

BEFORE THE BROADCASTING STANDARDS AUTHORITY

Decision No:19/90

Dated the 12th day of October 1990

IN THE MATTER of the Broadcasting Act 1989

AND

IN THE MATTER of a complaint by

CINDY FLOOK

of Wellington

(on behalf on the

New Zealand National Party)

Broadcaster

RADIO NEW ZEALAND

LIMITED

I.W. Gallaway Chairperson

J.B. Fish

J.L. Hardie

J.R. Morris

DECISION

The Complaint and Radio New Zealand's Decision

By letter faxed to Radio New Zealand (RNZ) early in the evening of 8 October 1990, the Secretary General of the National Party, Ms Cindy Flook, made a formal complaint about an advertisement broadcast on behalf of the Labour Party on the 2ZB station that morning. The advertisement claimed that the National Party would abolish weekend pay rates before Christmas 1990, a claim which Ms Flook asserted was false and malicious. She sought from RNZ the immediate withdrawal of the advertisement and the broadcast of a suitable statement to correct the false impression it had created.

On the morning of 9 October, a senior employee of RNZ telephoned Ms Flook to advise her that the advertisement was supported by two newspaper reports in his possession which he then faxed to her. Although RNZ tried to contact Ms Flook by telephone that afternoon to find out whether she wished to pursue her complaint, she was unavailable and did not return the telephone call. Meanwhile, RNZ researched the National Party's industrial relations policy.

Next morning, after a telephone complaint from the Office of the Leader of the Opposition, RNZ decided to withdraw the advertisement. It had been broadcast on a network basis, not



merely on Radio 2ZB, so withdrawing it from the air involved contacting all the stations which network with RNZ. When Ms Flook telephoned RNZ at mid-morning that day (10 October), she was advised of the decision to withdraw the advertisement.

In a letter faxed to RNZ that same day, Ms Flook repeated her requests that RNZ withdraw the advertisement and broadcast a suitable statement to correct the impression it had created. RNZ's response, also faxed on 10 October, was that its decision to withdraw the advertisement was "as far as Radio New Zealand is prepared to take the matter."

Referral of the Complaint to the Broadcasting Standards Authority and RNZ's Comments

By means of facsimile machines in each instance, Ms Flook referred her complaint to the Authority pursuant to s.8(a) of the Broadcasting Act 1989, the Authority sought RNZ's further comments and these were received - all on 10 October 1990.

On 11 October, the Authority received another faxed letter from Ms Flook in which it was claimed that the advertisement had been broadcast that day on two RNZ stations, namely, Wanganui's River City Radio and Auckland's Classic Hits 97FM. She stated that while she accepted RNZ's assurances that it was doing its best to withdraw the advertisement, meanwhile the "false, misleading and deceptive material continues". Ms Flook repeated her view that nothing short of a full statement by RNZ, correcting the false impressions created by the advertisement, would suffice to redress the damage done. Upon receiving Ms Flook's fax, the Authority contacted both of the RNZ stations identified by Ms Flook and received confirmation that they had broadcast the Labour Party advertisement on 11 October.

RNZ's explanation, in its letter of 10 October to the Authority, of its acceptance and broadcast of, and subsequent decision to withdraw the Labour Party advertisement may be summarised as follows:

1. RNZ accepted the advertisement in good faith.
2. The content of the advertisement appeared to be sufficiently supported by two provincial newspaper reports, dated 15 April 1989 and 6 December 1989, which carried reports of statements made by two National Party Spokespersons (Messrs Banks and Cooper).
3. The individual policies of all political parties are not normally researched by RNZ before political advertisements are accepted because of the time this would entail.
4. The advertisement was withdrawn on the basis of the National Party's industrial relations policy.
5. RNZ does not recognise any obligation to broadcast corrections for political



advertisements during a compressed time-frame and the normal "hurly-burly" of election campaigning because:

- (a) the circumstances of National's policy on the issue of weekend pay rates were confused by reported statements by two senior National Party Spokespersons which lent a measure of support to the purport of the Labour Party advertisement; and
- (b) it is within a political party's own means to use its available election broadcasting time to contradict advertisements which it believes to be misleading.

With regard to the delay between RNZ's decision to withdraw the advertisement and the actual withdrawal of it from all its network stations, the senior employee of RNZ who handled the matter explained to an officer of the Authority, in a telephone conversation on 11 October, that a fax advising the stations of the withdrawal of the advertisement had been sent on 10 October. It was followed by another fax, sent on the morning of 11 October, which stressed the urgency of the advertisements' withdrawal. Despite that action, as has been noted, the advertisement was replayed on at least two radio stations on 11 October.

Decision

The Labour Party advertisement in question used sound effects to suggest that the two speakers, apart from the announcer, were a petrol station attendant and a customer. After a brief sequence in which the attendant asked whether the customer would like her to check the oil in the customer's car and then proceeded to do so, the announcer stated:

Every Saturday, Jill works down at the petrol station so she can give her kids the Christmas holiday they've never had.

Next the customer commented that it must be hard working on a Saturday and Jill replied that she just thinks of the money. The announcer then said:

But now National says they'll abolish weekend pay rates. And not just sometime ... but by Christmas.

The final words in the advertisement, spoken by Jill, were:

But ... that's a \$5 an hour pay cut. National wouldn't do that to us would they?

There is no disagreement between the complainant and RNZ that the Labour Party advertisement was false in its claim that the National Party would abolish weekend pay rates by Christmas. As Ms Flook explained to RNZ:

Under National's policy, weekend pay rates are a matter to be negotiated between



employers and their staff in the work place. They are not a matter to be determined by the next National Government.

The referral of Ms Flook's complaint to the Authority was made because she was dissatisfied with RNZ's refusal to take the corrective action which she requested, namely, the broadcast of a suitable statement correcting the false impression created by the advertisement in addition to the withdrawal of the advertisement. In considering the appropriateness or otherwise of RNZ's action in withdrawing the advertisement - but doing no more than that - the Authority believes the following matters are relevant:

- (a) whether or not the broadcast of the advertisement breached any obligations imposed by law upon RNZ; and
- (b) whether RNZ, as the broadcaster responsible for maintaining broadcasting standards, took reasonable steps to ensure that the broadcast of the advertisement would not be in breach of its legal obligations.

These matters will be discussed in turn.

(a) Although it was not specifically alleged by the complainant or acknowledged by RNZ that the broadcast of the Labour Party advertisement breached obligations imposed by the law upon RNZ, the decision to withdraw the advertisement suggests very strongly that RNZ was of the opinion that the broadcast of the advertisement did breach those obligations. The Authority is in no doubt that the broadcast of the advertisement breached obligations imposed upon RNZ.

The Broadcasting Act 1989 requires broadcasters, amongst other things, to maintain standards consistent with any approved code of broadcasting practice applying to its programmes (s.4(1)(e)). Standard 10.1 of the Codes of Broadcasting Practice for Radio requires all broadcasters to observe the codes adopted by the Committee of Advertising Practice (CAP). Both sets of codes have been approved, on an interim, pro forma basis, by the Authority. One of the CAP codes is the Advertising Code of Ethics, and part of one of its provisions is in these terms:

2. Truthful Presentation - Advertisements must not contain any statement or visual presentation which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, or makes false and misleading representation

Another of the CAP codes is the Code for Comparative Advertising which contains the following guideline:

Comparative advertising should be factual and informative and should offer a product or service on its positive merits. The intent and connotation of the advertisement should be to inform and not to discredit, disparage or attack competitors, competing products or services directly or by implication.



In the view of the Authority, the Labour Party advertisement did not meet the requirements of either of these provisions of the CAP codes.

(b) In assessing the reasonableness of the steps taken by RNZ to ensure that the broadcast of the political advertisement would not be in breach of its obligations as a broadcaster, the Authority notes first that Part VI of the Broadcasting Act 1989, which deals with election programmes (including political advertisements), originally made political parties the "broadcaster" of election programmes. The original Part VI of the Act thus placed the responsibility of ensuring that election programmes complied with broadcasting standards upon the political parties for whose purposes and upon whose authority they were made. When Part VI was amended in March by the Broadcasting Amendment Act 1990, broadcasters were outspoken in their claims for editorial control of the content of election programmes but the amendment retained the political parties as "broadcasters" for the purposes of Part VI.

In August 1990, however, the Broadcasting Amendment (No. 2) Act repealed Part VI of the Act and replaced it with a new Part VI which no longer makes the political parties the "broadcasters" of their own election programmes. Instead, responsibility for ensuring those programmes comply with broadcasting standards was placed where the broadcasters had consistently argued it should be, ie with permanent broadcasters who are familiar, from their daily operations, with the requirements of the broadcasting standards scheme.

In light of the background to the present Part VI of the Act as well as the special sensitivity of election programmes, the Authority admits to being concerned that RNZ did not, upon receipt of the Labour Party's advertisement, research the National Party's industrial relations policy in order to discover whether it contained the policy referred to in the advertisement. While RNZ's justification - that a want of time normally prevents it from researching party policies before accepting political advertisements - would be acceptable when the advertisement in question does nothing more than focus upon a party's own policies, the situation is quite different when a political advertisement for one party focuses upon the policies of another. In that situation, the broadcaster should be on guard that, by broadcasting the advertisement without making independent inquiries as to its veracity, the risk of breaching the broadcasting standards scheme is especially high.

RNZ relied upon the fact that it was supplied with news reports of speeches made in 1989 by two National Members of Parliament which supported the content of the Labour Party's advertisement. However, in the Authority's view, the date of those reports as well as the fact that neither politician is the National Party spokesperson on industrial relations, should have alerted RNZ to the possibility that the National Party policy apparently revealed by the reports may have been superseded. Further, it is not the case that the National Party's most recent statements of its policies are difficult to obtain. As one of the two major political parties in this country, its policies are well-publicised. Even if a comprehensive statement of the Party's industrial relations policy (which Ms Flook advised was released on 8 May 1990) was not readily to hand when the advertisement was submitted to RNZ, a telephone call or fax to the National Party headquarters or the Party's spokesperson upon the matter would surely have alerted RNZ to its inaccuracy.



In sum, the Authority is satisfied both that the broadcast of the advertisement breached the obligations imposed upon RNZ by law and that the systems which it had in place to prevent such a breach were inadequate.

Those findings bear upon the question of the adequacy of RNZ's actions in response to Ms Flook's complaint. The Authority has no criticism of the promptness with which RNZ responded to Ms Flook's complaint and took steps to withdraw the advertisement from broadcast. Plainly, however, the steps it took were not wholly successful. Moreover, it remains to be determined whether RNZ should have broadcast, as Ms Flook requested, a suitable statement designed to correct the false impression created by the Labour Party's advertisement.

In this regard, the Authority is again concerned by RNZ's assertion that a political party should use its own broadcasting time to contradict advertising by another party which it believes to be misleading. In the context of the present complaint, where - as RNZ's withdrawal of the advertisement suggests and this Authority's findings confirm - RNZ was in breach of its statutory obligations in broadcasting the Labour Party advertisement, RNZ's assertion amounts to an abdication of the adverse consequences of its editorial responsibility.

In all the circumstances of the complaint, the Authority is of the view that Ms Flook's request that RNZ broadcast a suitable statement correcting the impression created by the Labour Party advertisement was reasonable.

Accordingly, pursuant to s.13(1)(a) of the Broadcasting Act 1989, **the Authority orders Radio New Zealand Limited to broadcast a statement, approved by the Authority, which corrects the false impression created by the Labour Party advertisement.**

That statement shall be:

- **read by a Radio New Zealand announcer;**
- **no more than 30 seconds in length;**
- **broadcast once on each of three consecutive days on each radio station which broadcast the Labour Party advertisement, which three day period shall commence within seven days of the date of this Decision;**
- **broadcast in the same radio time period as the Labour Party advertisement was broadcast.**

It remains to note that Ms Flook also referred to the Authority a complaint she had made about the broadcast of the Labour Party advertisement on independent radio stations. That complaint was made not to a broadcaster of the advertisement but to the Independent Radio Association's sales and marketing agent. While, as a result of Ms Flook's complaint, the advertisement was withdrawn, she brought the matter to the Authority's attention because she wished the independent radio stations to carry a suitable statement correcting the false impression created by the advertisement.



Because Ms Flook's complaint about the broadcast of the advertisement on independent radio stations was not made to a broadcaster, the Authority cannot investigate and review the decision made (by IBA's sales and marketing agent) to withdraw it. But for the technical flaw in the procedure followed by Ms Flook in making her complaint about the broadcast of the advertisement on independent radio stations, the Authority would have reached the same decision that it has reached with regard to RNZ's broadcast of the advertisement. The Authority hopes that the independent radio stations which broadcast the Labour Party advertisement will take note of this Decision and broadcast the statement described in the order of the Authority (above).

Signed for and on behalf of the Authority



Iain Gallaway
Chairperson

12 October

