

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 164/93

Dated the 9th day of December 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

ROBERT WARDLAW
of Auckland

Broadcaster
TELEVISION NEW ZEALAND
LIMITED

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

DECISION

Summary

The film "Trains, Planes and Automobiles" was broadcast on TV2 at 8.30pm on Wednesday 1 September. Approximately midway through the film (about 9.30pm), the central character swore at a clerk in a car rental outlet to which she responded in kind.

Mr Wardlaw complained to Television New Zealand Ltd that such language was unacceptable and breached the broadcasting standard requiring good taste and decency.

Pointing out that the film was classified as Adults Only (AO), was preceded by a specific warning about language and that a considerable amount of similar language had already been removed, TVNZ argued that the words in question could not have been omitted without destroying the film's continuity. It declined to uphold the complaint that the broadcast breached the good taste standard or that insufficient consideration had been given to the effect of the programme on children. Dissatisfied with TVNZ's response, Mr Wardlaw referred his complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

For the reasons given below, the Authority declined to uphold the complaint.



Decision

The members of the Authority have viewed the item complained about and have read the correspondence (summarised in the Appendix). As is its practice, the Authority has determined the complaint without a formal hearing.

The film "Trains, Planes and Automobiles" dealt with the vicissitudes suffered by a businessman trying to get from New York to his Chicago home in time for Thanksgiving during a period of bad weather. Featuring comedians Steve Martin and John Candy, it was broadcast on TV2 at 8.30pm on 1 September.

Mr Wardlaw complained about the offensive language used by the extremely agitated character played by Steve Martin while in a rental car office. When the receptionist finally stopped chatting on the telephone, he stated:

I want a fucking car, and I want a fucking car now

The receptionist paused, looked at him and asked if he had his contract. He said that he had thrown it away to which she responded:

Well then, you're fucked.

Mr Wardlaw pointed out that the use of such language in a public place might result in police action and, he argued, there would have been other ways of displaying the character's frustration. Furthermore, the exchange would have been heard by a number of children as it was broadcast during the school holidays.

TVNZ assessed the complaint under standards G2 and G12 of the Television Code of Broadcasting Practice which require broadcasters:

- G2 To take into consideration currently accepted norms of decency and taste in language and behaviour, bearing in mind the context in which any language or behaviour occurs.
- G12 To be mindful of the effect any programme may have on children during their normally accepted viewing times.

TVNZ emphasised that the film had an "AO" classification, that it was preceded by a warning about language, that the offending section was broadcast at about 9.30pm, that the word "fuck" had been eliminated 18 times by TVNZ's appraisers but it argued, it was retained in that exchange as it was essential to the film's continuity and storyline. As the time at which it had been screened it was not the normally accepted viewing time for children, TVNZ maintained that it did not breach standard G12. Moreover, taking context into account, it did not contravene the good taste and decency requirement in standard G2.

When he referred the complaint to the Authority, Mr Wardlaw commented that he had deliberately not cited standard G12 as he expected that it would be, and was, declined



on the grounds advanced by TVNZ. However, he maintained that the exchange contravened standard G2 as the use of the language, regardless of warnings, would result in criminal action if used in a public place. He also questioned the value of a warning should a viewer not have switched to that channel at the start of the programme.


The Authority agreed with both TVNZ and Mr Wardlaw that because 9.30pm is well after the start of "AO" time, it cannot be regarded as the "normally accepted" viewing time for children. As a result, standard G12 had not been breached.

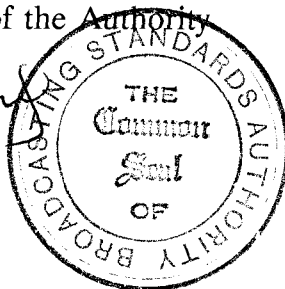
Turning to standard G2, the Authority took note of the requirement that good taste and decency in language and behaviour has to be considered in the context in which the offending language is used or behaviour displayed. The standard, it believed, although obviously related to the criminal law, was not identical with it. For example, whereas a certain amount of nudity or sexual behaviour in the correct context was acceptable for broadcast, such behaviour in a public place might well be grounds for a criminal prosecution.

On this occasion, the language complained about occurred at a pivotal point in the film when the frustrations of the character played by Steve Martin had reached the point where the outburst, while somewhat startling, was not unexpected. To have used bleeps would have substantially affected the development of the story and to have omitted the sequence altogether would have destroyed the flow of the fast-moving and amusing contemporary film. The Authority concluded that the short burst of offensive language was not gratuitous but was appropriate in context at that point in the comedy.

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

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



9 December 1993

Appendix

Mr Wardlaw's Complaint to Television New Zealand Limited

In a letter dated 5 September 1993, Mr Robert Wardlaw of Auckland complained to Television New Zealand Ltd about the film "Trains, Planes and Automobiles" broadcast on TV2 at 8.30pm on 1 September 1993.

A character in the film, he wrote, used obscene language in a car rental outlet. That language, he continued, contravened the broadcasting standard which requires good taste and decency. Acknowledging that the language was used to simulate frustration, nevertheless Mr Wardlaw said, it would have resulted in police action if used in a public place.

Mr Wardlaw said that he did not accept the use of the term was necessary to indicate frustration as there were other ways of doing that. He also argued that the term remained publicly offensive.

Expressing concern that the programme was broadcast during the school holidays, he pointed out that for a number of reasons the words could well have been heard by some children. He accepted that television was an important institution in a number of aspects but argued that its role did not allow it to establish social and moral standards to which the community had to conform.

TVNZ's Response to the Formal Complaint

TVNZ advised Mr Wardlaw of its Complaints Committee's decision in a letter dated 6 October 1993.

It reported that the film had been assessed under the standards requiring good taste and decency in context and that consideration had been given to the effect of the programme on children.

TVNZ said that the film had dealt with the problems encountered by a businessman on his return to his family in Chicago while in the company of an effusive and irritating bore of a man. The film, TVNZ continued, was classified as "AO" (Adults Only), was preceded with a warning about language and the offending passage did not screen until about 9.30pm. The word "fuck" had been eliminated 18 times by TVNZ's appraisers but retained - and used three times - in the offending brief section of dialogue. To eliminate the word at that point, TVNZ argued, would have made the storyline meaningless and destroyed the film's continuity.

TVNZ stated:

The [Complaints] Committee recognised the dilemma facing the programmers and the appraisers. Should they scrap a popular film featuring two of the best-



known comic actors in the business because of three unsavoury words? Or should they give the film an "AO" rating, screen it after 8.30pm, and broadcast a specific warning at the beginning.

It was the Committee's view that the interests of television viewers at large were best met by the latter course - and that therefore the programmers acted properly in scheduling the programme when they did.

TVNZ maintained that neither standard was breached. In response to Mr Wardlaw's request, it reported that the film was watched by 347,000 viewers and that there was no record of any calls concerning the film.

Mr Wardlaw's Complaint to the Broadcasting Standards Authority

Dissatisfied with TVNZ's decision, in a letter dated 14 October 1993, Mr Wardlaw referred his complaint to the Broadcasting Standards Authority under s.8(1)(a) of the Broadcasting Act 1989.

He commented that he had deliberately refrained from complaining under standard G12 (the effect of programmes on children) although he did not object to TVNZ's assessment of his complaint under that standard.

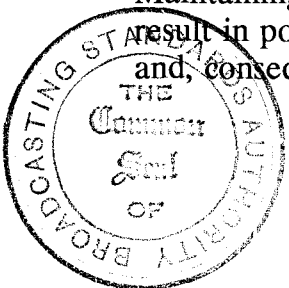
Describing TVNZ's rebuttal of his complaint as predictable, Mr Wardlaw said it was naive of TVNZ to assume that only people aged 18 or over watched "AO" programmes. He also pointed out that many viewers frequently changed channels and that bench-marks of morality were also seen, incorrectly, as movable. In view of the character's obvious frustration with the circumstances he encountered during the film, Mr Wardlaw maintained that deletion of the gratuitous vulgarity would not have detracted from the film.

Mr Wardlaw disputed TVNZ's view that the language used did not go beyond currently held norms of decency. He asked:

One cannot help but wonder what benefit TVNZ believes it is conferring on the whole community of New Zealand in attempting to make such language commonplace. Unrestrained, the TV Channels certainly have the power to go a long way in that direction. Do they have the social responsibility to go with that power?

Accepting that the G12 aspect of the complaint was unlikely to be acceptable because of the hour of the broadcast, Mr Wardlaw observed that the "8.30pm watershed" was a nonsense and was used by TVNZ to excuse unnecessary obscenities.

Maintaining that the language used in the film if spoken in a public place would result in police action, Mr Wardlaw considered television to equate to a public place and, consequently, warnings were unacceptable.



TVNZ's Response to the Authority

As is its practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 19 October 1993 and TVNZ, in its reply dated 21 October, responded to two points.

First, "bleeping" the language as suggested was counter-productive as it drew attention to the words deleted.

Secondly, the language in the film had been reduced as much as possible before the broadcast without destroying its sense of continuity.

TVNZ concluded:

Despite the language "Planes, Trains and Automobiles" is an entertaining film and we believe the correct decision was made to show it with cuts, and with an explicit warning about language.

We remain very sorry that Mr Wardlaw was offended, but believe that the level of offence to viewers as a whole when set against the entertainment value of the film was insufficient for Television New Zealand to ban it, either in its original screening or in this repeat screening.

Mr Wardlaw's Final Comment to the Authority

In reply to TVNZ's response, in a letter dated 29 October 1993 Mr Wardlaw argued that TVNZ was incorrect to suggest that "bleeping" would not have concealed the actual words used.

He also disputed TVNZ's contention contained in the final sentence of the quote above, describing it as an unsupported value judgment.

He added:

TVNZ entirely missed the point which I thought I had made clear - that my whole argument was based on the wanton and needless corruption of society, with emphasis on the effect on the immature of all ages, but affecting all viewers in some important way. After all, how often is the language discussed heard in the context of family grouping - in normal families?

Pointing to the large numbers who watched television, Mr Wardlaw concluded:

TVNZ should acknowledge that, although we cannot and should not impose on society the philosophies which provide a dynamism for responsible behaviour, we can and must avoid further desensitising, in the moral sense, the viewing population which includes many already with the proclivity for gross anti-social conduct.

