

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 65/91

Dated the 10th day of December 1991

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

DR J.E. EFFRON

of Wellington

Broadcaster

TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson

J.R. Morris

R.A. Barraclough

L.M. Dawson

DECISION

Introduction

The *Fair Go* programme broadcast by Television New Zealand Ltd on 12 March 1991 included an item about paintings sold door to door. The woman featured had bought a painting on the understanding that it was a local scene painted by a well-known New Zealand artist. The woman was later told by three picture framers that she had bought Asian art and that the painting was probably imported. *Fair Go's* inquiries disclosed that the painting's style was Oriental, that the painting could possibly be of a local scene and that it was painted by a Mr Barry Grey, a New Zealand resident who had immigrated from Beijing some two to three years previously.

Dr Effron complained to TVNZ that the item was offensively racist and that it implied that people not born in New Zealand were committing fraud to describe themselves as New Zealanders. The item, he said, encouraged denigration of, and discrimination against, New Zealanders born in Asia.

TVNZ, noting that the programme made no criticism of the artist or his paintings, declined to uphold the complaint. As Dr Effron was dissatisfied with TVNZ's decision, he referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.



Decision

The members have viewed the item to which the complaint relates and have read the correspondence (summarised in the Appendix).

Dr Effron complained about an item broadcast on *Fair Go* concerning art work sold door to door. The purchaser of one painting was told that it was a scene in the Waitakeres painted by Barry Grey, a well-known New Zealand artist, and that she would be encouraging the development of New Zealand art by buying the painting. After investigating a complaint that the painting might be imported Asian art, *Fair Go's* inquiries disclosed that it was painted in New Zealand by a Mr Barry Grey, a New Zealand resident, who had immigrated from Beijing some two to three years previously.

Dr Effron stated that the item's message, because of the way the item was presented, was to question Mr Grey's right to call himself a New Zealander. He acknowledged that that effect might well not have been the programme maker's intention. However, the item's effect was to encourage denigration of or discrimination against New Zealanders born in Asia and, more generally, to encourage denigration of and discrimination against New Zealanders not born in New Zealand or Britain. As a result Dr Effron alleged that it breached standard 26 of the Television Code of Broadcasting Practice which states:

26. Except as the legitimate expression of satire, dramatic themes and current affairs reporting might legitimately dictate, the portrayal of persons in programmes in a manner that encourages denigration of, or discrimination against, sections of the community on account of sex, race, age, disability, or occupational status or as a consequence of legitimate expression of religious, cultural or political beliefs, may not be encouraged.

TVNZ declined to uphold the complaint as, it maintained, the item did not involve a racial slur. It quoted the item's concluding dialogue which asked viewers the question whether it was stretching the point to describe the painting which was the subject of the investigation as New Zealand art.

The Authority noted that although the item left some points unanswered (for example, was the painting a scene of the Waitakeres?), it dealt with Mr Grey very fairly. In the language of the programme, Mr Grey was given a fair go. As part of his complaint, Dr Effron described the reporter's repetition of Mr Grey's answers as patronising. The Authority, in contrast, considered that it reflected the reporter's efforts to ensure that all viewers understood Mr Grey's less than perfect English.

The Authority decided that the item's central issue was the style of the paintings being sold door to door. It had been the style which the picture framers, approached by the purchaser and the art experts approached by *Fair Go*, had described as either Asian or Oriental. Indeed, some of the comments about the painting's style tended to be derogatory. However, castigating the style of a painting does not necessarily amount to a comment on the artist.

With regard to the artist portrayed, Mr Barry Grey, the item commented favourably on

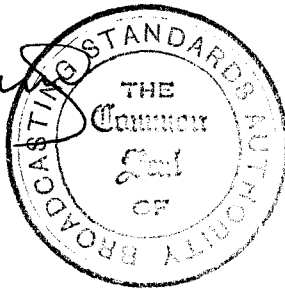


his special skills. Bearing this point in mind, together with the item's concluding question for viewers noted above, the Authority was unable to agree with Dr Effron that the item cast more than a minor aspersion on Asian artists. Further, in the Authority's opinion, no slur was made about foreign born New Zealanders more generally. A breach of standard 26 is concerned with more than a passing slur. It requires the Authority to conclude that an item has denigrated or discriminated against a section of the community, in this case on account of race. It is a test which this complaint does not meet.

For the reasons set forth above, the Authority declines to uphold the complaint.

Signed for and on behalf of the Authority

Iain Gallaway
Iain Gallaway
Chairperson



10 December 1991

Appendix

Dr Effron's Complaint to Television New Zealand Limited

After correspondence with Television New Zealand Ltd, the Race Relations Conciliator and the Broadcasting Standards Authority, in a letter dated 5 May 1991 Dr Effron made a formal complaint to TVNZ about TV1's *Fair Go* programme broadcast on 12 March. The complaint was made under standard 26 of the Television Code of Broadcasting Practice which provides:

26. Except as the legitimate expression in context of satire, dramatic themes and current affairs reporting might legitimately dictate, the portrayal of persons in programmes in a manner that encourages denigration of, or discrimination against, sections of the community on account of sex, race, age, disability, or occupational status or as a consequence of legitimate expression of religious, cultural or political beliefs, may not be encouraged.

Dr Effron wrote:

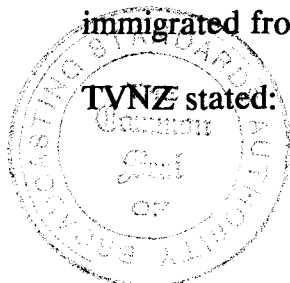
The programme stated essentially that anyone who was not born in New Zealand and who called himself a New Zealander was a fraud. Combined with a focus on Mr Grey's permanent residence status, his name, his accent and his facial features which I submit was wholly unnecessary to make any point they wanted to make about the art work in question (about which, from memory, they only asked one or two questions out of many more to Mr Grey), the effect was to encourage denigration or discrimination against New Zealanders who were born in Asia and perhaps against all who were not born in Britain or New Zealand.

TVNZ's Response to the Formal Complaint

TVNZ advised Dr Effron of its Complaints Committee's decision in a letter dated 1 July 1991. It explained that the *Fair Go* item followed the receipt of a complaint from a person who had bought a painting from a door to door salesperson. The woman said that she was told by the salesperson that it was a painting of a scene in the Waitakeres by Barry Grey, a well-known New Zealand artist. However, she was later told by three picture framers that she had bought Chinese or Asian art and that the painting was probably imported.

Fair Go's findings, which were disclosed during the programme, were that the painting's style was Asian or Oriental, that the painting could possibly be of a local scene and that it was painted by a Mr Barry Grey, a New Zealand resident, who had immigrated from Beijing some two to three years previously.

TVNZ stated:



You may recall that "Fair Go" took the view, which it openly stated was debatable, that it was stretching the point to suggest buying Barry Grey's "paint in 10 minutes" portfolio was encouraging the development of New Zealand art.

...

The Committee was satisfied that the programme made no criticism of the artist or of his paintings. In fact it was observed that the programme stated that such work was allowing people to buy genuine originals at a cheaper price.

It added that the item included a interview with Mr Grey who had displayed his technique although the discussion was not easy as he spoke limited English.

With regard to Dr Effron's complaint that the programme implied that only New Zealanders who had been born in New Zealand were entitled to describe themselves in that way, TVNZ denied that the programme stated, or implied or in any way proposed that view. It also responded to a number of specific points made by Dr Effron.

In summary, TVNZ maintained that the letter of complaint from the buyer of the painting justified *Fair Go's* investigation as to whether the paintings sold door to door as the works of New Zealand artists were, in fact, imports. The programme's inquiries revealed the artist's Chinese ethnic origins - "But that did not mean the revelation encouraged denigration of him on racial lines or would lead to discrimination with regard to his race". The complaint was not upheld.

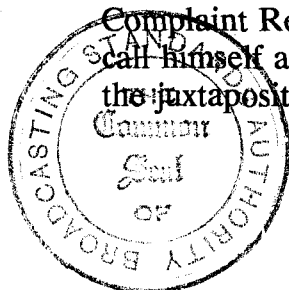
Dr Effron's Complaint to the Broadcasting Standards Authority

As Dr Effron was dissatisfied with TVNZ's decision, in a letter dated 10 July he referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

Expressing the opinion that much of TVNZ's reply had missed the point of his complaint, he stated that *Fair Go's* interview with Mr Grey focused on his racial characteristics and his status as a New Zealander. It had implied that a person who was not born in New Zealand, or had an accent, or had Asian features, could not be a New Zealand artist. The result was to denigrate Mr Grey and other New Zealand artists with an Asian background.

He also responded to a number of other points made by TVNZ although he described them as irrelevant to his complaint.

Dr Effron emphasised his particular concern when he completed the Authority's Complaint Referral Form. He stated that the item had questioned Mr Grey's right to call himself a New Zealander by the questions asked, by the focus of the camera and the juxtaposition of the interview in the item.



He accepted the possibility that *Fair Go* might have not intended to communicate denigration but that was the programme's message which, he argued, would have been understood by an objective viewer.

TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's comments on the complaint. In its response, TVNZ said that its reply to Dr Efron had dealt with all the significant points which he had raised. Further, TVNZ argued that a proper consideration of the complaint entailed an examination of the chain of events covered in the item.

However, rather than repeat the detail dealt with in the previous correspondence, TVNZ said that *Fair Go* had never stated that Mr Grey was not a New Zealander. The item had contended that his artistic style was Chinese but that did not amount to a racial slur.

TVNZ disputed the complainant's allegation that the item's message was that Mr Grey had no right to call himself a New Zealander. Instead, it recorded:

It is not improbable that viewers would tend to admire the initiative of the artist in seeking to fill a niche in the market for reasonably priced oil paintings of New Zealand scenery.

The complaint, it continued, had misunderstood the key question posed by the item. It had asked whether it was fair to sell Mr Grey's paintings on the basis that the buyer was supporting New Zealand art. Quoting the item's concluding dialogue in support, TVNZ concluded:

As will be appreciated the answer to that question was for viewers to contemplate and resolve. When realistically assessed in its overall perspective the company does not believe the "Fair Go" item comes within even long range of breaching the provisions of code 26. It is submitted that there was absolutely no discrimination against him on the grounds of race or any other factor. It was, if anything, highlighting the caveat emptor principle and the need for a fully informed marketplace.

Dr Efron's Final Comment to the Authority

When asked for comments on TVNZ's response, in a letter dated 26 November Dr Efron stated that there was little new or substantive to reply to. He maintained that the item focused on and denigrated the artist. He continued to disagree that the item had focused on the nature of New Zealand art.

