



Australian Government

Defence Honours and Awards Appeals Tribunal

Loosli and the Department of Defence [2014] DHAAT 42 (27 December 2014)

File Number(s) 2014/017

Re **Rear Admiral R. Geoffrey Loosli CBE RAN (Retd)**
Applicant on behalf of
Captain Peter Hames RN (Retd)

And **Department of Defence**
Respondent

Tribunal Professor David Horner AM (Presiding Member)
Brigadier Mark Bornholt AM (Retd)

Hearing Date 12 December 2014

DECISION

On 27 December 2014 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Captain Peter Hames RN (Retd) is not eligible for the award of the Australian Active Service Medal 1945-1975 with Clasp 'MALAYA' and the Australian Service Medal 1945-1975 with Clasp 'FESR'.

CATCHWORDS

DEFENCE AWARDS - Australian Active Service Medal 1945-1975 and Australian Service Medal 1945-1975

LEGISLATION

Defence Act 1903 – ss 110T, 110V(1), 110T
Defence Force Regulations 1952 – Schedule 3

REASONS FOR DECISION

Introduction

1. The applicant, Rear Admiral Robert Geoffrey Loosli CBE RAN (Retd) on behalf of Captain Peter Hames RN (Retd) seeks review of a decision of the Directorate of Honours and Awards of the Department of Defence (the Directorate) that Captain Hames is not eligible for the award of the Australian Active Service Medal 1945-1975 (AASM 1945-75) with Clasp 'MALAYA' and the Australian Service Medal 1945-1975 (ASM 1945-75) with Clasp 'FESR'. On 23 September 2008 Captain Hames lodged an application for the award of the ASM 1945-1975 with Clasp 'FESR'. On 16 October 2008 the Directorate of Honours and Awards of the Department of Defence (the Directorate) advised Captain Hames that he was not eligible for the ASM 1945-75 or the AASM 1945-75 because he was a Royal Navy exchange officer during the period of his service aboard HMAS *Anzac*.
2. On behalf of Captain Hames, Rear Admiral Loosli sought a review of this decision in his application to the Tribunal on 26 January 2014.

Tribunal Jurisdiction

3. Pursuant to s110VB(2) of the *Defence Act 1903* (the Defence Act) 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. Included in the defence awards set out in Part 2 is the ASM 1945-75 and the AASM 1945-75. Therefore the Tribunal has jurisdiction to review decisions in relation to these awards. 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.

Conduct of the review

4. In accordance with its *Procedural Rules 2011*, on 15 March 2014, the Tribunal wrote to the Secretary of the Department of Defence informing him of Rear Admiral Loosli's application for review and requesting that he provide a report. On 16 May 2014, the Directorate, on behalf of the Secretary, provided the Tribunal with a report. In that report the Directorate confirmed its position that Captain Hames's service did not meet the eligibility criteria for the award he sought. On 4 June 2014 the Tribunal forwarded a copy of the report of the Directorate to Rear Admiral Loosli for comment. On 22 June 2014 Rear Admiral Loosli provided a written reply.
5. The Tribunal met on 14 November 2014 when it considered the material provided by Rear Admiral Loosli and the Directorate. The Tribunal met again on 12 December 2014 when it heard oral evidence from Rear Admiral Loosli who agreed to be available by telephone that day.

Historical Background

6. The Malayan Emergency lasted from 1948 to 1960. During that time units from the three Australian services were deployed to Malaya or its waters. Australian military personnel who took part in the Emergency were awarded the AASM 1945-75 with Clasp 'MALAYA'.

7. The British Commonwealth Far East Strategic Reserve (FESR) was established in 1955 to deter communist Chinese aggression in South East Asia. Australia contributed Navy, Army and Air Force units to the FESR. Their prime role was to defend the Federation of Malaya and Singapore against external aggression. This included 'flag showing duties in South East Asian waters in order that their participation in the strategic Reserve may be fully appreciated in the countries in this area'.¹

8. While the primary role of the units deployed as part of the FESR was to deter Chinese aggression, they could be deployed on a secondary role, namely to fight Communist Terrorists within Malaya. As it turned out this secondary role became the main activity of most of the Army and RAAF units. Navy units were involved in supporting operations against the Communist Terrorists on an ad hoc basis. Members of these units received the AASM 1945-75 with Clasp 'MALAYA' as described in paragraph 6.

9. Members of units that conducted operations to fulfil the primary role of the FESR received the ASM 1945-75 with Clasp 'FESR'. The FESR remained in place after the end of the Malayan Emergency in 1960 and later devolved into the Australia, New Zealand and UK Force, and later again the Five Power Defence Arrangements which included forces from Malaysia and Singapore.

Australian Active Service Medal with Clasp 'Malaya'

10. The AASM 1945-75 was introduced into the Australian Honours System in December 1997 to recognise, retrospectively, the service of Australian Defence Force (ADF) members and certain other persons in prescribed warlike operations such as the Korean War, the Malayan Emergency, the Indonesian Confrontation and the Vietnam War. The medal has six clasps: Korea, Malaya, Malaysia, Thai/Malay, Thailand and Vietnam.

11. The eligibility criteria for the AASM 1945-75 with Clasp 'MALAYA' are contained in the *Australian Active Service Medal 1945-1975 Regulations*. These Regulations state, among other things, that eligibility for the Clasp 'MALAYA' is one day's service during the Malayan Emergency from 16 June 1948 to 31 July 1960.

¹ *Directive for the Attachment of H.M.A Ships in the Far East for Service with the Strategic Reserve*, Department of Navy 13779 dated 21 December 1956 in Major General The Hon R.F. Mohr, RFD ED (Retd), *The Review of Service Entitlement Anomalies in Respect of South east Asian Service 1955-75*, Commonwealth of Australia, Defence Publishing Service, 2000, Enclosure 1, Chapter 3.

12. The Regulations further state:

4. (1) The Medal may be awarded to the following persons who served in connection with a prescribed operation:

- (a) a member, or a former member, of the Defence Force;
- (b) a person in a class of persons determined by a Minister for these Regulations.

These Regulations also state that 'Defence Force' has the same meaning as in the *Defence Act 1903*. Section 30 of the *Defence Act 1903* states: 'The Defence Force consists of 3 arms, namely, the Australian Navy, the Australian Army and the Australian Air Force'.

13. The Declaration and Determination under the AASM 1945-75 Regulations that establishes the AASM 1945-75 with Clasp 'MALAYA' allows for award of the medal to members of the ADF who rendered service as part of the contribution of a foreign defence force to the prescribed operation while on secondment or exchange with the foreign defence force, but contains no reciprocal clause.

14. The determination under the AASM 1945-75 Regulations that sets out the class of persons who may be awarded the AASM 1945-75 with Clasp 'MALAYA' provides for recognition for certain Australian civilians, Australian accredited war correspondents and Australian accredited war artists.

The Australian Service Medal 1945-75

15. The Australian Service Medal 1945-75 was approved in 1995, and may be awarded for service in, or in connection with prescribed non-warlike operations during the period commencing on 3 September 1945 and ending on 16 September 1975. The medal has 14 clasps, including 'FESR'.

16. The eligibility criteria for the ASM 1945-75 with Clasp 'FESR' are contained in the *Australian Service Medal 1945-1975 Regulations*. These regulations state, among other things, that eligibility for the Clasp 'FESR' is 30 days service with the Far East Strategic Reserve between 2 July 1955 and 31 October 1971.

17. The Regulations further state:

4. (1) The Medal may be awarded to:

- (a) a member, or a former member, of the Defence Force; or
- (b) a person in a class of persons determined by a Minister for these Regulations.

These Regulations also state that 'Defence Force' has the same meaning as in the *Defence Act 1903*.

18. The Declaration and Determination under the ASM 1945-75 Regulations that establishes the ASM 1945-75 with Clasp 'FESR' allows for award of the medal to members of the ADF who rendered service as part of the contribution of a foreign

defence force to the declared operation while on secondment or exchange with the foreign defence force, but contains no reciprocal clause.

19. The determination under the ASM 1945-75 Regulations that sets out the class of persons who may be awarded the ASM 1945-75 with Clasp 'FESR' provides for recognition for certain Australian civilians, Australian accredited war correspondents and Australian accredited war artists.

Captain Hames's Service Record

20. Captain Hames RN was posted to the Battle Class destroyer HMAS *Anzac* twice during his exchange period with the RAN, from 30 January 1957 to 7 February 1958, and from 12 February 1958 to 3 April 1958.

21. During his first posting to *Anzac* the destroyer was attached to the FESR from 10 April 1957 to 23 January 1958.² During this deployment Hames served as the ship's Gunnery Officer. Rear Admiral Loosli was the ship's Executive Officer. In his application on behalf of Captain Hames, Loosli states that *Anzac* was allocated to FESR from March 1957 to January 1958.

22. At the time of Hames's service in *Anzac*, Australian naval personnel were exclusively recognised under the Imperial system of honours and awards.

Rear Admiral Loosli's applications on behalf of Captain Hames

23. Rear Admiral Loosli has played a major role in the effort to secure the medals for Captain Hames. In his evidence on 12 December 2014 Rear Admiral Loosli informed the Tribunal that when he received his AASM 1945-75 with Clasp 'MALAYA' and his ASM 1945-75 with Clasp 'FESR' he contacted Captain Hames in the United Kingdom to ask whether he had received the same medals. When Loosli learned that Hames had not received the medals he advised Hames to apply for them.

24. On 20 October 2000 Captain Hames wrote to the Directorate regarding his entitlement to the AASM 1945-75 with Clasp 'MALAYA'. In early 2002 Rear Admiral Loosli contacted Defence about Captain Hames's entitlement. On 19 February 2002 the then Director Honours and Awards advised Hames that he was not eligible for the medal. The same day Defence sent a letter to Loosli confirming that Hames was not entitled to the medal.

25. On 23 September 2008 Hames wrote to the Directorate concerning his entitlement to the ASM 1945-75 with Clasp 'FESR'. On 16 October 2008 Defence wrote to Hames confirming that he was not entitled to the medal because he was a Royal Navy exchange officer while serving on *Anzac* and the award is for ADF personnel only.

² Jeffrey Grey, *Up Top: The Royal Australian Navy and Southeast Asian Conflicts 1955-1972*, Allen & Unwin, Sydney, 1998, p. 29.

26. Since 2009, Rear Admiral Loosli has corresponded with Defence and the Department of the Prime Minister and Cabinet (PM&C) seeking recognition for Hames, in the form of the Naval General Service Medal (NGSM) 1915-1962 with Clasp 'MALAYA', the AASM 1945-75 with Clasp 'MALAYA' and the ASM 1945-75 with Clasp 'FESR'.

27. Defence refused to recommend Hames for the NGSM 1915-62 with Clasp 'MALAYA' because in its view the application should have been lodged with British Admiralty. Further, Defence refused to recommend Hames for the Australian awards because Hames was a member of the RN, and not the RAN, at the time of his service in *Anzac*.

28. Following Rear Admiral Loosli's application to the Tribunal, Defence re-assessed Hames as eligible for the NGSM. In making the re-assessment, Defence approached Mr Steve Spear, Staff Officer, Honours & Awards in the UK Naval Command Headquarters, who advised Defence that as Hames was on exchange with the RAN, had filled the appointment of an Australian officer, under the findings of the *Review of Service Entitlement Anomalies in Respect of South East Asian Service 1955-1975* (the Mohr review), Spear believed that the Australian authorities should not treat Hames any differently to his colleagues in *Anzac* and determine if he was eligible, or not eligible, for the medal according to the Australian eligibility criteria. Defence therefore decided to award the NGSM to Captain Hames. During the hearing Rear Admiral Loosli stated that Captain Hames was greatly honoured to have received the NGSM.

29. Following Defence's decision to award the NGSM to Hames, the outstanding reviewable decisions were Defence's refusal to recommend him for the AASM 1945-75 with Clasp 'MALAYA' and for the ASM 1945-75 with Clasp 'FESR'.

30. In correspondence with the then Chief of Navy, Vice Admiral R. H. Crane AM, CSM, RAN in 2009, Loosli advised that another RN officer, Commander Poland, who served in HMAS *Warramunga* on exchange from 1954 to 1957, had received the ASM 1945-75 with Clasp 'FESR'. Defence has stated in its report that this medal was issued in error in 1996, but that it would not pursue the return of this award.

Defence's submission

31. Defence contend that Hames is not eligible for the Australian awards because he was not a member of the ADF at the time of his deployment to the FESR area.

Rear Admiral Loosli's submission

32. Rear Admiral Loosli has acknowledged that Captain Hames was an exchange officer and hence under the regulations he is not eligible for the AASM 1945-75 with Clasp 'MALAYA' or the ASM 1945-75 with Clasp 'FESR'.

33. However, Rear Admiral Loosli believes this is an injustice, as Hames was the only person in *Anzac* not eligible for the Australian awards. In more recent times, Australian campaign awards have been issued to foreign officers serving on exchange

or posting within the ADF because these foreign officers belong to classes of persons deemed eligible for these awards by the Minister.

34. In his response to the Defence submission Loosli expressed his disappointment that there does not appear to have been a consideration of the issue of allowing those on exchange service to receive awards from Australia. The issue was not addressed in the Mohr Review, which, among other things, focussed on the award of the NGSM to Australians.

35. Further, in his response Loosli says that Hames was responsible for controlling the firing of the ship's guns during bombarding of bandit camps. However, the official history lists three definite occasions when RAN ships fired naval gunfire support missions during the Emergency:

- 29 September 1956 (not during Hames' posting to *Anzac*) - HMA Ships *Tobruk* and *Anzac*;
- 22 January 1957 - HMA Ships *Quickmatch* and *Queenborough*; and
- 26 August 1957 - HMAS *Tobruk*.

The official history goes on to say that *Anzac* fired a further fire support mission on 26 July 1957, but although the ship attempted to 'engage targets thought to be Communist Terrorist hideouts' the firing is described in several places as an exercise, and its operational status is therefore uncertain.³

Tribunal Consideration

36. The Tribunal carefully considered Captain Hames's eligibility against the Regulations for eligibility for the AASM 1945-75 with Clasp 'MALAYA' and the ASM 1945-75 with Clasp 'FESR', and particularly the requirement that to be eligible one needed to be a member or former member of the ADF or to be a person in a class of persons determined by a Minister. Applying these Regulations the Tribunal confirmed that Captain Hames was not eligible for the medals.

37. Rear Admiral Loosli argued that while ADF members are serving on exchange with a foreign defence force on a prescribed operation they are eligible for the award of an AASM or ASM, and that this 'almost – not quite' introduces a concept of reciprocity. The Tribunal did not accept this view.

38. The Tribunal noted that foreign military personnel serving on exchange with ADF units in East Timor and Afghanistan have been awarded Australian medals after their eligibility was determined by the Minister for Defence. It is beyond the scope of this review for the Tribunal to make any definitive judgement about whether the current policy is at odds with a previous policy, but the Tribunal notes that on the face of it, there appears to be some inconsistency, and encourages Defence to reconsider whether there is indeed an inconsistency that could be rectified.

³ Grey, *Up Top*, pp 32-33.

DECISION

39. The Tribunal has decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Captain Peters Hames RN (Retd) is not eligible for the award of the Australian Active Service Medal 1945-1975 with Clasp 'MALAYA' and the Australian Service Medal 1945-1975 with Clasp 'FESR'.