

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 66/93

Dated the 9th day of June 1993

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

THE NEW ZEALAND JEWISH
COUNCIL

Broadcaster

RADIO PACIFIC LIMITED

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

DECISION

Introduction

The subject of some Palestinian refugees who had been deported from Israel but prohibited from entering Lebanon set the theme for five hours of radio talkback broadcast by Radio Pacific Ltd on 28 December 1992 from midnight until 5.00am.

The President of the New Zealand Jewish Council, Mrs Wendy Ross, complained to Radio Pacific, as the broadcaster, that the discussion was in breach of the Radio Codes of Broadcasting Practice because it was inaccurate, unfair and encouraged discrimination.

Responding that the programme was of a genre that encouraged free discussion on controversial topics, Radio Pacific nevertheless conceded that many people had been offended by the views expressed on this particular occasion. It apologised to those who had been offended and explained that the host probably thought his views were fair and accurate. It reported that the host (the Reverend Geoffrey Vine) would not host a Radio Pacific talkback session again. Dissatisfied with the action taken by Radio Pacific, the Jewish Council referred its complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.



Decision

The members of the Authority have read the full transcript of the programme, listened to an edited tape and read the correspondence (summarised in the Appendix). As is its practice, the Authority has determined the complaint without a formal hearing.

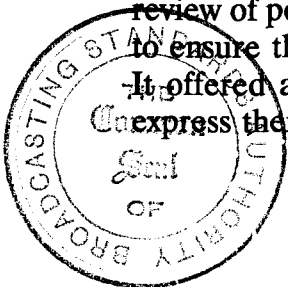
The President of the New Zealand Jewish Council, Mrs Wendy Ross, complained on its behalf to Radio Pacific that the broadcast of a talkback programme hosted by the Reverend Geoffrey Vine on 28 December 1992 between midnight and 5.00am was in breach of broadcasting standards because it was factually inaccurate, unfair and encouraged discrimination. The Council noted that the broadcast began with a one-sided and distorted synopsis of the expulsion of some Palestinians by the Israeli government. Then, it continued, the host incited callers to air their anti-semitic prejudices and stereotypes and provided them with the opportunity to broadcast their hatred for the Jewish people. Accompanying the complaint was a transcript of the full five hour broadcast, to which the Council referred when it itemised specific breaches.

Mr Derek Lowe, Managing Director of Radio Pacific, prefaced his response to the Council with an explanation of the unique character of talkback radio, describing it as a forum where "listeners can immediately respond by phoning Pacific talkback and publicly disagreeing with a host." He defended the right of talkback hosts to express their views, explaining that generally, balance was achieved because callers expressed opposing views. He acknowledged that it was important that hosts ensured that those views were balanced, and accepted that many people felt that Mr Vine did not try hard enough on this occasion. Mr Lowe conceded that some of the remarks made in this programme upset a number of Jewish people, and for this he offered an apology and noted that Mr Vine was no longer a member of Radio Pacific's staff.

In its referral to the Broadcasting Standards Authority, the Jewish Council provided an extensive list of examples of errors of fact, distortion and racial denigration which it claimed breached the broadcasting code. It rejected as insufficient, Radio Pacific's "tempered apology" and its decision not to re-employ Mr Vine. In its view, the appropriate response would have been to institute a policy to ensure that racial vilification did not recur, and to restrain hosts from discussing controversial subjects about which they had strong opinions but insufficient factual knowledge. It claimed that Radio Pacific had failed to understand

the distinction between legitimate opinion which is subjective, and racism and falsehood, which are both objective.

To these allegations, Radio Pacific responded that the "cornerstone of talkback is free speech". However, it acknowledged that on this occasion many of Mr Vine's remarks were unnecessarily extreme, and conceded that Jewish people could interpret them as denigratory. It rejected the Jewish Council's suggestion that it should undergo a major review of policy guidelines for talkback, explaining that it would take the necessary steps to ensure that future midnight to dawn hosts were advised to exercise more discretion. It offered an apology and, at the same time, defended the right of talkback hosts to express their views. In response to the Authority's request that Radio Pacific clarify its



position, its lawyer (Mr Brent Impey) explained that Radio Pacific had upheld the complaint and that it had discontinued Mr Vine's employment. Further inquiries revealed that all aspects of the complaint had been upheld.

Having read the transcript of the five hour programme and listened to an edited tape, the Authority had no hesitation in describing it as denigratory to Jewish people, unfair and factually inaccurate. It regarded Radio Pacific's initial response to the complainant as inadequate because it did not advise whether the complaint had been upheld and, if so, on what grounds. Further, when in response to the Authority's request for clarification it advised that the complaint was upheld, it still did not specify on what grounds. Finally, the Authority was advised that Radio Pacific upheld the complaint on the three grounds cited by the Jewish Council.

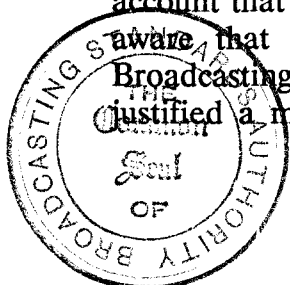
Before discussing the details of the complaint, the Authority made the preliminary observation that the standards in the Radio Code of Broadcasting Practice are not specifically designed to cater for the genre of talkback radio. It believes that it is doubtful whether all of the codes for structured radio broadcasts would readily apply to an interactive broadcast. It notes that this is an issue which has been considered in the past and that it now requires the attention of the broadcasters who schedule talkback programmes to decide whether or not codes should be developed to encompass the genre.

Since Radio Pacific has upheld all three grounds cited in the complaint, the Authority does not have to determine whether the programme breached those standards. As the Jewish Council was dissatisfied with the action taken by the broadcaster, the Authority must decide whether the action taken by Radio Pacific was sufficient. It noted that as a consequence of this broadcast Radio Pacific had decided it would terminate Mr Vine's employment, even on a casual basis. The Jewish Council sought a review of Radio Pacific's response, believing it to be insufficient in view of the seriousness of the breach. It did not accept that termination of Mr Vine's employment would be seen as a consequence of the broadcast, especially as he had already been informed by the time of the broadcast that he would be employed on a part time basis only in the future. It considered that the appropriate action on Radio Pacific's part was a major review of its policy to ensure:

- 1 That racial vilification does not recur, and
- 2 that hosts do not embark upon controversial subjects in which they have strong opinions, but manifestly insufficient factual knowledge.

The Council did not believe that Mr Lowe had understood the difference between the objective and the subjective and nor did he grasp the issue of racism.

In its consideration of whether the action taken was appropriate, the Authority took into account that Radio Pacific gave an assurance that future midnight to dawn hosts were aware that it was unacceptable to breach the standards of the Radio Code of Broadcasting Practice. It noted that Radio Pacific did not consider that this one incident justified a major review of policy, and that Radio Pacific defended the right of all



talkback hosts:

to involve themselves in controversial issues, to express their own opinions and to test public opinion.

In this instance, Radio Pacific acknowledged that Mr Vine had not acted responsibly and that he would no longer be employed by Radio Pacific in any capacity.

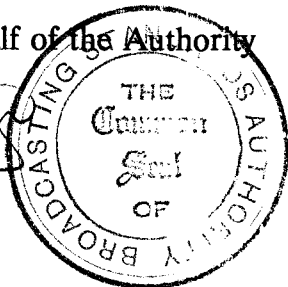
Reviewing the action taken by Radio Pacific, the Authority considered that in the circumstances, the response was adequate. It accepted that there were logistical difficulties in monitoring the content of a midnight to dawn programme. However, it was satisfied that Radio Pacific had taken the necessary steps to ensure that such a programme was not repeated. It noted that as well as the formal complaint from the Jewish Council, reaction from the community, both during the programme and subsequently, had been strong and was a consideration which had prompted Radio Pacific to terminate the host's employment. The Authority also accepted that the station's talkback hosts staff had been reminded about the necessity to adhere to the broadcasting standards.

For the reasons set forth above the Authority declines to uphold the complaint that Radio Pacific's action, having upheld all aspects of the complaint, was inadequate.

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson
9 June 1993



Appendix

The New Zealand Jewish Council's Formal Complaint to Radio Pacific Limited

In a letter dated 13 January 1993 Mrs Wendy Ross on behalf of the New Zealand Jewish Council complained to Radio Pacific Ltd about the broadcast of a radio talkback programme hosted by the Reverend Geoffrey Vine between midnight and 5.00am on 28 December 1992. As the programme was factually inaccurate, unfair and encouraged discrimination, she said, it breached the relevant standards of the Radio Code of Broadcasting Practice.

The Jewish Council claimed that the 5 hour broadcast began with a one-sided and distorted view of the action of the Israeli government in expelling some Palestinians. Then, it wrote, the host encouraged and supported callers who gave false information, voiced anti-semitic prejudice and stereotypes, and provided antisemites the opportunity to broadcast, with impunity, their hatred for Jewish people.

Accompanying the letter was a full transcript of the five hour programme.

Radio Pacific's Response to the Formal Complaint

In a letter dated 19 January 1993 Mr Derek Lowe, Managing Director of Radio Pacific, advised the New Zealand Jewish Council that it had received other complaints about the programme and conceded that it had upset a number of Jewish people. Radio Pacific stated that it was important for talkback hosts to ensure that opposing views were expressed and that, in this case, many people did not feel that Mr Vine tried hard enough to do so. It apologised to those who were offended, but explained that there were always two points of view on an issue and that talkback was a forum which aired both. Radio Pacific noted that the host was no longer a member of its staff and hoped that its apology and explanation would suffice.

The New Zealand Jewish Council's Complaint to the Broadcasting Standards Authority

Dissatisfied with Radio Pacific's reply, the Jewish Council in a nine page letter dated 15 February 1993, referred its complaint to the Broadcasting Standards Authority under s.8(a) of the Broadcasting Act 1989.

The programme, it wrote, amounted to a dangerous use of talkback radio because it lacked accuracy and fairness and encouraged denigration of Jewish people. It was dissatisfied with the actions taken by Radio Pacific, observing that Mr Vine had been informed prior to the broadcast that he would only be broadcasting spasmodically in the future. It wrote:

We therefore consider that, given these circumstances, Geoffrey Vine's



absence from Radio Pacific will not be seen by other staff members or the public as the consequence of his irresponsible and inflammatory broadcasting, especially since Derek Lowe in his letter made no clear connection between Geoffrey Vine's hosting of the programme and his no longer being a staff member.

Indeed, while Derek Lowe offers a tempered apology in his letter, he makes no condemnation or even criticism of Geoffrey Vine's hosting of this programme.

The action not taken by Radio Pacific as far as we can judge from Derek Lowe's letter, was to institute a major policy review to ensure:

1. That racial vilification does not recur, and
2. that hosts do not embark upon controversial subjects in which they have strong opinions, but manifestly insufficient factual knowledge.

It repeated that it upheld Mr Vine's right to express his views on the Israeli government's action, but that it took issue with the errors of fact, distortion and racial denigration. With reference to a transcript of the full five hour programme, it itemised its specific concerns with the content of the broadcast.

In concluding, the Jewish Council noted that the broadcast omitted to acknowledge that the so-called refugees were in fact members of an extreme fundamentalist group dedicated to the annihilation of Israel.

Radio Pacific's Response to the Broadcasting Standards Authority

As is its usual practice, the Authority sought the broadcaster's response to the complaint. Its letter is dated 16 February 1993 and Radio Pacific's reply, 1 March.

Radio Pacific explained that it was very conscious of its statutory obligation to ensure that reasonable opportunities were given to present significant points of view. It noted that its hosts were aware of their responsibility to observe the radio codes of practice and acknowledged that on this occasion many of Mr Vine's remarks were unnecessarily extremist "and Radio Pacific accepts that he made statements which Jews could clearly interpret as denigrating."

Radio Pacific wrote that it:

was prepared to have a representative of the New Zealand Jewish Council appear on our station, at an agreed time, to present the alternative view. However, when open-line programmes open up the debate on Palestinian or Jewish issues, it is clearly expected that pro and anti factions will provide the balance.



It noted that as a result of this complaint, Mr Vine would no longer be permitted to host programmes at Radio Pacific. It rejected the Jewish Council's suggestion that it needed to implement a policy to ensure that racial vilification did not recur, observing that one incident involving a part-time host between midnight and 5.00am did not require a review of policy. It maintained that to be effective, talkback hosts must hold strong opinions on a variety of matters and be able to discuss controversial issues. It agreed to take appropriate steps to ensure that future midnight to dawn hosts are advised that programmes such as this are not acceptable.

Radio Pacific repeated its unreserved apology to Mrs Ross and the Jewish Council for any parts of the broadcast that caused offence.

In conclusion, Radio Pacific pointed out that it was a fundamental right for talkback hosts to express their views. In this case, it believed that Mr Vine's views were neither fair nor accurate and it took steps to ensure that he would not host such a programme again. However, it defended the right for talkback hosts to involve themselves in controversial issues, to express their own opinions and to test public opinion.

The New Zealand Jewish Council's Final Comment to the Authority

When asked to comment on Radio Pacific's reply, in a letter dated 17 March 1993, the Jewish Council expressed disappointment with Radio Pacific's response to its complaint.

It questioned whether Radio Pacific believed that talkback radio was not bound by the code of broadcasting practice, adding that to argue that it encouraged "free speech" was to ignore the fact that free speech was always tempered by some limitations.

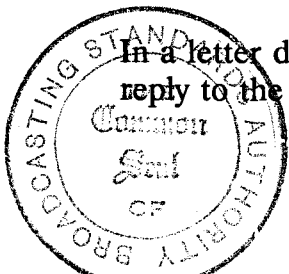
It maintained its view that the station's policy should be reviewed so that such incidents did not happen again and that Radio Pacific should recognise and understand that racial vilification was offensive per se and not just to those who were its target. It concluded by stating that it believed that it was irresponsible for Radio Pacific to claim that its hosts could not be expected to be experts on everything while at the same time encouraging them to involve themselves in controversial issues.

It also requested the opportunity to be heard.

Included with the letter was an article entitled "Talkback Radio: Airing Prejudice" by Lesley Max.

Further Correspondence

In a letter dated 18 March 1993 Radio Pacific requested the opportunity to present its reply to the complaint by way of a formal hearing. It believed that the complaint



raised a serious issue about talkback radio and that there would not be proper consideration of the issues without a formal hearing.

In a letter dated 14 April 1993, Mr Brent Impey, as lawyer for Radio Pacific, advised the Authority:

Radio Pacific has reconsidered its position and now does not seek an oral hearing.

In a further letter, dated 5 May, Mr Impey advised the Authority that Radio Pacific did uphold the complaint, that it removed the host concerned and that it would not be engaging Mr Vine on a casual basis in the future.

In response to a request from the Authority, Radio Pacific advised on 17 May that it had upheld all aspects of the complaint and expressed its regret that the programme
went to air.

