

COMPLAINT NUMBER	18/368
COMPLAINANT	G Clarke
ADVERTISER	Tranzurban
ADVERTISEMENT	Tranzurban, Radio
DATE OF MEETING	27 November 2018
OUTCOME	Not Upheld

SUMMARY

The radio advertisement for Tranzurban's recruitment campaign said in part: "If you're an experienced bus driver or new to the industry, check out the opportunities available right now with Tranzurban. They're looking for team players with a positive, make it happen attitude to join their team and deliver Wellingtonians around the coolest little capital. Even if you've been thinking of retirement, but you're not ready to hang up your boots, Tranzurban want to hear from you. Permanent and casual positions available. So if you are looking for a sweet work-life balance, call the team for a chat."

The Complainant said the employment advertisement claiming bus driver roles offered a good work-life balance was misleading. The Complainant said the roster patterns and split shifts were not conducive to a good work-life balance.

The Advertiser said the advertisement was part of a recruitment campaign to build up a permanent, part time and casual driver pool. Potential employees could contact the Advertiser to discuss hours and shifts and a robust recruitment process ensured no successful applicant would be misled as to the work on offer.

The Complaints Board said the concept of work-life balance was subjective and while the working arrangements on offer would not suit all workers, the Advertiser had explained the type of worker it was targeting, including recently retired drivers who may want part time or casual work.

The Complaints Board said the Advertiser had provided sufficient support for its claim that the bus driver roles could offer work-life balance and was therefore not likely to mislead or deceive consumers. The Board said the advertisement had been prepared with a due sense of social responsibility. The Complaints Board ruled the advertisement was not in breach of Basic Principle 4 and Rule 2 of the Code of Ethics.

The Complaints Board ruled the complaint was Not Upheld.

[No further action required]

Please note this headnote does not form part of the Decision.

COMPLAINTS BOARD DECISION

The Chair directed the Complaints Board to consider the advertisement with reference to Basic Principle 4 and Rule 2 of the Code of Ethics.

Basic Principle 4 required the Complaints Board to consider whether the advertisement had been prepared with a due sense of social responsibility to consumers and to society.

Rule 2 required the Complaints Board to consider whether the advertisement contained any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge.

The Complaints Board ruled the complaint was Not Upheld.

The Complaint

The Complainant said the employment advertisement claiming bus driver roles offered a good work-life balance was misleading. The Complainant said the roster patterns and split shifts were not conducive to a good work-life balance.

The Advertiser's Response

The Advertiser said the advertisement was part of a recruitment campaign to build up a permanent, part time and casual driver pool. It had identified there were potentially retired drivers at home who miss working but don't want to, or can't, commit to a full-time position, and still hold the required licenses looking for part-time or casual work that may fit in with their lifestyle.

The Advertiser explained the roles available and said it conducts a robust recruitment process which includes a sit down meeting with its interviewer and a pre-employment drive with one of its driver trainers; allowing for plenty of opportunity to ask whatever questions the applicant has around hours of work; and this is always discussed.

The Complaints Board Discussion

Consumer takeout

The Complaints Board began by discussing the likely consumer takeout of the advertisement. The Board agreed the likely takeout would be the Advertiser had a range of opportunities for potential bus drivers and the advertisement was particularly directed towards those who might not be able or willing to work a 40 hour week. The Board said it was a call to action to make contact with the Advertiser and find out more information. The Complaints Board noted the advertisement did not give any specific details about working conditions.

The Complaints Board noted the Complainant's concerns with the advertisement and discussed a definition of the term 'work-life balance' which said it is "the division of a person's time and focus between work and leisure activities." The Board said the concept of work-life balance is subjective and while the working arrangements on offer would not suit all workers, the Advertiser had explained the type of worker it was trying to target, including recently retired drivers who may want part time or casual work.

The Complaints Board also said the advertisement was a call to action for potential employees to contact the Advertiser about the roles available and there would be ample

opportunity to ascertain whether the working arrangements would suit individual circumstances.

The Complaints Board said the Advertiser had provided enough support for its claim that the driver role can offer a work-life balance for certain employees and the advertisement was not likely to mislead or deceive consumers. The Board said the advertisement had been prepared with a due sense of social responsibility. The Complaints Board ruled the advertisement was not in breach of Basic Principle 4 and Rule 2 of the Code of Ethics.

Accordingly, the Complaints Board ruled the complaint was Not Upheld.

DESCRIPTION OF ADVERTISEMENT

The radio advertisement for Tranzurban's recruitment campaign said in part: "If you're an experienced bus driver or new to the industry, check out the opportunities available right now with Tranzurban. They're looking for team players with a positive, make it happen attitude to join their team and deliver Wellingtonians around the coolest little capital. Even if you've been thinking of retirement, but you're not ready to hang up your boots, Tranzurban want to hear from you. Permanent and casual positions available. So if you are looking for a sweet work-life balance, call the team for a chat."

COMPLAINT FROM G CLARKE

Tranzurban was advertising employment opportunities for bus drivers. The ad said in part that Tranzurban's employment offered a good work life balance. The hours of work at Tranzurban are the nub of the current industrial dispute with the Tramways Union. Their individual employment agreement offers no guaranteed start and finish time, no guaranteed days of work, no guaranteed maximum work hours. Drivers can be required to work any shifts chosen by the employer that cover an 18 hour span seven days a week. A typical day for a driver can start at 7.30am and finish at 8.30pm with multiple sign offs and ons during the day with time worked for payment purposes being 6.5 hours. The unpaid portions of the day do not provide an opportunity for family time or recreation time. There is no way that this can be truthfully advertised as a great work life balance.

CODES OF PRACTICE

CODE OF ETHICS

Basic Principle 4: All advertisements should be prepared with a due sense of social responsibility to consumers and to society.

Rule 2: Truthful Presentation - Advertisements should not contain any statement or visual presentation or create an overall impression which directly or by implication, omission, ambiguity or exaggerated claim is misleading or deceptive, is likely to deceive or mislead the consumer, makes false and misleading representation, abuses the trust of the consumer or exploits his/her lack of experience or knowledge. (Obvious hyperbole, identifiable as such, is not considered to be misleading).

RESPONSE FROM ADVERTISER, TRANZURBAN

I refer to your letter addressed to Paul Snelgrove and dated 6 November 2018, regarding a complaint made by G Clarke concerning radio advertising we ran from 16 October 2018 to 31 October 2018.

I provide the following background in support of our advertising:

- In January 2018, Tranzurban commenced a large-scale recruitment drive to fill over 300 bus driving positions for new contracts commencing with Greater Wellington Regional Council (GWRC) in mid-2018.
- It is common knowledge that the bus industry across New Zealand has faced a shortage of bus drivers for some time; Wellington is no different.
- Based on industry knowledge and experience, we estimated that we would be successful in recruiting around 60% of our driving pool from incumbent bus operators in the Wellington region; leaving us with a shortfall of 40%.
- We were under no obligation to transfer drivers from the previous bus operator and our recruitment strategy for all positions was to go to the open market.
- During the first 6 months of 2018, we advertised across multiple mediums including radio, newspaper, social media, employment websites and on the backs of our existing bus fleet.
- This recruitment campaign was hugely successful, and we have welcomed many existing bus drivers to our Wellington team, and many who were new to the bus industry.
- Since our services with GWRC commenced in June and July, our operations have gone through the initial bedding in period and are now actively in business as usual operation; working closely with GWRC and our driving teams in streamlining timetables across the network and aligning our driving rosters to service this network.
- There has been much consultation with our drivers on the development of these rosters, and all rosters comply with the Land Transport Rule which governs hours of work within the bus industry.
- It is common place in the bus industry to employ permanent full-time and part-time, as well as casual drivers.
- Permanent full-time drivers work a rotating roster set over 7 days. Our rosters are designed so that drivers are scheduled to work 80 hours per fortnight (or 40 hours per week). If a driver wants to work an additional shift, this is at their discretion. The bus industry is designed around shift work with some shifts operating during the AM and some shifts operating during the PM; at Tranzurban we rotate our shifts to make sure everyone is treated fairly.
- Permanent part-time drivers are interested in either only working a limited number of hours per day, or only working on certain days of the week. The hours of work in our part-time employment agreements have been drafted to account for a varying number of individual part-time driver requests.
- Casual drivers are interested in driving positions where hours of work are accepted at their discretion. When work is available, they are offered it and they can choose to accept or decline. Many of our casual drivers love driving buses and appreciate the opportunity to be a part of the industry while not committing to a permanent position.
- Our rosters are designed so that drivers are rostered to work an 80-hour period each fortnight. We guarantee our full-time drivers 80 hours, so if we only manage to roster them for 75 hours, their pay is topped up to 80 hours. If they wish to work an extra shift that takes them over their 80 hours, that is at their discretion.

- We pay the highest urban base hourly rate in New Zealand; our drivers in Wellington are paid 8% above the living wage with flat rates of \$22.20 per hour.
 - G Clarke is an advocate for the Tramways union and this unions collective agreement with NZ Bus (the other main bus operator in Wellington), operates a penal rate system where drivers are on lower hourly base rates starting off on \$17.65 with drivers who work more than 40 hours a week earning time and a half, and drivers who work more than 48 hours a week earning double time.
 - Tranzurban offers a higher flat rate over a 40-hour week allowing our drivers a better work life balance rather than having to work overtime to bring up their weekly pay.
- ...

I provide the following information in relation to the complaint:

- In his complaint, G Clarke states: “The hours of work at Tranzurban are the nub of the current industrial dispute with the Tramways union”
- Since we were awarded (back in mid-2017), the contract to operate services for GWRC (commencing mid-2018), the Tramways union have mounted one campaign after another in order to smear our reputation, damage our good name and impact our ability to recruit drivers and operate our services; through false accusations and absolute blatant lies via the media, social media and union publications.
- In July, this union lodged a Statement of Problem in the Employment Relations Authority (ERA) alleging we were breaching the Land Transport Rule with our rosters and hours of work.
- Following this hearing, the ERA issued a determination within 24 hours, finding Tranzurban were not in breach of work time hours and complied with the Land Transport Rule.
- We have undertaken significant consultation with our drivers on our rosters, and we have made changes based on drivers’ feedback about what is and isn’t working for our team.

In the complaint, G Clarke states: “Their individual employment agreement offers no guaranteed start and finish time, no guaranteed days of work, no guaranteed maximum work hours.”

- Our permanent full-time employment agreements outline that the roster will be set over a seven-day week but are not required to specify set hours of work on specific days.
- Aligning work hours to the roster is common place within the bus industry which is a seven-day week industry.
- Our employment agreements guarantee a good wage (highest urban base rate in NZ) and a minimum of 80 hours per fortnight to our permanent full-time drivers.
- Our rosters are designed to give all full-time drivers guaranteed 80 hours per fortnight (usually over a 10-day period) and is at their discretion if they wish to work an extra shift.
- The majority of our shifts allow for two consecutive days off in a row, some allow for more.
- There are very specific work time rules within the Land Transport Rule that we must comply with. These rules layout the maximum time a driver:

- can work in any period before having a rest break,
 - can work in any one day,
 - can work before requiring a day off.
- Our employment agreements for our part-time drivers either allow for a guaranteed 20 hours per fortnight as per the roster or define specific days or hours of work. These are negotiated on a case by case basis where we can match need with want.
 - I reiterate, that our rosters do not breach our work time obligations under the Land Transport Rule.
 - I also reiterate that we have undertaken significant consultation with our drivers on our rosters, and we have made changes based on drivers' feedback about what is and isn't working for our team.
 - **In the complaint, G Clarke states: "Drivers can be required to work any shift chosen by the employer that cover an 18 hour span."**
 - The land Transport Rule specifies that the period between when a driver first signs on work for the day and last signs off work for the day, must be within a 14-hour period.
 - It is simply not possible for a shift to span 18 hours.
 - I reiterate, that our rosters do not breach our work time obligations under the Land Transport Rule.
 - **In the complaint, G Clarke states: "The unpaid portions of the day do not provide an opportunity for family time or recreation time."**
 - The urban bus industry has two peaks during the day; a peak in the AM between 730am and 930am and a peak in the PM between 230pm and 630pm. Naturally there are less services running through the middle of the day requiring less drivers.
 - Some of our shifts operate what our industry calls 'split shifts'. This is common place across the bus industry. An example of this is where we employ around 600 school bus drivers across 20 centres in NZ, these drivers do one school run in the AM and one school run in the PM and that's it; and they love it!
 - We at Tranzurban have made a considerable effort in employing local people to work at local depots, so drivers who work from our Lower Hutt depot for example, will live in Lower Hutt. This gives drivers the opportunity to easily return home or run errands during the middle of the day; and many do this.
 - Split shifts are not everyone's favourite, but we have minimised as many split shifts at Tranzurban as we can, there are very few shifts with split shifts and as we operate a rotating roster, drivers will only operate a split shift every now and then.-

In the complaint, G Clarke states: "There is no way that this can be truthfully advertised as a great work life balance."

- This is exactly what frustrates us about this union in the bus industry in Wellington; they take something that is actually working for the majority and turn it into a negative.
- Our shifts and rosters at Tranzurban, are no different to what is common place across the industry.

- We have a fantastic team of drivers who we engage with regularly and who provide useful feedback for us to improve our workplace.
- There is a national shortage of bus drivers across New Zealand and yet through our recruitment campaign and advertising, we have attracted over 100 new drivers to the industry in Wellington.
- These drivers have come into the industry knowing it is based around shift work, shift work is not for everyone, but it is a reality, and everyone has a choice.
- Shift work and the part-time and casual positions we have available at Tranzurban allow for work life balance, as we pay the highest urban hourly base rate in New Zealand, which is 8% above the living wage, meaning drivers only need to work a 40-hour week and will take home a good wage.
- G Clarke is an advocate for the Tramways union and this unions collective agreement with NZ Bus (the other main bus operator in Wellington), operates a penal rate system where drivers are on lower hourly base rates starting off on \$17.65 with drivers who work more than 40 hours a week earning time and a half, and drivers who work more than 48 hours a week earning double time.
- We are a 4th generation family business, all directors are family members and 5 of the 7 directors still drive buses today. We are bus drivers! We know the job first hand and we don't offer penal rates at Tranzurban; we want to offer a higher flat rate over a 40-hour week allowing our drivers a better work life balance rather than having to work overtime to bring up their weekly pay.

Summary

There is absolutely no basis to these allegations and we strongly refute the allegation that we have been untruthful in our recent radio advertising.

Our adverts have been drafted to represent what we stand for and clearly state what we are looking for; they are a welcoming and truthful representation of what we have to offer.

The only reference we have made, that relates in any way to G Clarkes complaint is where we say, "*Permanent and casual positions available, so if you're looking for a sweet work life balance, call the team for a chat...*"

When people ring our HR team, any questions they may have about what working for us entails, is answered openly and honestly.

We undertake robust interviews which includes a sit down with our interviewer and a pre-employment drive with one of our driver trainers; allowing for plenty of opportunity to ask whatever questions the applicant has around hours of work; and this is always discussed.

When we make an offer of employment, we sit down again with successful applicants and we run through their employment agreement, again discussing our rosters and how shift work works.

The Employment Relations Authority has recently heard this same allegation from this union in that our rosters breach work time hours under the Land Transport Rule; however; the ERA found no breach by Tranzurban and only compliance with the LTA Rule.

We are always engaging with our team and improving our workplace and rosters. Rosters can have a huge impact on not only our operation and service delivery to our customers, but on the engagement, morale and productivity of our entire workforce. We care about our drivers and we care about our customers; the two go hand-in-hand.

Contact person for advertising complaints	Renee Snelgrove Legal Director
Name and contact at creative agency	Mediaworks Creative c/o Wendy Morrison General Manager Mediaworks Wairarapa
Name and contact at media agency	Wendy Morrison General Manager MediaWorks Wairarapa
A basic, neutral description of the advertisement	An employment recruitment campaign with a call to action of ring the Tranzurban team for a chat
Date advertisement began	16 October 2018
Where the advertisement appeared (all locations e.g. TV, Billboard, Newspaper Website)	The Breeze
Is the advertisement still accessible – where and until when?	The advertising finished on 31 October 2018
A copy of digital media file(s) of the advertisement – if the complaint relates to on-screen graphic, please send a broadcast quality version.	Please refer to Attachment 1

Who is the product / brand target audience?	<p>The need identified was to build a casual and permanent part-time driver pool and that there were potentially retired drivers at home looking for circa 4 hours per day and potentially a school bus route.</p> <p>Retired Drivers - who miss working but don't want to, or can't, commit to a full-time position, and still hold the required licenses and are looking for part-time or casual work that may fit in with their lifestyle.</p>
Clear substantiation on claims that are challenged by the complainant.	Please refer to letter above
The response from the advertiser is included in the published decision. The ASA is not able to accept confidential or proprietary information. Please contact the Complaints Manager if this is an issue.	
For Broadcast advertisements:	
A copy of the script	Please refer to Attachment 2
A copy of the media schedule and spot list (Please remove all financial information)	Please refer to Attachment 3
CAB key number and rating	Unclear what this is
For Digital advertisements:	
What platform tools have you used to target your audience?	N/A

RESPONSE FROM MEDIA, MEDIWORKS

The Needs Analysis completed with Tranzurban identified a need to build a Casual and Part Time Driver Pool and that there were potential retired drivers at home looking for circa 4 hours per day and potentially a school bus route.

Retired Drivers - who perhaps miss it, still hold a P Class 2 or 4 licence and looking for work/life balance.

The commercial/script in question was approved based on this assignment and played specifically on the Breeze to align with the listening demographic.

APPEAL INFORMATION

According to the procedures of the Advertising Standards Complaints Board, all decisions are able to be appealed by any party to the complaint. Information on our Appeal process is on our website www.asa.co.nz. Appeals must be made in writing via email or letter within 14 days of receipt of this decision.