

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No: 3/91

Dated the 27th day of February 1991

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

G.B. KING
of Auckland

Broadcaster
TELEVISION NEW ZEALAND
LIMITED
of Auckland

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

DECISION

Introduction

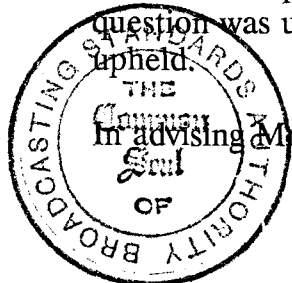
At 8.30 pm on 1 April 1990, Television New Zealand Limited screened the movie "Jagged Edge". Mr King considered that the frequent use of the word "fuck" during the movie fell into the category of foul language. This prompted him to make a formal complaint to TVNZ alleging that the company, in broadcasting the programme, had breached standards of good taste and decency.

TVNZ considered Mr King's complaint in the context of Programme Standard 2 of the Codes of Broadcasting Practice for Television. This Standard requires broadcasters

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.

TVNZ's Complaints Committee was in no doubt that the frequency of the language in question was unacceptable for the time it went to air. Accordingly, the complaint was upheld.

In advising Mr King of the decision on 10 May, TVNZ explained that :



... the version of the film which went to air was the version screened in the cinema. A modified version, which was screened in Australia, and which did not contain the material about which you complained, was certified by the company's appraisers for screening at 8.30 pm. For reasons which have been subject to internal inquiry the cinema version went to air after it was discovered, at the last moment, that the approved version had been sent back to the distributors. Nevertheless there was a substantial cut made for violence at the beginning.

For your information an instruction has been issued to departmental heads indicating that such language is unacceptable in TVNZ Ltd broadcasts at that hour. This does not mean the f word is totally banned but it does mean frequency of usage, as in "Jagged Edge" is unacceptable, and other usages need to be in total context and justified by the story line or news circumstances.

Mr King's Referral of the Complaint to the Broadcasting Standards Authority

Mr King was dissatisfied with the action taken by TVNZ and, pursuant to section 8(a) of the Broadcasting Act 1989, referred his complaint to the Authority for investigation and review.

In doing so, Mr King explained that he had read an article in the *Listener* of 14 May quoting Mr Tony Watts, the recently appointed Head of Feature Film Purchasing at TVNZ, as saying that " ... whereas some cuts would have just gone through, now if I think it unreasonable, I'll argue every one". As to Mr Watts' view on the word "fuck" these were summarised by the writer of the article in the following way:

A great little Anglo-Saxon word. Doesn't really bother him.

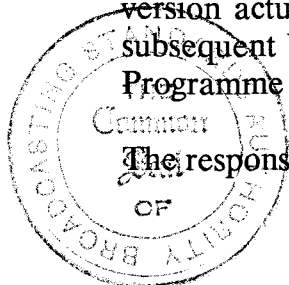
In light of the comments attributed to Mr Watts, Mr King had concluded that the instruction issued to departmental heads was not sufficiently water-tight as it seemed to leave Mr Watts with latitude to over-rule the decisions of the Programme Appraisers who work within the confines of Programme Standard 2.

Mr King's complaint was referred to TVNZ on 20 June for a response.

TVNZ's Response to the Authority

In a response dated 29 August, TVNZ forwarded copies of internal memoranda and minutes relating to the Complaints Committee hearing of Mr King's complaint. This correspondence backgrounded the fact that internal "misunderstandings" had resulted in the return to the distributors of the modified or television version of "Jagged Edge" - the version actually approved for broadcast by TVNZ's Programme Appraisers - and the subsequent broadcast of the cinema version of the film, a version not approved by the Programme Appraisers.

The response also quoted from an internal memorandum dated 27 July addressed to five



company executives including the Director of Films and the Head of Feature Film Purchasing, in which the Chief Executive of TVNZ stated, inter alia,

Only I have the authority to over-rule the Programme Appraisers.

It is unacceptable for anyone to defy the Appraisers' recommendations but if the Programme Department is unhappy, they have the right to bring an issue to me. Therefore, the situation must now be clearly understood:

Unless there is evidence of an over-ruling by myself, an Appraiser's written recommendation will apply.

As a result of this statement, TVNZ submitted that matters were now " ... as water-tight, to quote the complainant's words, as is humanly possible, given the exigencies of a television operation."

TVNZ's response was forwarded to Mr King with the request that he advise the Authority whether, in light of the Chief Executive's internal memorandum, he still considered that the instruction issued to TVNZ's Department Heads - to the effect that " ... such language is unacceptable in TVNZ Ltd broadcasts at that hour ... " [i.e. programmes broadcast at 8.30 pm] - was not sufficiently water-tight. It was also suggested to Mr King that if his concerns on this score had now been allayed, he might wish to consider withdrawing his complaint.

Mr King's Reply to the Authority

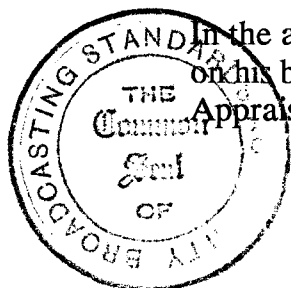
In his reply dated 16 September, Mr King noted the statement by the Chief Executive of TVNZ that only he had the authority to over-rule a Programme Appraiser's ruling and asked who would make that decision when the Chief Executive is overseas. Mr King also discounted suggestions that the misunderstandings that had led to the broadcast of the cinema version of "Jagged Edge" would be unlikely to occur again.

Decision

Preliminary consideration was given by the Authority to Mr King's complaint in early November 1990, following which TVNZ was asked to comment upon Mr King's concerns as to what happens when its Chief Executive is on leave or absent overseas. TVNZ was also asked to provide information concerning the role and functions of its Programme Appraisers.

By way of response, TVNZ commented that:

In the absence of the Chief Executive, there is always a person who is designated on his behalf who has the authority to determine any appeal against a Programme Appraiser's recommendation.



Copies of a paper setting forth the main duties of Programme Appraisers and other papers relating to censorship classifications were also provided to the Authority.

The Authority renewed its preliminary consideration of the complaint at its December Meeting. While appreciating the concerns which had prompted Mr King not only to make his initial complaint but also to question the "action" taken by TVNZ, the Authority confined itself to determining whether the action taken in relation to the complaint was appropriate and satisfactory in the circumstances.

On the evidence before it, the Authority concluded that the steps taken by TVNZ met that test. These included the instruction issued to departmental heads indicating that language such as that complained of is unacceptable in broadcasts screening at 8.30 pm, an instruction which - it was explained to the Authority - meant that

... frequency of usage, as in "Jagged Edge" is unacceptable, and other usages need to be in total context and justified by the story line or news circumstances.

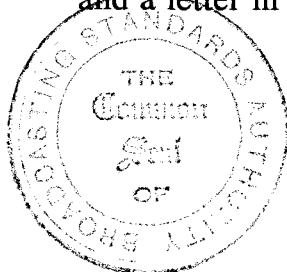
Another and more compelling action taken was the issuing of the Chief Executive's internal memorandum of 27 July in which he stated, in part, that

Only I have the authority to over-rule the Programme Appraisers ... It is unacceptable for anyone to defy the Appraisers' recommendations ... Therefore, the situation must now be clearly understood:

Unless there is written evidence of an over-ruling by myself, an Appraiser's written recommendation will apply.

In the knowledge that there would always be someone acting on behalf of the Chief Executive of TVNZ while that person is away on business or on leave, and convinced of the appropriateness of the actions taken by TVNZ, especially the admonitions contained in the Chief Executive's internal memorandum of 27 July, the Authority concluded that TVNZ's action was appropriate and reasonable in the circumstances. While there is, in any environment, always the possibility that internal policy or operational instructions will occasionally not be followed to the letter, the Authority was satisfied that the steps taken by TVNZ's Chief Executive should go a long way towards preventing the kind of misunderstanding which led to the screening of a version of a movie which had not been approved by the company's Programme Appraisers in place of the version which had been so approved.

The Authority decided to offer Mr King a further opportunity to withdraw his complaint and a letter in these terms was despatched to him on 14 December.



As the complaint has not been withdrawn, the Authority now decides formally to decline to uphold it.

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

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson

27 February 1991

