

Decision No. 5/82  
BRO 38/81

*Before the Broadcasting Tribunal*

IN the matter of the Broadcasting Act 1976, and in the matter of an application by Radio I Limited for amendment of sound-radio warrant MF 44 (1XI):

B. H. Slane, Chairman, Lionel R. Sceats, Member, Janet C. Somerville, Member.

Hearing: At Auckland, 30 November 1981.

Counsel: D. A. R. Williams and T. C. Gould for the applicant. F. A. Hamlin for New Zealand Post Office. J. B. Thomson for Broadcasting Corporation of New Zealand.

DECISION

In a decision dated 29 April 1980 (Decision No. 13/80) the Tribunal renewed the warrant for a period of 3 years and gave reasons why the period of the renewed warrant would be less than the maximum period of 5 years. At the same time the Tribunal deleted an existing warrant condition inserted at the time of the grant of the warrant by the Broadcasting Authority requiring the station to comply with the proposals contained in its warrant application, and substituted the following clauses:

- (e) The warrant holder shall not substantially depart from the basic format and content of its programmes or the type or extent of services intended to be provided at the time of the grant of the warrant without the prior consent of the Broadcasting Tribunal and subject to any conditions which the Tribunal might impose in the public interest.
- (f) Notwithstanding condition (e) the station may continue to provide the same services and basic format of its programmes as it was providing at the 30th day of June 1980, provided it lodges an application for such variations from its obligations as it considers necessary for the consideration of the Tribunal by 31 October 1980 and until the Tribunal has ruled on such application.

This amendment was intended to permit the station to carry on without being in breach of its renewed warrant but requiring it to put its proposals for departures from its existing obligations to the Tribunal for approval within 3 months.

The warrant holder now applies for the deletion of clause (f) and the substitution of a new clause (f) as follows:

Notwithstanding condition (e) the station may continue to provide the same services and basic format of its programme as it was providing as at the 30th day of November 1981.

The warrant holder also applies to amend the next renewal date of the warrant from 30 June 1983 to 30 June 1985. (The application actually refers to the renewal date being changed from the 30 June 1980. That this is an error is made clear when the particulars filed in support of the application are read with the application).

The application for renewal had been heard in Auckland on 10 and 11 July 1980 and a decision was given by the Tribunal on 29 July 1980. The warrant holder sought to appeal against the decision and instructed the solicitors then acting but the appeal was not filed within the stipulated 14-day period provided by section 84 (3) Broadcasting Act 1976. There is no provision for appeals to be lodged out of time.

When the Registrar learned that, although the Tribunal had been notified of an appeal, it had not in fact been lodged he notified the warrant holder and, some time later, this application was filed.

The application therefore falls into two parts. First, the application which was intended should be made within 3 months of the decision on the renewal and secondly an application to extend the duration of the current warrant to the maximum permitted—namely, a 5-year period from 30 June 1980.

The managing director of Radio I Limited, Mr G. B. Edwin, gave evidence of the news services provided by the company, and the community involvement. He briefly described the existing format which he said was exactly that which Radio I undertook to provide in its original warrant application. A case is put for the reduction in news services from that originally required on the grounds that there has been no significant public demand for news services beyond the existing hours on weekdays commencing at 6 a.m. and continuing hourly until 6 p.m. with extra bulletins during the breakfast and late afternoon periods. On Saturdays the first news bulletin is at 7 a.m. and bulletins presented hourly until 6 p.m. On Sundays bulletins start at 7 a.m. and continue hourly until 6 p.m.

Taking a broad view of the news and information services provided by the station we are satisfied that an effort is being made to comply during the day with the requirements laid down in the initial application. We are prepared to accept the omission of bulletins at night time partly because of the additional information services such as the traffic reports from aircraft and the other community involvement activities of the station. This should not be taken as a precedent for stations to reduce news bulletins from those promised. We accept here there is at present some determination to serve with news and information and to provide a community involvement to achieve those objectives in the original application. A 40 percent increase in news staff is some indication of that.

The amendment applied for is approved. The Tribunal is satisfied that the amendment is necessary in the public interest because it is unsatisfactory to relate back the performance of the station solely to a distant period, when breaches have been dealt with.

Mr Williams made detailed submissions on the jurisdiction of the Tribunal to amend the expiry date of the current warrant. In this respect the Tribunal does not need to be satisfied that the amendment is necessary in the public interest. But the applicant accepted that it must demonstrate that the amendment sought is justifiable in terms of the provisions of the Act.

Mr Williams submitted that the period for which a warrant is renewed is one of the terms of the warrant within the meaning of section 81 (4) of the Broadcasting Act. Where the words of the statute were precise and unambiguous they must be construed in their ordinary and natural sense. Section 72 provided that every warrant should, unless sooner revoked, continue in force until a date 5 years after the date of issue.

Section 81 (2) provides that the renewal of a warrant should take effect for the same period as the original term of the warrant renewed, "except that if the Tribunal is of the opinion that the holder of the warrant has been or is in breach of any condition of his warrant, the Tribunal may grant a warrant to take effect for such shorter period as it thinks fit." (That is what the Tribunal did in the case of the renewal of Radio I's warrant.) Mr Williams agreed that a warrant could not be amended to provide for an expiry date in excess of 5 years. That would render section 72 nugatory.

Mr Williams submitted that section 71 (2) was designed to ensure that at all times a warrant contain provisions dealing with the matters set out in that subsection. It did not conflict with the power to make amendments although section 81 (4) was made subject to section 71 (2).

Mr Williams took a hypothetical case to justify the reasonableness of his argument: An infringement may have led to a reduction in the term of the warrant under section 83 (4). It may be learned that the evidence of key witnesses against the warrant holder was false and perjured after any time of appeal had expired. Unless section 81 (4) could be used to vary the warrant by amending the warrant back to the 5 years the Tribunal would be powerless to rectify an obvious injustice.

The Tribunal is satisfied that there is statutory power to amend the warrant by amending the date on which it will expire provided the amendment would not have the effect of extending the duration of the warrant beyond the maximum of 5 years from the date of expiry of the previous warrant.

The circumstances in which such power should be exercised are alluded to later in this decision.

The argument of the merits of the application itself can be summarised as follows:

- (a) The renewal which led to the application was the first occasion upon which there was any challenge to the renewal of a private warrant and the first occasion when renewal was anything other than a formality.
- (b) The station had responded in a responsible fashion and had "put its house in order". The Tribunal's main concern had been that the directors and management should have addressed themselves to the question of obtaining the permission of the Tribunal to its changed news operation. It was not a case where there was concern about the reliability of the station.
- (c) The warrant was the foundation of its existence. Security of tenure was therefore important to its business operation. A reduced term set it apart from other stations and was unhelpful to its financial and business dealings.
- (d) The station was on a black list and the Tribunal had achieved the statutory purposes of scrutiny, examination and reorganisation on renewal, and there was no reason for any further discipline to be applied. The Tribunal could be satisfied that the lesson had been learned.