

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 11/90

Dated the 6th day of June 1990

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by
MR CLIFFORD R TURNER
of Hamilton

Broadcaster
TELEVISION NEW ZEALAND
LIMITED

I.W. Gallaway Chairperson
J.B. Fish
J.L. Hardie
J.R. Morris

DECISION

Introduction

This complaint arose from the broadcast of the satirical programme *Public Eye* on TV 1 at 9.00 pm on Tuesday, 24 October 1989.

Mr Turner was concerned that the broadcast of a brief item or skit in this programme concerning Aaron Cohen, a New Zealander serving a sentence in a Malaysian jail for heroin possession and awaiting a six-stroke rotan whipping, was in breach of the responsibility placed on broadcasters by section 4(1)(a) of the Broadcasting Act 1989 to maintain standards consistent with good taste and decency.

Mr Turner's Complaint to Television New Zealand Limited

Mr Turner wrote to TVNZ on 25 October 1989 formally complaining that the broadcast of this item breached s4(1)(a) of the Act. He maintained that Mr Cohen had had little chance in life and was facing the prospect of being the victim of a barbaric punishment in a Malaysian jail. He stated that "One would need to be mentally sick to see anything humorous in his situation."



TVNZ's Response to Mr Turner's Complaint

In a letter dated 18 December 1989, TVNZ advised Mr Turner that its Complaints Committee had not upheld his complaint. The letter pointed out that the brief for *Public Eye* is to satirise public events, issues or people currently attracting public attention. Aaron Cohen had been in the public domain with the news of his reprieve from the gallows and the skit, entitled "CIB Young Offenders Awards", was a take-off of the Young Achievers Awards in that it had an "artistic" introduction followed by a detailing of the recipient's achievements. TVNZ argued that satire, by its very nature, is rarely strictly in exemplary taste - *Public Eye's* 9 pm screening recognised that it was an adult programme and not family viewing material. The Committee considered that the skit needed to be seen within the framework of a convicted drugs offender rather than, as Mr Turner seemed to suggest, as being about someone who should be pitied on humanitarian grounds. Furthermore, in the context of a half-hour programme, a 1 minute 5 seconds skit did not place undue emphasis on Aaron Cohen. And, in any event, *Public Eye* is of a comparatively mild nature compared with its English equivalent *Spitting Image*. Finally, the Committee noted that past complaints on good taste and decency grounds about TVNZ programmes relying on satire for their impetus had been turned down "because of the very nature of the satire characteristic".

Mr Turner's Complaint to the Broadcasting Standards Authority

On 20 December 1989, Mr Turner, being dissatisfied with the decision of TVNZ's Complaints Committee, referred his complaint to the Authority pursuant to section 8(a) of the Broadcasting Act 1989.

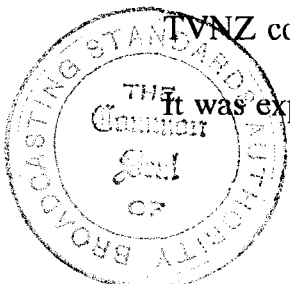
Mr Turner stated that Aaron Cohen had been lampooned as a "Young Achiever" and that since he had been born a heroin addict, "only a sick mind would find his situation a source of amusement." He considered the broadcast of such an item contravened the requirement laid down in the Act "that all programmes should be in good taste". Mr Turner disagreed that the short duration of the skit was relevant - "an item does not have to be of long duration before it can be considered to be in bad taste." He also maintained that any comparison with *Public Eye's* counterpart in the United Kingdom was irrelevant - "British programmes do not have to meet the standards set out in New Zealand's Broadcasting Act." Countering TVNZ's comments that "satire is rarely in exemplary taste", Mr Turner stated that the Act did not exempt satirical programmes from meeting its requirements.

On 12 January 1990, Mr Turner's complaint was referred to Television New Zealand Limited for its response.

TVNZ's Response to the Authority

TVNZ commented on Mr Turner's complaint in a letter dated 13 March 1990.

It was explained that in determining the complaint under section 4(1)(a) of the Act, its



Complaints Committee interpreted this provision in the light of standard 2 of the Television Programme Standards included in the Codes of Broadcasting Practice for Television. (Standard 2 requires that broadcasters, in the preparation and presentation of programmes, "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.")

Although considering that its letter of 18 December 1989 to the complainant comprehensively covered the key elements for consideration by the Authority, TVNZ responded at length to certain comments made by Mr Turner in referring his complaint to the Authority.

On the duration of the skit, it was explained that this issue was raised in order to show that the topic had not been "done to death" or given undue emphasis within the compass of a half-hour programme. The letter went on to say that:

It was intended to indicate to the complainant that the matter was kept in a reasonable perspective and not unnecessarily or unrealistically drawn out. The company would agree that an item does not necessarily have to be of long duration to be in bad taste, but it would observe that questions of context and degree are important when such factors are assessed. The company does not believe that, within this tight framework of satire, and the fact that only one formal complaint has been received for a programme seen by 350,000 viewers, that there is a prima facie evidence of a breach of the taste and decency requirements.

With regard to the relevancy or otherwise of its reference to its United Kingdom counterpart's programme, TVNZ agreed that any such reference may be

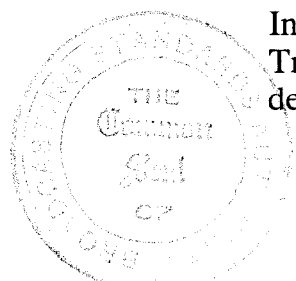
... totally irrelevant with regard to measuring the *Public Eye* excerpt against the Act provision. It was mentioned during the Complaints Committee's discussions and, as something of a courtesy, the complainant was given this information as an indicator of TVNZ thinking relating to the sting or sharpness of the satirical bite when it came to assessing the two programmes.

In addition, TVNZ also made it clear that its comments about satirical programmes rarely being in exemplary taste was not meant to suggest that such programmes are or should be exempt from the provisions of the Act.

The letter continued as follows:

By implying that they are rarely strictly in perfect taste it needs to be understood that given the context and general public understanding of the genre, they are not considered to be over the edge of the taste equation.

In this regard it might be helpful to refer to a recent decision of the Broadcasting Tribunal - Decision No: 8/90 which dealt with taste and decency matters. In its decision at page four it says:



‘The effectiveness of all humour and satire depends to some extent on the identification which such programmes achieve with the audience(s). Topical satire is often a ‘hit and miss’ affair, with different items gaining greater or lesser acceptance from different members of the audience.’

The consideration went on to mention that the complainant in question was "fully entitled to his view - an individual's sense of humour is obviously an intensely personal characteristic."

Further on the Tribunal makes an observation, which would have a link with taste and decency considerations, when it says:

‘As for standards generally acceptable in the community, the Tribunal is aware of the general popularity with audiences worldwide of topical satirical programmes on both radio and television. We have no reason to believe New Zealanders are unique in this regard.’

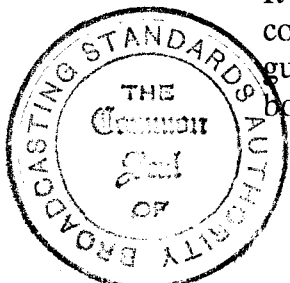
The Tribunal then goes on to say that to uphold the complaint in question "as a breach of standards generally acceptable in the community would be to accept his [i.e. the complainant's] personal opinion ... as representing the standards of the community. On the basis of one complaint relating to one specific aspect of the programme, there is little ground for such a conclusion."

TVNZ submitted that the elements outlined by the Tribunal in that Decision were almost identical to those of the *Public Eye* complaint. Although that Decision related to a complaint about a programme broadcast on radio, TVNZ considered that "the basic principles and scenarios of the taste and decency equation are similar."

TVNZ also drew attention to the fact that the reference to "standards which will be generally acceptable in the community" was a reference to section 95B(1)(a)(i) of the Broadcasting Act 1976, the alleged breach of which was a ground for a formal complaint to the Tribunal. It went on to submit that "such wording has a relationship to that of norms of decency and taste in the context of language and behaviour as embodied in [standard] 2." The letter continued:

This factor aside, the Tribunal deals specifically with the taste and decency element and draws attention to the factual basis of the item in question being clearly based on news reports of the time which were relatively accurately related. Much the same situation applies to the *Public Eye* skit. The Tribunal's comment that to find a breach of taste and decency in the context of that satirical programme "would be to artificially constrain that debate (rugby violence) and impose a very narrow view of ‘good taste’", is not without fitting relevance to this complaint.

It is submitted that the basic criteria are very similar given the factors of the context. Decision 8/90 appears to have established a clear precedent and guidance with regard to the taste and decency provision as it relates to satire. In both cases the skits were based on items currently or recently in the news and the



focus of public discussion. Also the question of one individual's personal reaction and entitlement to assume or represent taste and decency notions, capable of having universal acceptance or applause among viewers, must be an issue.

It would not be inappropriate to draw the Authority's attention to what is said about satire under rule 6 of the Code for Portrayal of People in Advertising. It states: "Humour and satire are natural and accepted features of the relationship between individuals and groups within the community. Humorous and satirical treatment of people and groups of people is equally natural and acceptable in advertising, provided the portrayal does not encourage intolerance, prejudice and bigotry." It is suggested that this rule is also a reasonable guideline for a satirical programme and that in the case of *Public Eye* there is a compatibility.

While the company would acknowledge and respect the complainant's humanitarian interpretation and motivation in this matter, it believes he miscalculates the public's perception of satire when it comes to taste and decency measurements. The company does not believe it has overstepped the mark.

Finally, in enclosing a videotape of the programme for viewing by members of the Authority, TVNZ suggested that *Public Eye* should be viewed in its entirety "to ensure that the skit in question may be seen in context within the perspective of the entire programme."

TVNZ's response was referred to Mr Turner by letter dated 16 March for any further comment he might wish to make.

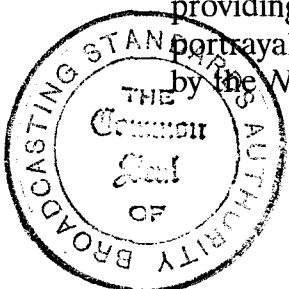
Mr Turner's Comments to the Authority

In a letter of 20 March, Mr Turner dismissed TVNZ's reference to the Code for the Portrayal of People in Advertising as irrelevant. He said that he realised that what is, or is not, in good taste "is in the eye of the beholder and the ear of the listener and I will happily leave that decision to your Authority ... I would however like to say that I was not alone in my disgust at this episode; a TV critic in the *Herald* expressed similar sentiments."

These comments were referred to TVNZ on 22 March for any further response the company might wish to make.

TVNZ's Further Response to the Authority

TVNZ, in a letter dated 29 March, maintained that the reference to the Code for the Portrayal of People in Advertising was relevant in that it could assist the Authority "by providing a guideline illustrative of what has been endorsed by the Authority in the portrayal of satire." It was also suggested that Mr Turner's recollection of the comments by the *New Zealand Herald* critic was imperfect. TVNZ said that:



"Barry Shaw did not express disgust at the episode. He considered it "probably the best *Public Eye* show yet..." However with reference to the skit on Aaron Cohen he went only so far as to comment that the send up "was in questionable taste" and that he was "more deserving of pity than pillorying"."

Finally, TVNZ submitted that the additional matters raised by Mr Turner "did not provide sufficient evidence to show that the programme, in the view of 350,000 viewers, overstepped the mark."

Decision

The Authority is required to determine whether or not TVNZ had breached section 4(1)(a) of the Broadcasting Act 1989, which states:

4(1) Every broadcaster is responsible for maintaining in its programmes and their presentation, standards which are consistent with -

(a) The observance of good taste and decency

After preliminary discussion and having viewed the tape of the *Public Eye* programme, the Authority considered this complaint at its Meeting on May 23.

In its deliberations the Authority confirmed its view, as set out in its own Decision No: 2/90 that "the concept of good taste and decency in a given situation or context pertains to conformity with such standards of propriety as the Authority considers to be in accord with the generally accepted attitudes, values and expectations in New Zealand society. Much depends on the viewers' expectations surrounding a particular programme ...".

In addition, the Authority had regard to the arguments put forward by the complainant and by TVNZ, to Decision No: 8/90 of the Broadcasting Tribunal and to standards 2 and 26 of the Codes of Broadcasting Practice, Television Programme Standards.

Under the subheading "General" the Television Programme Standards provide that:

In the preparation and presentation of programmes, broadcasters are required:

...

2 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.

The Authority is of the opinion that the expectations of viewers who choose to watch a satirical programme timed for 9.00 - 9.30 pm would tend to be accepting of a broader concept of "standards of good taste and decency" than would necessarily be required in other contexts. The Authority also agreed that the Aaron Cohen item in *Public Eye* was



topical and contained a number of cogent allusions to contemporary events; the nature of this programme and of this item was clearly satirical and, to borrow an argument recorded in Decision No: 8/90 of the Broadcasting Tribunal, "it is in the nature of satire to exaggerate reality by presenting incidents or people in a way which [highlights] irony."

It was agreed that when viewed within the context of the rest of the programme (about which no complaints were received), this item was not given undue emphasis. Members of the Authority were not, however, unanimous about whether or not the item about Aaron Cohen did in fact maintain standards which are consistent with good taste and decency.

One view was that in broadcasting this item TVNZ had failed to maintain those standards. This view was believed to be consistent with the provisions of standard 26 of the Codes of Broadcasting Practice, Television Programme Standards which, under the subheading "People Considerations" states that:

- 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.

It was considered that the item was in poor taste in that it made "fun" of a pathetic individual whose background had rendered him a helpless victim and a person so handicapped since birth as to be (to quote Barry Shaw of the *New Zealand Herald*) "more deserving of pity than pillorying". It was considered that there was a danger of offence sufficient to be in breach of good taste and decency in the use of humour based on physical and/or mental disability and that this breach could be extended to include other persons disadvantaged to the extent of this hapless youth. As a consequence, it was considered that the complaint should be upheld.

The other and prevailing view was that while it was conceded that the item could be classified as being of doubtful taste, as "black humour" or even as a "sick joke", such is the essence of satire and the likely expectation of its viewers that standards applicable in other contexts may be suspended within this context. In addition, note was taken of the comment by the Broadcasting Tribunal, in Decision No: 8/90, that " ... As for standards generally acceptable in the community, the Tribunal is aware of the general popularity with audiences world-wide of topical satirical programmes on both radio and television. We have no reason to believe New Zealanders are unique in this regard." It was considered that required standards had been maintained and that consequently the complaint could not be upheld.



By a majority vote, the Authority decided that the broadcast of the Aaron Cohen skit did not breach s 4(1)(a) of the Act.

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

Signed for and on behalf of the Authority


Iain Gallaway
Chairperson



6 June 1990