

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 9/92

Dated the 30th day of March 1992

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by the

SOLICITOR-GENERAL

Broadcaster

CAPITAL FM LIMITED

of Wellington

I.W. Gallaway Chairperson

J.R. Morris

R.A. Barraclough

L.M. Dawson

DECISION

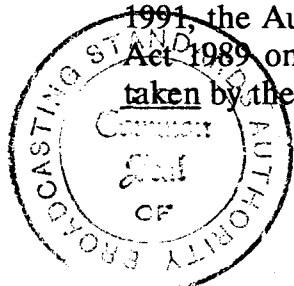
Introduction

The Solicitor-General (Mr J.J. McGrath QC) in a letter dated 8 August 1991 complained to the broadcaster of More FM about items broadcast by that station on 17 and 24 July 1991 which, he said, were attempts to influence judicial decisions. Each item involved comment from a Mr Chris Gollins in a segment entitled More Report.

The managing director of Capital FM Ltd (Mr Doug Gold), the owner of More FM, responded in a letter dated 20 August. Explaining that the items in question were comment programmes, he denied that the broadcasts had breached either the Broadcasting Act or the Radio Code of Broadcasting Practice.

In a response dated 13 September, Mr McGrath refused to accept Mr Gold's letter as a decision on his complaint as it did not meet his concern that comments such as those broadcast on 17 and 24 July undermined the system of justice.

Following further correspondence between the complainant and the broadcaster's solicitor, the matter was referred to the Broadcasting Standards Authority. Because of the legal issues involved, in an Interlocutory Decision (No:ID 1/91) dated 17 December 1991, the Authority ruled that it accepted the referral under s.8(a) of the Broadcasting Act 1989 only on the basis that the Solicitor-General was dissatisfied with the action taken by the broadcaster. Because the statutory time limits had not been met, it did not



accept the referral on the basis that the broadcasts on 17 and 24 July breached broadcasting standards.

Decision

The Authority, rather than repeat its discussion of the procedural points raised in the parties' correspondence, has attached Interlocutory Decision No: 1/91 to this Decision. It will be noted that in that decision the Authority accepted the referral of the complaint under s.8(a) of the Broadcasting Act 1989 only on the basis that the Solicitor-General (the complainant) was dissatisfied with the action taken by Capital FM Ltd (the broadcaster). Because the time limits imposed in the Act had expired, the Authority did not accept the referral on the basis that the complainant was dissatisfied with the broadcaster's decision on the alleged breach of the standards. This decision, therefore, does not investigate and review the broadcaster's decision relating to any standards matters. In accordance with the interlocutory ruling, it investigates and reviews the action taken by the broadcaster in response to the complaint.

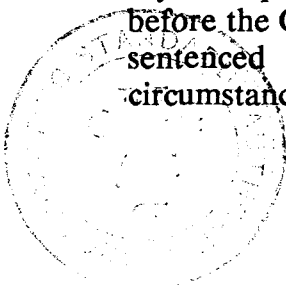
The complainant, when advised of the Interlocutory Decision, did not want to comment further. (The details advanced by the Solicitor-General up to that point are dealt with in the attached Interlocutory Decision.) He awaited the Authority's ruling on the substantive point on which the referral had been accepted. Through its solicitor, the broadcaster responded to the Interlocutory Decision by requesting a further decision that the complainant be asked to define precisely the nature of the complaint and to identify the offending parts of the two broadcasts.

Having considered that request, the Authority declined to make the ruling sought. It believed that the complainant had provided sufficient details to allow the broadcaster to assess the complaint. As examples of how, in the Authority's opinion, the complainant had provided adequate information, the Authority notes the following extracts in the complainant's letters to the broadcaster. The first is from the letter dated 8 August 1991 when he wrote:

My complaint is that both of these broadcasts amount to an attempt to influence a judicial decision. Statements such as this are a matter of concern to the judiciary and to all those who are involved in administering the legal system. The purpose of them is to undermine the independence of the courts, with consequent detriment generally to the administration of justice. In other words, it is a corner stone of a democratic system that the courts are independent and are seen to be such. The media should not act in a way that tends to undermine them.

When asked by the broadcaster for further details, in a letter dated 13 September the Solicitor-General said:

My main point is that attacks on judges, when they focus on particular cases still before the Courts, inevitably tend to undermine the system of justice. If a person sentenced by a Court regards a media attack directed at the particular circumstances of his case as having influenced the judge's decision it matters little



that the judge was not influenced at all. The damage is done if the result in the mind of any listener is a perception that the media can put pressure successfully on judicial decision-making in individual cases or that it is an appropriate course to try to do so.

Having declined the broadcaster's request, the Authority then examined the aspects of the broadcaster's action on which it had accepted the referral. That action comprised the broadcaster's failure to reach a decision on the specific complaint together with an undertaking to the Solicitor-General that it would in future seek legal advice before broadcasting any matter referring to the judiciary.

In regard to the broadcaster's failure to make a decision, there is one issue with semantic overtones which the Authority wishes to settle promptly. It is possible to read the broadcaster's letter to the complainant of 20 August as, in fact, making a decision on the complaint. However, the Solicitor-General declined to accept it as a decision and the broadcaster (and its solicitor) have subsequently adopted that attitude. Thus, the Authority is proceeding on the basis, acted on by the parties, that the broadcaster has not ruled on the Solicitor-General's complaint first made in his letter of 8 August 1991.

The broadcaster's solicitor has been consistent in his response that it is not possible to decide the initial substantive complaint as the Solicitor-General, despite requests, has declined to provide sufficient detail to enable the broadcaster to focus on the points in dispute. It was a request which, as noted above, was also made to the Authority.

As will be apparent from its decision not to provide the ruling sought by the broadcaster's solicitor, the Authority considers that adequate details have been provided. At a general level, both the Broadcasting Act 1989 and the Radio Codes of Broadcasting Practice are concerned with balance, accuracy and dealing justly and fairly with people referred to. Specifically, s.4(1)(b) of the Act requires broadcasters to maintain standards consistent with the maintenance of law and order and standard 1.1(f) of the Radio Code of Broadcasting Practice (approved under s.4(1)(e) of the Act) requires broadcasters to respect the principles of law which sustain society.

The specific issues about commenting on the judiciary and revealing information about alleged offenders prior to sentence are discussed in Burrows, "News Media Law In New Zealand" (3ed), Auckland, 1990. Burrows refers to two leading cases decided in New Zealand where broadcasters have allegedly been in contempt of court because of statements broadcast. The cases referred to are Solicitor-General v Radio Avon Limited [1977] 1 NZLR 301 and Solicitor-General v Broadcasting Corporation of New Zealand [1987] 2 NZLR 100.

The Authority does not intend to discuss further either the standards issue or the cases as it believes that to do so would be to address the substantive issue which the Solicitor-General complained about but on which the Authority has ruled that it was time-barred from accepting a referral.

With regard to the adequacy of the action taken by Capital FM Ltd in response to the Solicitor-General's complaint, s.6(1)(a) of the Broadcasting Act states that a broadcaster



is obliged:

- (a) 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;

Since, as has been stated, the Solicitor-General's formal complaint met the requirements of the provision, the only question remaining is whether Capital FM Ltd discharged its statutory duty to receive and consider the complaint.

The Authority has no doubt that Capital FM Ltd did not discharge that duty. Far from considering the Solicitor-General's complaint, the broadcaster declined to consider it and its reasons for doing so, as has been explained, do not withstand scrutiny. If broadcasters were able to discharge their duty under s.6(1)(a) of the Broadcasting Act by failing to recognise a duly made formal complaint or by pleading ignorance of the meaning of the standards regime which governs their operations, there would be no point to the regime's existence.

Accordingly, the Authority concludes that Capital FM Ltd, upon receipt of the Solicitor-General's formal complaint, was obliged to assess the broadcasts which inspired the complaint against the identified broadcasting standards, giving those standards an interpretation in accordance with common sense. Since Capital FM Ltd failed to do that, the Solicitor-General's dissatisfaction with the action it took in response to his complaint is well-founded. Nothing short of compliance with s.6(1)(a) of the Broadcasting Act 1989 could have been a satisfactory response on the part of the broadcaster. Therefore, its undertaking to seek legal advice in the future which was, in its own words, "in lieu of any action taken" in response to the complaint, was a misguided if unwitting attempt to substitute its statutory responsibilities with an informal system of its own making.

For the reasons set forth above, the Authority upholds the complaint that the action taken by Capital FM Ltd in response to the Solicitor-General's formal complaint was inadequate, it being in breach of the broadcaster's statutory duty under s.6(1)(a) of the Broadcasting Act 1989.

Having upheld a complaint, the Authority may issue an order under s.13(1)(a) of the Broadcasting Act directing that the broadcaster broadcast a statement relating to the complaint. It has declined to do so in this case as it believed that this decision, discussing the issues within the confines laid down by Interlocutory Decision No: 1/91, has been unable to consider the substantive points raised in the complaint. It concluded that an order could possibly distract listeners from, rather than inform them about, the issues involved.

Signed for and on behalf of the Authority


 Iain Gallaway
 Chairperson
 30 March 1992

