

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 32/92

Dated the 4th day of June 1992

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

BRUCE CLEMENTS
of Auckland

Broadcaster
RADIO NEW ZEALAND LIMITED

I.W. Gallaway Chairperson
J.R. Morris
R.A. Barraclough
L.M. Dawson

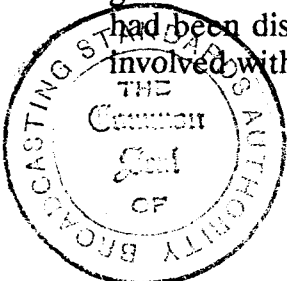
DECISION

Introduction

A "Candid Call" broadcast by 89FM in Auckland on Tuesday 19 November 1991 referred to an experience of Mr Clements' some months earlier when he was pursued by another driver for some 30 minutes. Mr Clements described the driving incident as harrowing. The broadcast of the "Candid Call" was repeated on 21 November.

Mr Clements complained to 89FM that both the entire broadcast and the specific language used breached the standard of good taste and decency and that the broadcast did not deal with him fairly. Further, it breached the standard requiring a person's permission to record and broadcast a telephone conversation.

RNZ upheld most of the aspects of the complaint which alleged a breach of the standards requiring good taste and decency and that persons referred to be dealt with fairly. The aspect of the complaint referring to the broadcasting of a recording without permission was not upheld as the standard only applied to news, current affairs and community comment programmes. Further, it considered that the colloquial language used when Mr Clements was described as a "prick" did not breach the standard requiring good taste and decency. RNZ reported that the concept and content of "Candid Calls" had been discussed with the station manager and it pointed out that some of the staff involved with the call were no longer working for the station.



As Mr Clements was dissatisfied that his entire complaint was not upheld and with the action taken by RNZ on the aspects of the complaint which were upheld, he referred the complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

Decision

The members have listened to a broadcast of the programme to which the complaint relates and have read the correspondence (summarised in the Appendix). As is its practice, the Authority has determined the complaint without a formal hearing.

In order to clarify the issues raised by the complaint, the Authority records that Mr Clements complained to 89FM that the broadcast on 19 and 21 November 1991 of a "Candid Call" which referred to him breached standards 1.1(b), 1.1(e) and 4.1 of the Radio Code of Broadcasting Practice. Standards 1.1(b) and 1.1(e) require broadcasters:

- (b) To take into consideration currently accepted norms of decency and good taste in language and behaviour, bearing in mind the context in which any language or behaviour occurs.
- (e) To deal justly and fairly with any person taking part or referred to in any programme:

Standard 4.1 reads:

- 4.1 No telephone conversation with a member of the public is to be broadcast without the person's permission when statements by that member of the public are intended to be "on the record" for the purposes of news and current affairs or community comment; the person concerned should be warned if a conversation is to be recorded for possible broadcast.

After ruling that standard 4.1 did not apply as the item was not news, current affairs nor community comment, RNZ upheld most of the complaint under standards 1.1(b) and 1.1(e).

In the referral of his complaint to the Authority, Mr Clements raised two matters apparently involving broadcasting standards. First, he complained that RNZ had not upheld his complaint about being called a "prick" during the broadcast and, secondly, he asked why he had not received an apology.

RNZ advised the Authority that it considered that the use of the word "prick" did not breach the standards given the item's context and, secondly, although there was no statutory requirement for an apology, it argued that by upholding parts of the complaint, it had in effect apologised to Mr Clements.

As well as lodging this complaint with the broadcaster, Mr Clements also complained directly to the Authority under s.4(1)(c) of the Broadcasting Act 1989 that the same

broadcast did not maintain standards consistent with the privacy of the individual. In Decision 19/92, dated 14 May, the Authority upheld that complaint and ordered RNZ to pay Mr Clements compensation of \$1,000.

It was apparent from the privacy complaint that Mr Clements did not seek, by way of apology from RNZ, a further broadcast referring to the issue raised during the "Candid Call". Thus, he was asked by the Authority what was involved in his complaint that RNZ had not apologised for the broadcast. Mr Clements explained that he felt that RNZ, in its letter to him upholding substantial aspects of the complaint, should have also expressed its regret for the broadcast. He continued to believe that a letter to him from RNZ which included an apology was appropriate. Whereas the Authority understands Mr Clements' concern, it has no power to order RNZ to apologise to Mr Clements in the manner he desires. The Authority's power to order broadcasters to make statements in connection with complaints it has upheld, under s.13(1) of the Broadcasting Act 1989, relates only to published statements.


The other aspect of Mr Clements' complaint, that he was called a "prick" during the broadcast, is a matter of broadcasting standards. On the one hand, it is a term which may contain derogatory overtones and it seems that RNZ was indulging in fine distinctions when it declined to uphold the complaint about the use of the term but upheld the other points raised by Mr Clements. On the other hand, it could be argued that its use during a joke was not meant to be derogatory and that it was appropriate to the tone and context of the item which everyone but Mr Clements knew was a "Candid Call".

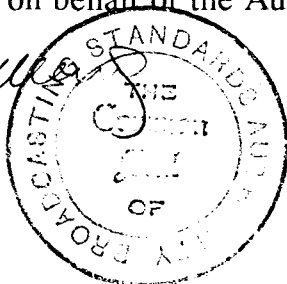
The Authority appreciated it was a borderline decision. Finally, a majority of the Authority decided that, although it was marginal, given the context in which the word was used and its barely audible pronunciation, the use of the word "prick" did not, on this occasion, breach the requirements in standards 1.1(b) of the Radio Code of Broadcasting Practice.

For the reasons set forth above, a majority of the Authority declines to uphold the complaint that the broadcast, by calling Mr Clements a "prick", breached standard 1.1(b) of the Radio Code for Broadcasting Practice.

The Authority declines to determine the complaint that RNZ, having upheld part of the complaint, should have included an apology in its response to Mr Clements.

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



4 June 1992

Appendix

Mr Bruce Clements' Complaint to Radio New Zealand Limited

In a letter to 89FM on 2 December 1991, Mr Clements complained about the broadcast of a "Candid Call" played at about 7.00am on Tuesday 19 November and repeated at the same time on 21 November.

The "Candid Call", he said, referred to a driving experience which had occurred to him some months previously when he was pursued by another motorist for some 30 minutes. Mr Clements described the experience as harrowing and, in desperation at the time, he had stopped in his neighbour's driveway.

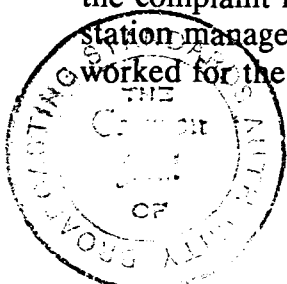
Mr Clements complained that the broadcast breached standards 1.1(b), 1.1(e) and 4.1 of the Radio Code of Broadcasting Practice. He said that the entire call breached the good taste and decency requirements in standard 1.1(b), as did the description of him as a "prick", that he had not been dealt with fairly as required by standard 1.1(e) and that he had not given permission for the telephone conversation either to be recorded or broadcast contrary to standard 4.1.

RNZ's Response to the Formal Complaint

RNZ advised Mr Clements of its decision in a letter dated 9 March 1992. It said, as the call was based on an unresolved real incident and could have provoked continuing concern and further action, that it breached the good taste and decency requirement in standard 1.1(b). As the call did not deal with a temporary and rapidly resolved practical joke and as it dealt with an incident in which there was little public interest, it breached the requirements for fair dealing in standard 1.1(e). Standard 4.1 referred specifically to news, current affairs and community comment and, accordingly, RNZ reported, was not applicable and that aspect of the complaint was not upheld.

As the tape of the broadcast indicated that Mr Clements understood the nature of candid calls and that they were never broadcast "live", RNZ did not uphold the aspect of the complaint that the telephone procedure could be described as unfair dealing. Further, as the context of candid calls was robust and colloquial, RNZ did not uphold the aspect of the complaint that the use of the word "prick" breached the good taste and decency requirement.

RNZ advised Mr Clements that the action taken as a result of upholding aspects of the complaint involved discussing the concept and content of "candid calls" with the station manager and it noted that some of the staff responsible for the call no longer worked for the station.



Mr Clements' Complaint to the Broadcasting Standards Authority

In a letter to the Authority dated 16 March 1992, Mr Clements referred some aspects of his complaint to the Authority under s.8(a) of the Broadcasting Act 1989. Specifically, he objected to being called a "prick" on air and believed that RNZ, by not apologising, treated his complaint as a joke.

RNZ's Response to the Authority

As is its practice, the Authority sought comment on the complaint from the broadcaster. Its request is dated 17 March 1992 and RNZ's reply, 7 April.

In regard to Mr Clements' complaint that it had not apologised, RNZ argued that there was no statutory requirement for an apology. Furthermore, a public apology would exacerbate the aspects of the complaint which had been upheld. It continued:

The fact of the Company's unreservedly upholding the parts of the complaint which it determined to be valid is in itself and in a real sense an apology to the complainant.

RNZ disagreed that it regarded the complaint as a "joke", pointing to a review of the procedures which had occurred as a result of the complaint. It also pointed out that a new station manager had been appointed since the broadcast complained about and, thus, it was unreasonable to reprimand him. It summed up this point by stating:

Other than broadcasting a belated and self-defeating public apology, certainly inappropriate under the particular circumstances, there is little more the company could have done by way of follow-up action.

Before dealing with the aspects of the complaint not upheld, RNZ canvassed the areas where it had been upheld. It then repeated its reason why it considered the telephone conversation breached neither standards 4.1 or 1.1(e).

It proceeded to describe a "candid call" as a "mini drama" and, taking into account the widespread use of the word "prick", that it was not used as an insult and that standard 1.1(b) required that consideration be given to context, it believed that its use did not breach the standard. It provided some background to the derivation of the word "prick" and described it as synonymous with the commonly used word "dork" and considerably less offensive than the not infrequently used "berk".

Mr Clements' Final Comment to the Authority

When asked to comment on RNZ's response, in a letter dated 27 April Mr Clements noted several matters. He objected to RNZ's attitude of putting the blame for the call on to his co-worker who had supplied the information used. He also referred to the current dictionary meaning of "prick" which indicated, as he maintained in the correspondence, that it was insulting and demeaning.

