

3. He detailed obscene, racist, abusive and threatening telephone calls made by anonymous callers who were obviously listeners to the programme.

4. It was no defence that Mr Bickerstaff could not be blamed for extravagant responses to his finger-pointing at Mr Cuthbert. Broadcasters did not have a right to inflame public opinion against a member of the public because of a personal grievance.

5. Many of the offensive terms used by the anonymous callers were the words used on air by Mr Bickerstaff and defended by him in respect of the other complaint as necessary to his style and to maintain his rapport with his audience.

6. The on-air attack on Mr Cuthbert was not justified as part of a continuing public debate between the 2 of them over the South Africa question. That claim was untrue. Apart from 1 occasion on air briefly, Mr Cuthbert had not telephoned the programme.

7. The South Africa connection was irrelevant to the matter of this complaint and was offered as an excuse for all occasions on Mr Bickerstaff's behalf.

8. Mr Kelly's personal views on South Africa were not known by Radio Pacific and were irrelevant to the complaint.

9. It was claimed that Mr Bickerstaff had the right to respond to "strong personal attacks" made on him by Mr Cuthbert. Those attacks were presumably complaints to the Race Relations Office and evidence submitted to the Tribunal for the renewal of warrant hearing. There was no proper use of the right of response. Mr Cuthbert had a right to intervene in the proceedings for renewal and to make complaints to the Race Relations Office.

10. The transfer of the jurisdiction to the Tribunal was opposed.

Broadcasting Complaints Committee Decision No. 4/88

In its decision (No. 4/88) dated 1 July 1988, the Broadcasting Complaints Committee stated that he had read the correspondence on the complaints of unjust and unfair treatment and unwarranted infringement of privacy in connection with the broadcast of 30 March 1988. He had listened to a tape of the programme.

The Committee stated that his attention had been drawn to the fact that Mr Kelly on behalf of Mr Cuthbert had lodged a complaint with the Tribunal direct relating to the same programme. [This seems to refer to Mr Kelly's own complaint about standards.]

The Committee said he was aware of the Tribunal's decision 6/88 relating to Radio Pacific's application for renewal. That decision indicated that the station had been subject to complaints from CARE, of which Mr Cuthbert was treasurer. Again according to the Broadcasting Tribunal's decision, CARE had as one of its objectives the removal of Mr Bickerstaff, the Committee wrote.

The Committee said it seemed clear that Mr Cuthbert's concern related to the total programme and was part of an ongoing saga. Although the complaints were couched in different terms and were directed to different aspects of the same broadcast, there remained the clear impression that CARE wished to see Mr Bickerstaff removed from broadcasting.

In those circumstances it seemed to the Committee inappropriate for him to consider Mr Cuthbert's complaint, which was essentially a minor part of a larger issue. The Committee found the two complaints to be inextricably bound together and that they ought not be considered in isolation. Furthermore, bearing in mind the Tribunal's decision, it was considered preferable to decline jurisdiction and refer the complaint to the Tribunal.

Decision on Complaint of Unjust and Unfair Treatment and Breach of Privacy

This complaint was referred to the Tribunal after the Tribunal had had the benefit of a sitting in respect of the other complaint. For that reason, and because the parties had made their submissions to the Committee, the Tribunal did not seek further submissions.

The station had written to Mr Kelly on 13 April 1988 as set out at the beginning of this decision. Mr Kelly had then written to the Tribunal complaining on 28 April 1988.

The Tribunal has listened to tape recordings. The context is set out above because it is relevant to an understanding of the particular sentences when Mr Cuthbert was named twice.

On the issue of breach of privacy, a submission made by the solicitors for Radio Pacific that the complaint could only be based on the gathering of material is patently incorrect on a plain reading of the section.

The Tribunal therefore finds that there was a valid complaint lodged with the Broadcasting Complaints Committee.

The question arises whether there was a breach of privacy in the broadcast. Mr Cuthbert was named. Whether he was unfairly or unjustly treated is dealt with later. The only question is whether the naming of Mr Cuthbert, fairly or unfairly, was a breach of his privacy.

The fact that is allegedly resulted in abusive telephone calls is not in itself conclusive. It has to be accepted that Mr Cuthbert is a public figure. Mr Cuthbert has taken a prominent position in protests over a number of issues relating to sporting contacts with South Africa. He is not a private person in the context of this complaint but rather a public figure. It is quite possible that public figures will receive telephones calls as a result of references to them in broadcast programmes and others in other media.

For this Tribunal to find that mention of a public figure in an unfavourable way is in itself a breach of privacy, whether the comment is fair or unfair, would be to limit the freedom of speech quite remarkably. We can identify no allegation of the programme having urged people to contact Mr Cuthbert or in any way having advocated any course of action which would have in itself constituted a breach of his privacy. It is not necessary for us to decide the question of whether an invitation to contact a person is in itself an infringement of the right of privacy when that person is a public figure. It is, however—for the purposes of broadcast regulation—a matter that raises serious issues and care needs to be taken in arriving at a decision on the basis of particular circumstances.

In this case, we can see no basis for the claim of a breach of privacy on the part of Mr Cuthbert. He was undoubtedly involved in issues related to Mr Bickerstaff off air and we can see no breach of the Act in his identification on air.

The complaint is not upheld in this respect.

In respect of the allegation of unjust and unfair treatment, the Tribunal has had to consider a number of issues.

First, there is the claim that attacks had been made on Mr Bickerstaff and that he was justified in responding to them. Leaving aside the nature of his response, it is interesting to observe the assumption made by the station manager (and Mr Bickerstaff) that Mr Bickerstaff was entitled to use his position as a broadcaster to respond in respect of matters which had not been broadcast. An ordinary citizen may well observe that hosts who publicly criticise public figures are themselves public figures who must tolerate similar criticism, without using their power to deal unfairly with others. That is what the Act requires. Mr Bickerstaff was prepared to use his privileged position. While we accept the truth of Mr Lowe's statement in the other complaint hearing that Mr Bickerstaff was prepared at all times to accept calls on air, he has a great advantage in doing so and certainly uses it.

While Mr Cuthbert's monitoring of the programme was seen