

or an objective analysis of the Tribunal's decision, so the statements could not be justified as a fair comment based on factual material. It was an emotional response. Mr Bickerstaff had previously told the Tribunal that he projected a certain image for the audience. We can appreciate that occasionally a "bloody" in context is quite acceptable in Mr Bickerstaff's adopted characterisation. Very occasional use of swear words will not necessarily breach the standards. But Mr Bickerstaff piled one word and phrase on top of another and added abuse. The result was not acceptable. Responsibility needs to be exercised.

We do not consider that the managing director's assertion that "those who find Mr Bickerstaff's down to earth language offensive probably stopped listening to his programme a long time ago" to be any sort of defence for this degree of lapse. It was a self-indulgent, self-pitying use of a privileged position to direct abuse offensively at a particular person and group of people.

It is not a matter of whether the Tribunal likes something or not, nor of whether bureaucrats exercise powers. It is rather whether, put simply, language should be permitted on the air which breaches community standards. Some of this insulting, offensive and obscene language—if used in the street to the people for whom it was intended—could have led to an arrest. Mr Bickerstaff's unwillingness to discipline himself, and his rancour at what he felt was an attack in the decision, is not a justification. The Tribunal itself did not in fact criticise him personally in any way in its decision 6/88.

The Tribunal upholds the complaint of a breach of the standards of good taste and decency.

The seriousness of this breach is the deliberate nature of it.

Mr Bickerstaff may express his views but he must do so within the law and within the rules of broadcasting and within community standards of good taste and decency. The ultimate responsibility lies with the warrant holder. The station appears since to have accepted those responsibilities, particularly in relation to the other matters traversed at the renewal hearing in relation to racial and ethnic matters, which accords well with its responsibilities as a warrant holder.

Also to be taken into account is the fact that no subsequent complaint has reached the Tribunal, despite Mr Cuthbert's avowed practice of monitoring the programme.

This decision will be sent to the Broadcasting Standards Authority set up to assume the Tribunal's complaints jurisdiction under new legislation which gives it more extensive powers and control over the setting of standards. That body may decide to take this conduct into account if there should prove to be any subsequent similar breach.

The Tribunal regrets that the complaints decisions could not be completed earlier due to a need to give priority to licensing work. Yet by casual observation, it seems the tone of the programme has picked up and no other complaints have lodged complaints. Mr Bickerstaff's undoubted talents have apparently been better directed.

Complaint 11/88 RJA Cuthbert to the Broadcasting Complaints Committee

The complaint Mr Kelly made on behalf of Mr Cuthbert was in 2 parts. First, unfair treatment: secondly, unwarranted breach of privacy. The complaint can be summarised as follows:

Mr Cuthbert was a member of CARE and as such participated in the Tribunal's hearing of Radio Pacific's application for renewal of warrant. CARE's submission laid some stress on aspects of the past on-air conduct of Mr Bickerstaff. The submission of the Race Relations Conciliator carried a similar emphasis. A number of complaints had been laid with the conciliator, some of which had been upheld by the conciliator. Three of them were lodged by Mr Cuthbert.

Mr Kelly wrote that on Wednesday, 30 March, Mr Bickerstaff said: "His name is Dick Cuthbert. Remember that name—

Dick Cuthbert.' To which the caller responded: 'I'll remember it.' "

(The actual words and other remarks also made are in the text above.)

More precisely, Mr Kelly said Mr Cuthbert said he then received several abusive and threatening telephone calls derived from that broadcast.

On 6 May 1988 Radio Pacific's solicitors wrote to the Broadcasting Complaints Committee stating that the complaint appeared to have been lodged under section 950 (1) (b) of the Broadcasting Act as one of unjust and unfair treatment of programmes and unwarranted infringement of privacy.

Radio Pacific's solicitor stated that, as they understood it, there had been 1 complaint lodged, namely in reference to Mr Bickerstaff's statement on 30 March set out above.

The solicitor answered the complaint as the station was obliged to do under section 95s (1) (d). He said the claim in respect of unwarranted infringement of privacy was totally inappropriate. That section referred to the infringement of privacy "in connection with the obtaining of material included in programmes broadcast"—there was no infringement of privacy in obtaining any material in respect of this broadcast."

Radio Pacific also denied that Mr Cuthbert had been subjected to unjust and unfair treatment and considered that complaint frivolous. (Section 95Q (1) (d) provides that the Committee shall not investigate complaints which appear to be frivolous.) The solicitor wrote that Mr Cuthbert was a well-known figure who had been involved publicly in campaigns against Mr Bickerstaff. He was well known for his views on South Africa and had been involved in public debate with Mr Bickerstaff either directly or indirectly over many years. He had vigorously attacked Mr Bickerstaff at the Tribunal's public hearing on the renewal of Radio Pacific's warrant when he admitted monitoring Mr Bickerstaff's programme. His campaign against Mr Bickerstaff was a matter of fact and admission.

Radio Pacific submitted that Mr Bickerstaff was the subject of an organised campaign by Messrs Kelly and Cuthbert and that they were lodging a frivolous complaint because of their deeply held views on the issue of relations with South Africa, Mr Bickerstaff holding a contrary view.

As to Mr Cuthbert's complaint concerning his name being used in the broadcast, Radio Pacific's solicitors responded that Mr Cuthbert gave evidence to the Tribunal that he had monitored Radio Pacific. He had a record of lodging complaints against Mr Bickerstaff with the Race Relations Office and was a public figure with publicly known views, upon which Radio Pacific was entitled to make comment. As a matter of natural justice, Mr Bickerstaff had a right to respond to the strong personal attacks on himself which Mr Cuthbert had made to the radio station, the Race Relations Office and the Tribunal.

Radio Pacific considered that the issue was so linked with the Tribunal's hearing and decision on the station's warrant that the Committee should report the complaint to the Tribunal to determine it either in isolation or when renewal of the warrant was considered in 10 months' time.

Mr Kelly then responded to the Committee.

In a letter dated 10 June 1988, Mr Kelly made the following comments on Radio Pacific's solicitors' response.

1. Section 950 (b) (ii) reads:

"Unwarranted infringement of privacy in, or in connection with the obtaining of material included in, programmes broadcast by any broadcasting body."

Clearly that included unwarranted infringement of privacy in programmes broadcast by any broadcasting body.

2. The complaint was not frivolous.