



Australian Government

Defence Honours and Awards Appeals Tribunal

Henne and the Department of Defence [2016] DHAAT 12 (26 April 2016)

File number (s) 2014/070

Re Mr Bernard Frederick Henne
Applicant

And Department of Defence
Respondent

Tribunal Mr Richard Rowe PSM (Presiding Member)
Ms Naida Isenberg

Hearing Date 25 September 2015

DECISION

On 26 April 2016 the Tribunal decided:

- to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Bernard Frederick Henne is not eligible for the award of the Reserve Force Medal.
- that it has no jurisdiction to review the decision in respect of the National Medal.

CATCHWORDS

Defence Awards – refusal to recommend the award of the Reserve Force Medal (RFM).

LEGISLATION

Defence Act 1903 – ss 110T, 110V(1) 110VB(2)

Defence Force Regulations 1952 - Reg 93C and Schd 3

Air Force Act 1923

Air Force Amendment Act No. 138 of 1976 (AIRTC)

Air Force Regulations Amend SR 161 of 1927 Extracts Reg 443-448 and 458-464

Air Force Regulations Amend as at 1961 Extract Reg 480-483 (Air Training Corps – SR 158 of 1942)

Air Force Regulations Amend SR 203 of 1977 (Repeal of ATC)

Cadet Forces Regulations Statutory Rules No 206 of 1977 made under the *Defence Act 1903*, the *Naval Defence Act 1910* and the *Air Force Act 1923* including amendments up to 1988

Defence Force Service Awards Regulations - Letters Patent for the Reserve Force Medal CAG S78 dated 27 April 1982 and also the National Medal - Letters Patent CAG S78 dated 27 April 1982
DI (G) PERS 31-1 dated 6 April 1984 - Defence Force Service Awards
DHAM Volume 2 Chapter 18 - Australian Long Service and other Service Awards

REASONS FOR DECISION

Introduction

1. The applicant, Mr Bernard Frederick Henne (Mr Henne), seeks review of the decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate) that he is not eligible for the award of the Reserve Force Medal (RFM) and the National Medal (NM). Mr Henne initially applied to the Department of Defence (Air Force Medals Section) on 14 October 2001 for the RFM. He subsequently, in 2003, also applied for the NM. Following representations through his local Member of Parliament he was informed on 3 August 2006 and 8 November 2006 that Defence had advised that Mr Henne was not eligible for either award as he did not meet the eligibility requirements.

2. On 4 March 2014, Mr Henne provided a submission to the Defence Honours and Awards Appeals Tribunal *Inquiry into the Refusal to Issue Entitlements to, Withholding and Forfeiture of Defence Honours and Awards* regarding his eligibility for the RFM and the NM. On 1 May 2014, Mr Alan Rose AO, the then Chair of the Tribunal, in informing Mr Henne that his eligibility for these awards was not within the scope of the Tribunal's Inquiry, advised him that he could seek an individual review of his application if he could provide evidence that he had made an application to Defence for the awards and that his application had been refused. On 28 May 2014 Mr Henne applied to the Tribunal for a review of the Directorate's decision in a letter to the Chair together with supporting documentation.

Tribunal Jurisdiction

3. Pursuant to s110VB(2) of the *Defence Act 1903* the Tribunal has jurisdiction to review a reviewable decision if an application is properly made to the Tribunal. The term *reviewable decision* is defined in s110V(1) and includes a decision made by a person within the Department of Defence to refuse to recommend a person for an award in response to an application. Regulation 93C of the *Defence Force Regulations 1952* defines a defence award as being those awards set out in Part 2 of Schedule 3 (Schedule 3). The RFM is included in the defence awards set out in Part 2. Therefore the Tribunal has jurisdiction to review decisions in relation to this award. The role of the Tribunal is to determine whether the decision of the Directorate is the correct or preferred decision having regard to the applicable law and the relevant facts.

4. The Tribunal does not have jurisdiction to review Mr Henne's eligibility for the National Medal as this award is not included in Schedule 3 as an award the Tribunal can review. This was discussed with Mr Henne at hearing.

Conduct of the Review

5. In accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011* (as amended), on 10 July 2014 the Tribunal wrote to the Secretary of the Department of Defence advising him of Mr Henne's application for review and seeking a report on the reasons for the original decision and the provision of relevant material that was relied upon in reaching the decision. On 2 March 2015

the Directorate, on behalf of the Secretary, provided the Tribunal with the Defence submission in the form of a written report. The Tribunal forwarded a copy of the Directorate's written report to Mr Henne for comment on 12 March 2015. Mr Henne responded in a letter dated 5 April 2015. On 28 July 2015 the Tribunal sought additional material from Mr Henne which was referred to in the submissions he had sent to the Tribunal.

6. The Tribunal considered the material provided by Mr Henne and the Directorate. Mr Henne was invited to give evidence (by telephone) to the Tribunal and on 25 September 2015 the Tribunal held a hearing with Mr Henne. The Tribunal sought additional material from Defence regarding the status of RAAF General Reserve members on Air Training Corps (AIRC) duties after 1977, following the establishment of the AIRC, the process for determining eligibility for the award of the Australian Cadet Force Services Medal (ACFSM) and personnel records. This additional material was provided to Mr Henne.

Reserve Force Medal

7. The RFM was instituted by Her Majesty, Queen Elizabeth the Second by Letters Patent on 20 April 1982. The RFM Regulations, the *Defence Force Service Awards Regulations*, are set out in the Schedule to the Letters Patent and came into force on 27 April 1982 (CAG No. S 78).

8. The conditions for the award of the RFM as stipulated in the Regulations are:

10. The Reserve Force Medal may be awarded to a person who has, on or after 14 February 1975 and before 20 April 1999, completed the qualifying service as a member of the Defence Force required by regulation 11. A person who has been awarded the Reserve Force Decoration is not eligible for an award of the Reserve Force Medal

11.(1) Subject to sub-regulation (2) the qualifying service as a member of the Defence Force required for the award of the Reserve Force Medal is efficient service as a member of the Defence force for a period of 15 years or for periods that, in the aggregate, amount to 15 years, being service that includes efficient service as a member of the Reserve Forces for a period of not less than 12 years or for periods that, in the aggregate, amount to not less than 12 years.

(2) Service that has been taken into account as part of the qualifying service for the award of the Reserve Force Decoration, the Defence Force Service Medal or a clasp to that decoration or medal shall not be taken into account for the purpose of sub-regulation (1).

9. The Regulations also stipulate that eligibility for the RFM is not affected by other awards, as follows:

15. The eligibility of a person for the award of a medal or clasp under these Regulations is not affected by the making of any other award to the person.

10. The Tribunal noted that, currently, the minimum periods of a member's annual qualifying service that is efficient service for the award of the RFM are set out in the *Defence Force Service Awards Regulations Determination by the Chief of the Defence Force* dated 6 February 2013. For a member of the General Reserve of the Royal Australian Air Force the requirement is one day per annum.

Mr Henne's Service Record

11. The Defence submission referred the Tribunal to Mr Henne's service record, and stated that:

- On 24 July 1961, Mr Henne enlisted in the RAAF General Reserves for Air Training Corps (ATC) duties with a five-year enlistment period, but apparently re-engaged for a further period.
- On 7 July 1971, Mr Henne discharged on expiration of his obligatory period of service after serving a total of nine years, 11 months and 13 days.
- On 25 March 1975, Mr Henne re-enlisted in the RAAF General Reserve for Air Training Corps (AIRTC) duties.
- On 31 October 1985, Mr Henne's appointment with the AIRTC expired.
- On 15 May 1990, Mr Henne discharged at his own request from the AIRTC.
- Mr Henne's service records show no evidence of training or remuneration after 2 November 1977.

12. Mr Henne has been issued with the following awards for his service:

- Australian Cadet Forces Service Medal with First and Second Clasps
- Australian Defence Medal

Mr Henne's Claims for the RFM

13. In his application for review dated 25 February 2014 Mr Henne states:

'... I was appointed on the 25 March 1975 for a period of 5 years until 25 March 1980. In September 1977 I was also transferred to the Air Training Corps Adult staff. I held dual positions as a Warrant Officer. During this time I paraded with Air Training Corps and was paid by Air T.C. from September 1977. I changed my insignia to Air T.C. from RAAF Reserve on the 25 March 1980. With my previous service this would give me the 15 years to claim the medals.'

14. Mr Henne also provided a copy of a letter to the Air Force Medals Section, Department of Defence, dated 14 October 2001, when he had applied for the Reserve Force Medal, in which states:

‘My service was from July 1961 to about September 1971 and again from April 1974 to May 1980 when I was discharged from the RAAF Reserve due to government policy change on Reserves structure. My rank on discharge was Warrant Officer. I was attached to the Victorian Squadron of the Air Training Corps for this period.

...

After my discharge from the RAAF Reserve I was transferred to the Air T.C. I was discharged from the Air T.C. in 1990 due to my civilian work requirements.’

15. Mr Henne also provided, relevantly, copies of the following:

- a letter from Headquarters Support Command, RAAF, Victoria Barracks, Melbourne dated 28 May 1975, headed “RAAF Reserve: Acting Rank - Airmen”, advising that, with effect from 5 May 1975, the Applicant would be promoted to acting sergeant;
- a letter from the Department of Defence (Air Force Office), dated 16 February 1981, advising Mr Henne that according to its records he was appointed to the Reserves on 25 March 1975 for a period of five years and that, accordingly his period of service ceased on 25 March 1980. He was informed that his name had been removed from the Reserve list;
- “RAAF Reserve Disposal Notice” advising Mr Henne that he had been removed from the RAAF General Reserves with effect from 31 October 1985;
- An AIRTC occurrence report dated 24 August 1982 noting his promotion from Warrant Officer (AIRTC) to Flying Officer (AIRTC) with effect from 12 August 1982;
- Routine Order by Commanding Officer Victorian Squadron AIRTC promoting Mr Henne to Flight Commander with effect from 16 March 1983; and
- Personnel Occurrence Reports dated 14 June 1988 and 18 October 1988 in which the Commanding Officer (AIRTC) granted him leave.

The Directorate’s Submission

16. The Defence submission was to the effect that Mr Henne is not eligible for the RFM because he does not meet the eligibility criteria for the award, as he “completed 13 eligible years service towards the necessary 15 years”. The submission was also that, in any event, there was no evidence that Mr Henne had a role in the RAAF Reserve after 2 November 1977 when the RAAF Reserve and AIRTC separated.

17. Further, it was submitted, even if Mr Henne continued to serve in the RAAF Reserve, there was no evidence that he had undertaken service that was efficient service as a member of the Reserve Forces for an aggregated period of not less than 12 years.

18. The submission included the working papers which formed part of the re-assessment undertaken prior to the submission to the Tribunal.

19. The working papers also contain the following statements:

- With the re-organisation of the Air Training Corps (ATC) and its subsequent renaming to the Air Training Corps (AIRTTC), essentially the same name just a different acronym, on 27 May 1976, Staff and Officer's (sic) of Cadets were to be separated from the RAAF Reserves as noted in the memorandum from the CO NSW AIRTTC to all Reservists NSW AIRTTC dated 16 March 1977. The exact date of separation could not be located, however, for award entitlement purposes the day prior (2 November 1977) to the date of gazettal for the *Cadet Forces Regulations 1977* of 3 November 1977 is used as the end date for qualifying service towards the RFM.
- As noted in paragraph 3 (of the memorandum from the CO NSW AIRTTC), Staff and Officers of Cadets retention on the General Reserves would be considered, however, membership of the Reserve will not relate in any way to appointments or status in the AIRTTC. As such, any further service with the AIRTTC from 3 November 1977 onwards is not regarded as service with the Australian Defence Force. However, any member who remained on the General Reserve (parallel service) is to be assessed separately for his service and in accordance with the relevant Regulations.
- Examination of the member's service records show that he enlisted in the RAAF General Reserve for ATC Duties on 24 July 1961 until he discharged on 7 July 1971 for a total of 9 years and 349 days. The member re-enlisted into the RAAF General Reserve for AIRTTC duties on 25 March 1975. The member's continued service with the AIRTTC from 3 November 1977 onwards is not recorded on the member's RAAF service file.
- Examination of AIRTTC files held by No.4 Wing AAFC failed to locate a file for the member's service with the ATC from 1961 to 1971. However, these records do confirm his re-appointment to the AIRTTC on 25 March 1975 until his resignation on 15 May 1990. The member's initial ATC service combined (with) his latter AIRTTC service shows that the member served with the ATC and the AIRTTC for a cumulative total of at least 25 years and 35 days.
- Further examination of the member's RAAF service records confirms that the member continued to be on the General Reserve until being removed with effect from 31 October 1985. However, there is no evidence of any active service recorded with the General Reserve after 3 November 1977.

While service on the General Reserve is inactive service, a member can be called-up for service during this period. A member on the General Reserve was only required to advise the RAAF on an annual basis of his/her current address and general state of health. There are letters of this notification on the member's file dated 18 February 1979 and 14 January 1980 only.

- As the entirety of the member's ATC and AIRTC service has been used for the awarding of the ACFSM and two Clasps, the member's service up to and including 2 November 1977 cannot be used towards the Reserve Forces Medal. Only the member's service from 3 November 1977 can be used towards this medal.
- Consequently, as the member's General Reserve service from 3 November 1977 to his discharge on 31 October 1985 was inactive and he did not perform any qualifying service towards this award after this date, Mr Henne cannot qualify for this award.

20. Mr Henne's responded that:

- Defence's statement that "on 31 October 1985, Mr Henne's appointment with the AIRTC expired" was incorrect, and that his service was continuous from 25 March 1975 until 15 May 1990.
- All parades were recorded on Squadron weekly reports. Payment was received annually.
- On 25 August 1982 while attached to RAAF East Sale for a Cadet training camp he was informed that he had been promoted to Flying Officer AIRTC. In 1986 he was promoted to Flight Lieutenant AIRTC.

21. Mr Henne enclosed with his letter copies of Official RAAF group photos taken between 1979 and 1989 showing him "in attendance as a staff member and some as a detachment commander".

The Tribunal's Consideration

22. The Tribunal carefully considered all the material placed before it. In the hearing on 25 September 2015, Mr Henne confirmed that his service was as he had stated in his letters (paragraphs 13, 14, 15 and 20 above refer).

23. The Tribunal considered whether Mr Henne met the eligibility requirements for the award of the Reserve Force Medal, as outlined in paragraph 8 above; specifically, whether Mr Henne had, as a member of the Defence Force, completed 15 years of efficient service on or after 14 February 1975 and before 20 April 1999.

24. The Tribunal noted that the RAAF Reserves was formally a part of the Defence Force and, accordingly, a member of the RAAF Reserves was formally a member of the Defence Force. In relation to Mr Henne the key question is, therefore,

whether he was a member of the RAAF Reserves for the requisite period stipulated in the Regulations.

25. The Tribunal notes that the *Air Force Regulations* made under the *Air Force Act 1923* were amended in 1942 by Statutory Rule No. 158 to create the Air Training Corps (ATC) which formed part of the Air Force Reserve. The *Air Force Amendment Act 1976* (No.138 of 1976) amended the *Air Force Act 1923* to establish, in Section 8, the Air Training Corps (AIRTTC). Section 8(3) provides that “a person appointed to be an officer or instructor in the Air Training Corps does not become a member of the Air Force by virtue of that appointment.” In so far as that provision relates to Mr Henne the Tribunal noted that at the time the Act was amended he was already a member of the Air Force Reserve, and continued to be a member until his discharge from the RAAF Reserve. It is also relevant in this respect that *Air Force Organisation Directive No 10/76 Reorganisation of Air Training Corps* states that with the formation of the AIRTTC “All Reservists who wish to do so will remain on the RAAF Reserve”.

26. In 1979 and 1980 Mr Henne formally advised Air Office that he wished to continue to serve in the RAAF Reserve, and, in the latter correspondence of 14 January 1980, sought clarification of his status, namely whether he was still in the Reserve and at what rank. In apparent response to his enquiry, a delegate of the Chief of Air Force Personnel wrote to Mr Henne on 16 February 1981 informing him that, according to its records, his appointment to the Reserve expired on 25 March 1980 and that his name had been removed from the Reserve list. It appears that this was not formally documented until 31 October 1985. The Tribunal was of the view that the ‘Disposal Notice’ of that date was no more than an administrative confirmation of the applicant’s status that had existed then for some 5 years. Although he continued to receive correspondence, at least in 1982 and 1983, from a delegate of the Chief of Air Force Personnel addressed to ‘All Reservists’, his own evidence was that he ‘changed his insignia’ from RAAF Reserve to AIRTTC in 1980, and in letters to Air Force Medal Section and to his Member of Parliament described himself as being in the Reserve only until May and March 1980, respectively.

27. In coming to its view the Tribunal observed that, unlike his promotion to Warrant Officer within the Reserve in 1977, Mr Henne’s promotions to Flying Officer and then Flight Commander in 1982 and 1983 respectively were AIRTTC promotions. Similarly, his application for leave in 1988 related solely to his role in the AIRTTC.

28. During the periods when Mr Henne was a member of the RAAF General Reserve he also served with the ATC, and subsequently, the AIRTTC (ie he had dual positions). However, based on the evidence the Tribunal finds that Mr Henne was a member of the RAAF General Reserves, and therefore of the Defence Force, from 24 July 1961 until 7 July 1971 and from 25 March 1975 until 25 March 1980. Thereafter, he continued as a member of the AIRTTC only, until his resignation on 15 May 1990.

29. Mr Henne’s total period of service as member of the RAAF General Reserves is from 24 July 1961 to 7 July 1971 and from 25 March 1975 to 25 March 1980, which periods, in aggregate, do not meet the requisite 15 years’ service. Accordingly,

the Tribunal finds that Mr Henne does not meet the eligibility requirements for the award of the RFM.

Tribunal's Finding

30. For the reasons set out above, the Tribunal finds that Mr Henne is not eligible for the RFM as he does not meet the eligibility criteria for the award. Accordingly, the Tribunal finds that the decision of the Directorate is the correct decision.

DECISION

31. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Bernard Frederick Henne is not eligible for the award of the Reserve Force Medal.