

(e) Allegations against the station had been made by the proprietors of the morning newspaper who were able to obtain extensive publicity for these allegations which were not in fact upheld.

(f) The Tribunal was now given a chance to look again at the station which was a special case.

The position regarding the warrant of the station is, perhaps, misunderstood and it is as well for this Tribunal to state it clearly.

Although the warrant has been renewed for a shorter term than the maximum of 5 years, the station is neither on a black list nor set apart from other stations. It simply has its renewal coming up for consideration 2 years earlier.

However, all private station warrants do not run from the same dates and therefore there are warrants falling due during most years.

Section 81 (3) states:

Every application for the renewal of a warrant shall be granted by the Tribunal, unless it is of the opinion that sufficient grounds exist for the revocation of the warrant and the holder of the warrant has been notified accordingly.

This provision is compatible with the infringement provisions of section 83 which require any proposal to revoke or suspend the warrant on the grounds that the station has not been carried on with the terms and conditions of the warrant to be notified to a warrant holder.

It is therefore clear that if a station complies with the terms of its warrant from the date of its renewal to the expiry time of the warrant (whether it be 3 years or 5 years), the station is entitled to a renewal of the warrant. Furthermore, unless there have been breaches of conditions of the warrant which justify that course, the warrant renewal may not be made to take effect for a shorter period than 5 years. It is therefore clear that Radio I will be entitled to renewal for a term of 5 years if it has complied with the terms of its warrant during the 3 years for which it stands renewed at present.

In our decision on the renewal we said the 3-year period would provide a reasonable period for the Tribunal to survey the station's performance. A decision to reduce the term of a warrant must be regarded as an opportunity for the Tribunal to have a look again at the performance of the station towards the end of the period stipulated for the renewal. The question the Tribunal has to decide in the present case is whether there are sufficient grounds for accelerating that review. The effect, in the present case, is that, having reviewed the circumstances of the warrant at this stage, it should defer further consideration until three and a half years from now rather than at a time 3 years from 30 June 1980.

It is accepted by the Tribunal that the station has taken steps to improve its performance and to address itself to the problem of the relationship of its present services to those promised in its application and alluded to in the Tribunal's decision on the renewal.

However, the station did not immediately take action following the revelation that its renewal appeal had not been filed and some months elapsed before this application was made in July 1981. It must take that into account in considering whether or not the original decision which would have enabled the Tribunal to review the station's performance over a sustained period of 3 years should be superseded.

The Tribunal has also concluded that there are not sufficient grounds for, in effect, putting aside consideration of the station's performance, until 1985. The Tribunal has amended the warrant condition and it is reasonable to await the expiry of the 3-year period in 1983 to see whether the adherence to the terms of the warrant is sustained. We are not convinced that an enhanced performance should, on an application for amendment be regarded as sufficient to vary or virtually nullify the decision upon renewal in July 1980.

As we have stated, we do not consider that any person should regard the warrant holder any differently from a business or trading point of view, because its warrant is due for renewal in less than 2 years time. All stations face the approach of a renewal during the whole of the term of the warrant.

Radio I will be no more subject to any likelihood of a shorter period of renewal because its term this time is 3 years, than would any other station. In other words, the performance which led to the shorter term of renewal has been dealt with and cannot constitute the basis for a shortening of the duration of the warrant upon the next renewal. The station is not on any blacklist as far as the Tribunal is concerned and its performance will be examined in exactly the same way as every other warrant for renewal.

We do not think it appropriate that we should set forth the circumstances in which a warrant which is granted for shorter term on renewal would be restored to its original date of expiry. We do consider however that the simple device of putting the station's "house in order" (as Mr Williams has put it) should not entitle the station immediately to go back to the original 5-year term. The purpose of the renewal is more than a discipline, (although it is clear that it has had some effect on station directors and management who may previously have regarded promises made on the grant of a warrant somewhat lightly), it is an opportunity to review the conduct of the station at an earlier period than the 5 years. In this instance the Tribunal would have had the opportunity to review the performance of the station over a 3-year period, or something close to that. The applicant is asking us to consider performance of the station over some months during part of which the company thought it was proceeding with an appeal, and during part of which it had decided to make this application. The Tribunal does not consider that this is an adequate period for the Tribunal to determine the attitude of the station to its warrant obligations. During much of the period the station has been enjoying an increased audience and the economic benefits which flow from it, fuller advertising schedules for example. The problems arose when economic pressure threatened the viability of the station.

Furthermore, the review that has been undertaken at this stage was foreseen at the time of the decision to renew the warrant for 3 years as it was made clear that an application should be made within 3 months of that decision, or within 3 months of an appeal in respect of that decision being dismissed, when the warrant would be amended along the lines proposed by the Tribunal.

Simply restoring the original 5-year term cannot remove the immediate consequences to the company of the original renewal decision. The impact of that decision came in the statements made by the Tribunal in it and the decision to renew the warrant for less than 3 years. The effect of extending the expiry date to 5 years would no more indicate that the station has put its house in order than the plain statement we make in this decision that it has set about doing so.

The application for the deletion of clause (f) is approved and the following clause substituted:

"Notwithstanding condition (e) the warrant holder may continue to provide the same services and basic format of its programmes as it was providing on the 30th day of November 1981."

The application to amend the expiry date of the warrant is therefore declined.

The Tribunal deferred final consideration of this application until the judgment of the High Court was known in an appeal by Hauraki Enterprises against a similar decision of the Tribunal to grant a renewal for a period of only 3 years. (Decision 11/80). On 11 March 1982 that appeal was dismissed by the High Court. There is nothing in the High Court judgment to suggest the Tribunal had misdirected itself on the law or its application to renewals.

Dated the 29th day of March 1981.

For the Tribunal,

B. H. SLANE, Chairman.

Decision No.: 1016

Reference No.: Ind 13/81

*Before the Indecent Publications Tribunal*

IN the matter of the Indecent Publications Act 1963, and in the matter of an application by the Comptroller of Customs for a decision in respect of the following publication:

*Pornography: Men Possessing Women* by Andrea Dworkin. Published by G. B. Putnam's Sons, New York.

Judge W. M. Willis (Chairman), Messdames H. B. Dick, L. P. Nikera, Messrs J. V. B. McLinden, I. W. Malcolm.

Hearing: 1 April 1982.

Decision: 30 April 1982.

Appearances: Mr Leloir for Comptroller of Customs, Miss S. Moran for importer, Miss R. Parke.

DECISION

THIS book was imported through the Auckland Parcels Post Branch and seized on 14 October 1981. As the importer has disputed its forfeiture, the book has been referred to the Indecent Publications Tribunal for a classification prior to the commencement of condemnation proceedings.