tribunal he argued that complying with the rules of objective journalism required "full coverage for the tests". He did not, in completing the complaint form, add anything specific.