

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 12/91

Dated the 18th day of April 1991

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

J.E. TREGURTHA

of Hastings

Broadcaster

TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson

J.B. Fish

J.L. Hardie

J.R. Morris

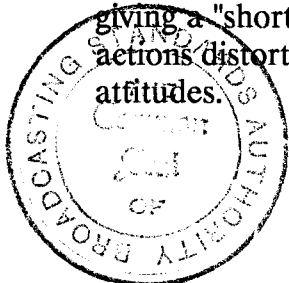
DECISION

Introduction

A repeat of an episode of Ever Decreasing Circles broadcast at 9.30 pm on TV1 on 5 July 1990, lasted 20 minutes 15 seconds (plus credits lasting approximately 1 minute). This compared with the length of the otherwise identical episode of 27 minutes 50 seconds (plus credits) broadcast by Television New Zealand Limited in 1989. The repeat broadcast was not accompanied by any announcement that editing had reduced the length of the programme.

Mr Tregurtha's Complaint to Television New Zealand Limited

Mr Tregurtha wrote to TVNZ on 16 July 1990 to lay a formal complaint. In summary, he complained that the programme screened was not the programme which was purported to be screened; that removing a part of a work of art was vandalism; that giving a "short weight" commercially would result in criminal liability; and that TVNZ's actions distorted the concept of "fair play" which could lead younger viewers to anti-social attitudes.



Expressing his uncertainty about the details of the broadcasting standards applicable to television and the complaints procedure, he related his complaint to good taste and decency and the maintenance of law and order. He wrote:

Such grounds would seem to cover this situation admirably - it is difficult to imagine a more morally corrupt attitude towards the interests of television viewers; and when the public becomes fully aware of the situation, law and order are most certainly not going to be enhanced.

TVNZ's Response to the Formal Complaint

TVNZ, in a letter dated 30 August 1990, recorded that its Complaints Committee observed that the standards relate only to that which is broadcast. Therefore, TVNZ could not be held responsible for what it did not screen.

It also noted that TVNZ's editing rights had recently been investigated by the Commerce Commission under the Fair Trading Act and that "complaint was rejected by the Commission".

TVNZ wrote:

Given all the circumstances the Committee was unable to determine that the two standard provisions in question had been breached. Accordingly your complaint was not upheld.

Mr Tregurtha's Complaint to the Broadcasting Standards Authority

As Mr Tregurtha was dissatisfied with TVNZ's decision, he referred the complaint to the Broadcasting Standards Authority on 24 September 1990 under section 8(a) of the Broadcasting Act 1989. The referral was on the Authority's Complaint Referral Form.

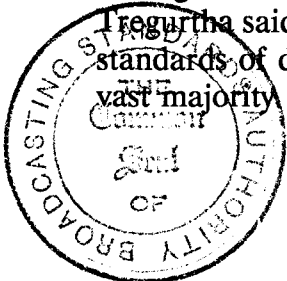
He related his complaint to the following standards in the Codes of Broadcasting Practice for Television.

Standard 1: To be truthful and accurate on points of fact.

Screening 73% only of the episode, Mr Tregurtha claimed, breached this standard.

Standard 2: To take into consideration currently accepted norms of decency and taste in language and behaviour,

Noting that this standard included the preparation and presentation of programmes, Mr Tregurtha said that reducing the length of a dramatic programme breached the accepted standards of decency. Furthermore, he claimed that this view would be shared by the vast majority of New Zealanders.



Standard 5: To respect the principles of law which sustain society.

Drawing a parallel with a bookseller who removed 27% of a novel but said it was the "genuine article", Mr Tregurtha described TVNZ's actions as illegal.

Standard 7: To avoid the use of any deceptive programme practice which takes advantage of the confidence viewers have in the integrity of broadcasting.

The integrity of broadcasting, Mr Tregurtha maintained, was "fatally damaged" if a viewer was unaware whether any jumps in sequence were part of the script or the result of TVNZ's actions.

He concluded:

If this practice is to continue, one can only wonder to what extent it may eventually spread. A 27% cut is unbelievable until one has seen the proof. The average person cannot envisage the utter contempt for the viewer that this implies. Obviously 30% cuts are on the cards (if they are not already occurring), then 40% and 50% are only a matter of time.

TVNZ's Response to the Authority

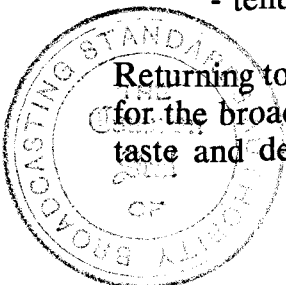
The Authority referred the complaint to TVNZ for comment on 27 September 1990 and TVNZ responded in a letter dated 19 February 1991 - 21 weeks later. It repeated the statement made to the complainant that the programme standards in the Broadcasting Act applied only to programmes which are broadcast. It continued:

Admittedly a reduced version of the programme was broadcast to meet logistics factors as they relate to common junctions and advertising and promotions requirements. However, there is absolutely no evidence to show that what was broadcast in any way constituted a breach of the good taste and decency requirements, or could it be construed as posing a genuine threat to law and order within the community.

TVNZ added that the complainant had been informed, when the complaint was accepted, that the complaint would be assessed only pursuant to the standards noted by the complainant. Accordingly, TVNZ submitted that the new grounds were inadmissible. Nevertheless, with regard to the two new grounds:

They were not taken into account by the Complaints Committee but if they had been, they would undoubtedly have fallen into a similar category as the other two - tenuous and inappropriate.

Returning to the allegation in regard to decency, TVNZ noted that editing was necessary for the broadcasting of sports, for example, and it rejected the possibility that the good taste and decency standard applied to the practice. With regard to law and order,



TVNZ repeated its comment made earlier to the complainant that the Commerce Commission had rejected a complaint about the practice of editing programmes. Observing:

The company, it is submitted, is entitled to exercise editorial decisions before programmes are put to air. It does not accept that the programme was subjected to the sort of mutilation the complainant alleges;

it concluded that the standards had not been breached.

Mr Tregurtha's Final Comment to the Authority

At the Authority's invitation, Mr Tregurtha commented on TVNZ's response in a letter dated 28 February 1991. He described the parallel between televising a cricket match and a dramatic programme as absurd in that the latter was crafted as an entity.

He apologised for any contraventions of the complaints procedures, explaining that his initial complaint to TVNZ was based on the Authority's complaint procedures pamphlet and he had later obtained the Television Code of Broadcasting Practice.

TVNZ's argument that his complaint was tenuous, he observed, reflected the inadequacies of the Code:

In a case such as this where TVNZ cut a single chunk of over 27% out of a drama, the situation is so patently unacceptable that it is somewhat superfluous to state specific grounds for complaint.

Noting that TVNZ had not considered the issue of advising viewers of cuts to programmes, he asked the Authority to impose a requirement of disclosure on TVNZ.

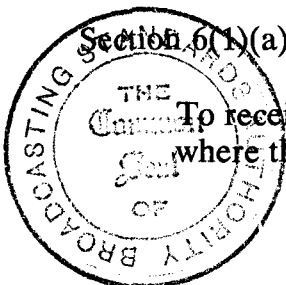
Decision

The Authority finds inexcusable the length of time it has taken TVNZ to respond to a number of referrals, of which this is a glaring example, i.e. TVNZ took more than five months to reply to the Authority's reference of the complaint to it. It records its displeasure and that it will advise TVNZ that it expects a prompt response to future referrals. In the event that a prompt response is not received, it will determine a complaint without any further input from the company.

The Authority has studied the correspondence and carefully considered the arguments advanced by Mr Tregurtha in support of his complaint and by TVNZ in response.

Section 6(1)(a) of the Broadcasting Act 1989 requires a broadcaster:

To receive and consider formal complaints about any programme broadcast by it where the complaint constitutes, in respect of that programme, an allegation that



the broadcaster has failed to comply with section 4 of this Act;

Section 4 lists four standards to which programmes must comply and provides for the application of approved codes of broadcasting practice to programmes. Standards 1, 2, 5 and 7 from the Television Code of Broadcasting Practice, to which Mr Tregurtha related his complaint, are recorded above.

TVNZ argued that the standards in the Act and the Code apply only to that which is broadcast. The Authority considers that this observation over-simplifies the intention of both the legislation and the Code. It reaches this conclusion because s4(1)(e) of the Act imposes an obligation on broadcasters to maintain standards consistent with any approved broadcasting code and the introduction to the Television Code begins: "In the preparation" of programmes.

However, although the Authority concludes that the Act does not necessarily confine it to examining the standards of programmes as broadcast, there are obvious limits about the extent to which the Authority can examine a broadcaster's practices when preparing programmes.

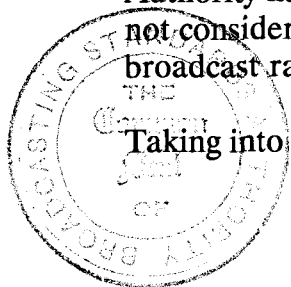
With regard to news and current affairs on television, standard 15 explicitly imposes an editing standard to ensure that the extracts of a film used (e.g. of an interview) correctly reflect the overall views expressed. However, as the current complaint focuses on an entertainment programme, standard 15 is not relevant.

The complainant, on several occasions, notes that the cutting of a programme amounts to a breach of contract between the broadcaster and the viewer. In the Authority's opinion this parallel is inapposite. There is no explicit contract between the broadcaster and the viewer of a programme. The substantial contract dealing with the broadcast of a programme is between the broadcaster and the distributor of the programme. If the distributor believes that cuts made by the broadcaster breach this contract, the distributor may seek the appropriate remedies. One of the viewer's remedies, on the other hand, is to switch off. The viewer buys a licence to view, but may at any time not view any particular programme.

As noted above, the jurisdiction the legislation grants to the Authority is to examine the preparation and presentation of programmes. Furthermore, the examination occurs under criteria which deal with behavioural standards: commercial and contractual standards are excluded from the Authority's jurisdiction.

Mr Tregurtha's initial complaint to TVNZ focussed on taste and decency (standard 2) and respect for the principles of law (standard 5). At no time did Mr Tregurtha allege that the programme which was broadcast on 5 July 1990 breached these standards. The programme *Ever Decreasing Circles* is a light-hearted English situation comedy. The Authority has not viewed the programme about which the complaint was laid. This was not considered necessary in view of the fact that the complaint focussed on what was not broadcast rather than that which was.

Taking into consideration the Authority's jurisdiction and the focus of the complaint, the



Authority declines to uphold the complaint alleging breaches of the Television Programme standards 2 and 5, subject to a comment about standard 5 recorded in the final paragraph.

When referring his complaint to the Authority, Mr Tregurtha also raised standard 1 (factual truth and accuracy) and standard 7 (avoiding the use of deceptive practices). When TVNZ's comments were sought on the referral, it replied:

The company would make the point at this stage that it is neither fair nor reasonable for a complainant, who clearly and firmly spells out his grounds in the first place, to then take the matter to the Authority and argue his case on the basis of two new grounds not earlier placed before the company. With respect, it is submitted that these grounds are beyond the scope of an Authority investigation of the broadcaster's decision. They are tantamount to being inadmissible.

The Authority agrees with this submission. With this complaint, TVNZ commented that had its Complaints Committee considered the complaint against these standards, it would have reached a similar conclusion to the other two standards raised - that they were "tenuous and inappropriate".

The Authority agrees with this conclusion in regard to standard 1 (factual truth and accuracy) and standard 7 (deceptive programming practice) only in so far as the Authority is empowered to examine the substance of programmes and not the restrictions imposed by technical criteria.

The caveat expressed above relating to standard 5 (respecting the principles of law) refers to the requirements of the Fair Trading Act 1986. The Authority is aware that the Fair Trading Division of the Commerce Commission in February 1990, when dealing with a complaint similar to the one from Mr Tregurtha, declined to intervene on the ground of minimal consumer detriment. The Commission suggested in that case that the complainant seek private remedies through the Court. It is beyond the Authority's jurisdiction to rule whether the practice complained about breaches the Fair Trading Act. Moreover, as the practice of cutting programmes is based on commercial as opposed to standards criteria, the Authority has no jurisdiction to pursue Mr Tregurtha's complaint under the Fair Trading Act 1986.

For the foregoing reasons the Authority declines to uphold the complaint.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson

18 April 1991

