

COMPLAINT NUMBER	19/440
APPEAL NUMBER	20/003
COMPLAINANT	P Southwell
ADVERTISER	New Zealand Labour Party
APPLICANT	P Southwell
ADVERTISEMENT	New Zealand Labour Party, Website
DATE OF MEETING	10 February 2020
OUTCOME	Appeal Declined

SUMMARY

The Complaints Board ruled on 22 January 2020 the complaint made by P Southwell had No Jurisdiction.

The Complainant appealed the Decision on the grounds that the evidence had been misinterpreted to the extent it has affected the decision and the decision is against the weight of evidence

The appeal application was considered by the Acting Chairperson of the Appeal Board. She noted the Complainant had confirmed the complaint was about the original advertisement made by the Advertiser prior to the 2017 election.

The Acting Chairperson agreed with the Complaints Board and said the Board's Decision was in relation to an historic three-year old advertisement, including content placed on a website for historic reference.

The Acting Chairperson noted the Complainant did not agree with the Decision, however, disagreement was not a ground on which an appeal could be accepted.

The Acting Chairperson said none of the grounds for appeal had been met and ruled the appeal application was declined.

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

CHAIRPERSON'S RULING

The Acting Chairperson viewed the application for appeal. She noted there were five grounds upon which an appeal was able to proceed. These were listed at Clause 6.4 of the Second Schedule of the Advertising Standards Complaints Board Complaints Procedures and were as follows:

- (a) The proper procedures have not been followed.
- (b) There is new evidence of sufficient substance to affect the decision.

- (c) Evidence provided to the Complaints Board has been misinterpreted to the extent that it has affected the decision.
- (d) The decision is against the weight of evidence.
- (e) It is in the interests of natural justice that the matter be reheard.

The Acting Chairperson of the Appeal Board noted the Complainant appealed the Decision on the grounds that evidence provided had been misinterpreted to the extent that it has affected the decision and the decision is against the weight of evidence.

Has the evidence been misinterpreted to the extent that it has affected the decision?

The Acting Chairperson reviewed the complaint, the website content, the Complaints Board Decision and the Appeal Application including correspondence with the Inland Revenue Department provided by the Complainant. The Acting Chairperson confirmed that the Complaints Board had not misinterpreted the evidence to the extent that it affected the decision.

The No Jurisdiction Decision was in relation to the historic three-year old advertisement from the Labour Party prior to the 2017 election, including content placed on a website for historic reference.

The Acting Chairperson said it was not within the Advertising Standards Authority's remit to revisit an election campaign advertisement from three years ago. She said in a democratic process, voters can hold political parties to account through their vote in the General Election.

Did the decision go against the weight of evidence?

The Acting Chairperson noted the Complainant's application included a response disputing statements made by the Advertiser, copies of correspondence from the IRD and disagreement with the Board's position on jurisdiction.

The Acting Chairperson said the Complainant's concerns about how the Advertiser had characterised their issue; whether Labour had fulfilled its election promise; and whether that promise could be considered a contract between the party and those who voted for it, were not matters that were able to be considered by the Complaints Board. The Complaints Board's decision was about whether it had jurisdiction to determine the complaint.

The Acting Chairperson acknowledged the Complainant disagreed with the Decision of No Jurisdiction, but this was not a ground for appeal.

The Acting Chairperson said none of the grounds for appeal had been met and ruled the appeal application was declined.

Acting Chairperson's Ruling: Appeal application **Declined**

APPENDICES

1. Description of Advertisement
 2. Appeal Application
 3. Summary of Complaints Board Decision
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Appendix 1

DESCRIPTION OF ADVERTISEMENT

The New Zealand Labour Party campaigned in the 2017 election on ending secondary tax. The Labour Party website has a page headed “Ending Secondary Tax” which describes how “Labour will abolish secondary tax as it denies many New Zealanders access to wages they need to make ends meet.” The page explains how Labour will ensure workers are taxed at the appropriate rate throughout the year rather than be taxed on secondary income at a flat rate which requires workers to claim back an overpayment.

Appendix 2

APPEAL APPLICATION FROM COMPLAINANT, P SOUTHWELL

My appeal is based on the following grounds

Evidence provided to the Chairperson of the Complaints Board has been misinterpreted to the extent that it has affected the ruling.

The ruling is against the weight of evidence.

The board states “The Advertiser said that regardless it has implemented the policy by introducing a tailored tax rate which now prevents overcharging rather than the interpretation the Complainant seems to have, that all secondary income is tax free.”

That is erroneous in the extreme.

At no point did I say all secondary income is tax free.

A tailored tax rate to prevent overcharging is not the same as abolishing the Secondary Tax rate. This ability existed prior to the purported change and was then called a “Special Tax Rate”

The definition of abolish is....

Definition of *abolish*

To end the observance or effect of (something, such as a law): to completely do away with (something)

Note from the Secretariat: Correspondence with the Inland Revenue Department provided by the Complainant as part of their Appeal was considered by the Acting Chairperson. It has not been included in the Appendices to the Decision as the ASA does not publish information that may identify complainants (other than a first initial and surname) or third parties.

This shows clearly nothing has changed in terms of abolishing Secondary Employment Tax as was promised in the pre-election advertising.

The Board stated...

The Complaints Board said the key consideration when applying the definition of an advertisement was whether the intention of the message was to influence the choice, opinion or behaviour of the reader. The Complaints Board agreed with the Advertiser that the publication of the proposed tax policy prior to the 2017 election was an advertisement, with the intent to influence voters. However, the Board unanimously agreed historical content on a website did not have an intent to influence and was not an advertisement. The Complaints Board ruled the content subject to the complaint before it did not fall within the definition of an advertisement and the Advertising Standards Authority did not have jurisdiction to consider the matter further.

This is almost unbelievable.

Of course the advertisement is historic.

The advertisement I complained about was the advertisement PRIOR to the last election. (The screenshot the board refers to was to show what that advertisement WAS)

Until Labour became Government and was in a position to carry out the pre-election promise there was no breach. It was only after Labour became Government and had had sufficient time to implement their promise to abolish secondary tax and did not that the breach occurred.

My complaint was about the pre-election advertisement.

In my view the Board would do well to consider....

Carlill v Carbolic Smoke Ball Company [1892] EWCA Civ 1 is an English contract law decision by the Court of Appeal, which held an advertisement containing certain terms to get a reward constituted a binding unilateral offer that could be accepted by anyone who performed its terms.

In plain terms Labours pre-election advertisement said "If you vote for us we will abolish Secondary Employment Tax if we become Government"

Labour became Government but did not uphold their part of the contract formed in the pre-election advertisement.

On these grounds I appeal the decision of the ASA Board.

FURTHER EVIDENCE PROVIDED BY THE COMPLAINANT, P SOUTHWELL

Please find attached additional evidence for my appeal on the Secondary Tax advertising by Labour for 2017 election.

The 1st screenshot shows their advertised Policy Platform.

The 2nd screenshot shows Secondary Tax is a part of that platform.

The 3rd screenshot shows what they state they will do and includes the words "Labour is committed to **abolishing** secondary tax so that these workers have the ability to make ends meet".

Appendix 3

Summary of the Complaint

The Complainant is concerned the advertisement about abolishing secondary employment tax was misleading as this has not been actioned. The Complainant provided information from Inland Revenue on the tax.

Summary of the Advertiser's Response

The Advertiser said prior to the 2017 election the policy being presented was an advertisement and the promise of implementation was not misleading.

Following the 2017 election, the policy no longer meets the criteria of an advertisement as the 2017 manifesto is present on the website as a record rather than as an intention to influence. Therefore, the Advertiser does not believe the ASA has jurisdiction over a historic posting.

The Advertiser said that regardless it has implemented the policy by introducing a tailored tax rate which now prevents overcharging rather than the interpretation the Complainant seems to have, that all secondary income is tax free.

Summary of the Complaints Board Decision

The Complaints Board said the content headed "Ending Secondary Tax" on the New Zealand Labour Party's website was historical information which did not intend to influence the choice, opinion or behaviour of the reader and did not meet the Advertising Standards Authority's definition of advertising.

The Complaints Board ruled it had No Jurisdiction to consider the complaint.