

by Mr Bickerstaff as the cause of all the complaints, some were lodged by CARE.

Mr Cuthbert was entitled to lay complaints with the Race Relations Conciliator and the justification (if any was needed) was the conclusions arrived at by that office. He had not engaged in any abuse or criticism of Mr Bickerstaff on the air.

We do not think there is any justification for denying Mr Bickerstaff the right to comment in appropriate terms on a public figure such as Mr Cuthbert, where Mr Cuthbert had been engaged in activities which clearly were designed to damage Mr Bickerstaff for whatever good reasons Mr Cuthbert had in mind. But we do not think that a campaign by CARE (which was acknowledged by Mr Kelly) could in any circumstances be a justification for the use of insulting and offensive words. Mr Bickerstaff was simply being, in plain words, unfair and unjust to Mr Cuthbert in referring to him as a "wanker" and in inaccurately ascribing all the blame for complaints to Mr Cuthbert. In fact, Mr Cuthbert had made 3 of the 8 complaints to the Race Relations Conciliator about Mr Bickerstaff, who was wrong in saying "He's had 8 in there. Him, himself, right?"

Nor do we accept the argument that, because the matter arose over a difference of opinion on South Africa and Mr Bickerstaff held himself out as the only person prepared to take an independent line on South Africa, he was entitled to use the sort of language and description of Mr Cuthbert that was involved in this case. We accept that there is a considerable ground for protecting broadcasters such as Mr Bickerstaff, who had taken a view on South Africa that is not fashionable in some media circles, from being driven off the air by unreasonable or unfair behaviour and comment. That sort of conduct has drawn our comment in another complaint recently decided in relation to Radio Pacific. So let there be no doubt about the Tribunal's position for freedom of speech.

But, as Mr Kelly rightly says, the broadcaster must act within the law. We cannot accept that the description of Mr Cuthbert as being solely to blame for the predicament in which Mr Bickerstaff thought he found himself was justified. In this connection we have taken not just the words referred to in the original complaint but also the context in which they occurred.

As we have said previously, Mr Cuthbert is a controversial public figure and must expect intense and strong criticism of his conduct and attitude. There are also rules laid down for broadcasting by broadcasters which require fairness and justice in dealing with individuals. In relation to the other complaint about bad language, Mr Bickerstaff made it clear that this was part of his style and attitude and that he considered it as something of a right to continue to broadcast using these words as he pleased. We have commented earlier in this decision on that. On this complaint, we simply say that we must uphold the complaint. It was a clear but not a serious breach of the requirements of the Act. In sporting terms, it was below the belt. A good sportsman would, in the circumstances, apologise.

We do not however consider the breach to require any direction to be given by the Tribunal.

The complaint, in respect of the allegation of unjust and unfair treatment, which we emphasise is against Radio Pacific Ltd., is upheld.

Co-opted Members

Messrs Sheehan, Carter and Tucker were co-opted as persons whose qualifications and experience were likely to be of assistance to the Tribunal. They took part in the respective deliberations of the Tribunal but the decisions are those of the permanent members.

Signed for the Tribunal.

B. H. SLANE, Chairman.

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Decision No. 7/90
COM 15/88

Before the Broadcasting Tribunal

In the matter of the Broadcasting Act 1976, and in the matter of a complaint by **Harold Earle Jensen** of Wilton, Justice of the Peace:

Warrant Holder: Broadcasting Corporation of New Zealand (Radio New Zealand):

Chairman: Judge B. H. Slane.

Member: Robert Boyd-Bell.

Co-opted Members: R. M. Carter and P. J. Trapski.

Decision

Dated this 30th day of January 1990.

The Complaint:

Mr Jensen complained about a news item broadcast at 7.40 a.m. in Radio New Zealand (RNZ) news on 1 July 1988. He described the item as:

"a biased review of the referendum being engendered by Bob Martin surrounding the Treaty of Waitangi and fishing rights.

"The L'Estrange comments were totally out of tilt, more so when one views them alongside the Treaty of Waitangi which has never been legally ratified.

"My point of issue is that the BCNZ failed to comply with the Act in not inviting or allowing Bob Martin the right of comment or reply to the L'Estrange accusations on this programme.

"Bob Martin has a sincere and real genuine concern for all New Zealanders over this issue and as such should have been given the right in the same programme to reply. The total lack of courtesy."

Mr Jensen said the Maori ownership issue was being "heightened by internal BCNZ influences and balanced replies are not being invited."

The BCNZ Response

On 30 September the Broadcasting Corporation wrote to Mr Jensen, advising him that the Board had not upheld his complaint. It had been considered against sections 24 (1) (d) and (e) of the Act, which respectively require broadcasters to have regard to the accurate and impartial gathering and presentation of news reporting to recognised standards of objective journalism; and 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.

The BCNZ said Mr Jensen's complaint concerned reports of an interview with Maryanne L'Estrange, co-ordinator of the pakeha pro-treaty group Project Waitangi. Prior to the interview, the thrust of the statements by the Commercial Fishermen's Association president Bob Martin to protect pakeha fishing "rights" had been thoroughly reported, said the Corporation. Similar coverage had been given to Maori views about fishing rights.

The role of the RNZ Network News was to report all relevant factors about an issue and, in handling the task, built-in balance was not necessarily required so long as total coverage had sufficiently addressed the issues.

Mr Martin had taken out newspaper advertisements calling for a referendum on the Treaty of Waitangi and Ms L'Estrange contacted Network News to make a statement on behalf of Project Waitangi. This statement dealt with what Project Waitangi regarded as errors of fact which could be established by checking with any reputable book on New Zealand history or the Treaty of Waitangi. As Ms L'Estrange's statements were a response to comments already aired by Mr Martin, there