



## Australian Government

### Defence Honours and Awards Appeals Tribunal

#### **Boreham and the Department of Defence [2018] DHAAT 17 (11 September 2018)**

File Number                      2018/005

Re                                      **Mr Victor Robert Boreham**  
Applicant

And                                    **Department of Defence**  
Respondent

Tribunal                            Rear Admiral James Goldrick AO, CSC, RAN (Retd)  
(Presiding Member)  
Ms Anne Trengove

Hearing Date                      4 September 2018

#### **DECISION**

On 11 September 2018 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Victor Robert Boreham is not eligible for the award of the Pingat Jasa Malaysia Medal.

#### **CATCHWORDS**

*DEFENCE AWARD – refusal to recommend the award of the Pingat Jasa Malaysia Medal*

#### **LEGISLATION**

*Defence Act 1903 – ss 110T, 110V(1) and 110VB(2)*  
*Defence Force Regulations 1952 - Reg 93C and Schd 3*  
*Statutes of Pingat Jasa Malaysia (PJM) (Malaysia), 3 March 2004*

## REASONS FOR DECISION

### Introduction

1. Mr Victor Boreham seeks award of the Pingat Jasa Malaysia Medal (PJM), based on his service in the Royal Australian Navy's fleet tanker HMAS *Supply* in the Far East in 1963 and 1964. Mr Boreham applied for the medal, although his qualifying service does not appear to amount to the eligibility criteria of at least 90 days, based on a formula of direct and indirect support of Commonwealth Far East Strategic Reserve (FESR) operations. Mr Boreham has suggested that the qualifying conditions are overly rigorous by comparison with Australian awards for the equivalent service. The question before the Tribunal is whether Mr Boreham qualifies for the PJM by any interpretation of the qualifying criteria.

### Tribunal Jurisdiction

2. 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. The term *foreign award* is defined in s110T of the Defence Act as an honour or award given by a government of a foreign country, or by an international organisation. The PJM was instituted by the Government of Malaysia to recognise the service of British Commonwealth personnel with the Commonwealth FESR from Malaysia's independence until the end of Confrontation over the period 31 August 1957 to 31 December 1966. An offer of the award of the PJM to eligible Australian personnel was made by the Government of Malaysia in 2004 and accepted by the Government of Australia.<sup>1</sup>

### Conduct of the Review

3. On 17 January 2005, Mr Victor Boreham applied to the Directorate of Honours and Awards in the Department of Defence for the PJM. On 10 September 2005, Ms Irene Wilson, Director Honours and Awards, advised Mr Boreham that his application had been rejected on the basis that he had achieved only 30 of the required 90 days of qualifying service.<sup>2</sup> On 3 January 2018, Mr Boreham applied to the Tribunal for a review of the decision.<sup>3</sup>

4. On 15 February 2018, in accordance with the *Defence Honours and Awards Appeals Tribunal Procedural Rules 2011*, the Tribunal wrote to the Secretary of the Department of Defence advising of the review of Mr Boreham's eligibility for the PJM and inviting submissions and an explanation of how Defence had reached its decision to refuse the award. A written submission was provided by the Directorate on 4 April 2018. This submission concluded that Mr Boreham did not serve in the qualifying area during the period concerned for a continuous or aggregated period of

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<sup>1</sup> Head Defence Personnel Executive Ministerial Submission HDPE 703/04 dated 30 November 2004

<sup>2</sup> DHA Letter 2005/1002745/19(38) dated 10 September 2005

<sup>3</sup> Mr Victor Boreham Lodgement of Review of Decision dated 3 January 2018

90 days, although Defence did revise its earlier estimate of Mr Boreham's qualifying service upwards from 30 days to 45.5 days. This being so, Defence submitted that he was not eligible for the award of the PJM.<sup>4</sup>

5. The Defence submission was sent to Mr Boreham on 9 April 2018.<sup>5</sup> Mr Boreham provided responses on 17 and 18 April 2018.<sup>6</sup> On a hearing on 4 September 2018 the Tribunal heard submissions from Mr Boreham and from Defence.

### **Pingat Jasa Malaysia Medal**

6. The Government of Malaysia established a campaign medal known as the Pingat Jasa Malaysia (PJM). This was offered to the Australian Government in 2004 to recognise Australian service personnel who had served in the FESR between 1957 and 1966. The offer was accepted. The PJM remains a foreign medal and is additional to the General Service Medals and their clasps which have been issued to recognise service in Malaysia, the Australian Active Service Medal 1945-1975 with clasp 'MALAYSIA' and the Australian Service Medal 1945-1975 with clasp 'FESR'.

7. The original Statutes approved by His Majesty the Yang di-Pertuan Agong of Malaysia provided that the award could be made to personnel, '...either for service with or attached to any of the Armed Forces or security organization group (sic), which directly involve demonstrated endowed with service, sense of duty, chivalry and gallantry for 3 months or more; or who had served indirectly not less than six months...' <sup>7</sup> The Statutes do not grant Australia the authority to amend the criteria.

8. The method by which the criteria were interpreted by the Australian Government and promulgated for use was the *Award of the Pingat Jasa Malaysia for Australian Service during the Malay Emergency and Indonesian Confrontation by the Government of Malaysia*.<sup>8</sup> This described the qualifying conditions as:

*Those members of the Australian Defence Force who were on the posted strength of a unit or formation and served in the prescribed operational area of Malaysia and Singapore, in direct support of operations in Malaysia for 90 days or more, in the aggregate, as follows:*

#### *Category One*

*a.*

- 1. Malaysia during the period 31 August 1957 and 31 December 1966 inclusive, or*
- 2. Singapore during the period 31 August 1957 and 9 August 1965 inclusive:*

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<sup>4</sup> DH&A/OUT/20178/007 dated 4 April 2018

<sup>5</sup> DHAAT/OUT/2018/144 dated 9 April 2018

<sup>6</sup> Mr Boreham emails to the Tribunal dated 17 and 18 April 2018

<sup>7</sup> *Statutes of Pingat Jasa Malaysia (P.J.M.)* authorised by His Majesty Tuanku Syed Sirajuddin Putera Jamalullail, Yang di-Pertuan Agong of Malaysia, 3 March 2004.

<sup>8</sup> 'Award of the Pingat Jasa Malaysia for Australian Service during the Malay Emergency and Indonesian Confrontation by the Government of Malaysia'

*Qualifying service between 12 August 1966 and 31 December 1966 may only apply if a member were posted for operations to Malaysia on or before 12 August 1966.*

*The prescribed operational area of Malaysia and Singapore is the landmass of East Malaysia (that is: the States of Sabah and Sarawak on the Island of Borneo) and the Island of Singapore extending to 12 nautical miles seaward from the coast of these areas.*

*b.*

*Those members of the Australian Defence Force who were on the posted strength of a unit or formation outside of the prescribed operational area above, but served in a secondary role in indirect support of operations in Malaysia for 180 days or more, in the aggregate, during the period 31 August 1957 and 31 December 1966 inclusive.*

*The secondary role is seagoing service with HMA Ships patrolling outside of the operational area whilst allotted to the Commonwealth Far East Strategic Reserve.*

*Notes:*

- 1. Sorties from bases outside of the operational area as prescribed at a. above will not qualify. Only service by those on the posted strength of bases in Malaysia and Singapore, and in cases where sorties have been mounted from these bases, will qualify.*
- 2. Service may be aggregated in relation to a. and b. above. This is calculated in the basis that service of one day in the operational area is one day towards qualification for the medal and service of two days in the secondary role is calculated as one day, all towards an aggregate of 90 days. For example, a person who has 10 days service in the operational area and 160 days service in the secondary role, will qualify for the medal on the basis of  $10 + (160 \text{ divided by } 2) = 90$ .*

#### *Category Two*

*Qualifying service during the period 31 August 1957 and 31 December 1966 inclusive, as described in Category One, may be deemed to have been established notwithstanding a member of the Australian Defence Force has not met the qualifying period if service was terminated due to the death, evacuation due to illness or injury or other disability due to service.*

## Mr Boreham's Submission

9. Mr Boreham applied for the PJM based on his service in HMAS *Supply* in 1963 and 1964. In his emails in response to the Defence submission, Mr Boreham acknowledged that Defence had revised his period of qualifying service to 45.5 days, and expressed his continuing disappointment that his award had not been recommended.<sup>9</sup>

10. At the start of the hearing, the Tribunal sought and obtained the consent of Mr Boreham to a number of agreed facts. These were:

- a. The length of Mr Boreham's qualifying service for the PJM is 45.5 days, all of which was accrued in HMAS *Supply* in 1963 and 1964; and
- b. Mr Boreham did not gain qualifying service for the PJM in any of his other seagoing postings.

11. In the submission provided to the Tribunal and at the hearing, Mr Boreham sought explanation of Defence's interpretation as to why the relevant criterion for award of the PJM was no less than 90 days service.<sup>10</sup>

## The Defence Submission

12. The Defence submission of 4 April 2018 indicates that the decision maker in this case holds the appropriate delegation. The submission indicates that the legal basis for the decision is the *Statutes of Pingat Jasa Malaysia*.

13. The submission states that the assessment of Mr Boreham's eligibility for the PJM was based upon his Service Record. In making the assessment, the Directorate relied upon the following material facts:

- a. Mr Boreham served in HMAS *Supply* from 2 August 1963 to 16 September 1964; and
- b. HMAS *Supply* moved into and out of the primary and secondary qualifying areas between 10 October 1963 and 22 June 1964. During this period, Mr Boreham accumulated a total of 45.5 days of qualifying service, 31 days being primary service and 14.5 days being secondary service.<sup>11</sup>

14. The Directorate confirmed that Mr Boreham's Record of Service did not show him being posted to any other units whose operations would have provided additional qualifying time for this award, (noting Mr Boreham qualified for other medals through service in both HMAS *Supply* and HMAS *Sydney*).

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<sup>9</sup> Mr Victor Boreham email dated 17 April 2018

<sup>10</sup> Mr Victor Boreham email dated 28 December 2017 – Folio #3 accompanying Lodgement of Review of Decision dated 3 January 2018

<sup>11</sup> HMAS *Supply* Reports of Proceedings September 1962-December 1963 (AWM78 327/1) & January 1964-December 1965 (ADM78 327/2) – Folios #67-110. See also 'Qualifying Periods for Unissued Awards – HMAS *Supply*'

## Mr Boreham's Service Record

15. Mr Boreham's service record indicates that he enlisted in the RAN as a Junior Recruit on a Twelve Year Engagement on 5 January 1962. He was discharged from the RAN as a Leading Writer on completion of his engagement on 4 January 1974. His seagoing service included HMA Ships *Supply*, *Sydney* and *Brisbane* as well as in the aircraft carrier HMAS *Melbourne* as part of her Air Group. It is his service in HMAS *Supply* from 3 August 1963 to 17 September 1964 which includes the periods in the FESR under consideration.

## The Tribunal's Consideration of Eligibility for the PJM

16. After revision of the initial estimate by Defence, there is no dispute regarding the length of Mr Boreham's qualifying service in HMAS *Supply* – for a period of 45.5 days, based on a combination of direct and indirect service. There is also no dispute that Mr Boreham's service in other ships did not include operations in the FESR areas within the qualifying period. At issue is whether Mr Boreham satisfies the criteria for award of the PJM.

17. The Tribunal is satisfied that the Directorate decision was made by an appropriately authorised Delegate and the correct legal basis formed the making of the decision – being the *Statutes of the Pingat Jasa Malaysia*<sup>12</sup> and the resulting Australian Government explanation of the eligibility criteria.<sup>13</sup>

18. The Tribunal is bound by the eligibility criteria that govern the award of the PJM. Accordingly, in order for Mr Boreham to be eligible for the award of the PJM, we must be satisfied that he either completed the qualifying period of 90 days of service or that his departure from theatre fell within one of the prescribed exceptions. We carefully examined the evidence provided by Defence and we are satisfied that the revised estimate of 45.5 days as the total of Mr Boreham's qualifying service is correct. We are also satisfied that Mr Boreham's departure from theatre did not meet any of the provisions relating to injury or illness set out under Category Two of the Australian interpretation of the *Statutes of the Pingat Jasa Malaysia*.

19. We carefully considered the key argument made by the applicant, as well as the evidence provided in support. While the Tribunal notes Mr Boreham's concern regarding the difference between the eligibility criteria for the PJM compared with Australian campaign awards for the same service, it is the nature of foreign awards that their criteria are set by the government concerned. The Australian Government's acceptance of such awards for Australian personnel also includes acceptance of those criteria. Neither the Australian Government nor the Tribunal have the power to modify the criteria and nor is there any discretion in applying the criteria to individual cases. Given that the PJM was an initiative of the Government of Malaysia as a goodwill gesture, the Tribunal cannot recommend any approach to change the criteria that Malaysia has decided upon.

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<sup>12</sup> *Statutes of Pingat Jasa Malaysia (P.J.M.)* authorised by His Majesty Tuanku Syed Sirajuddin Putera Jamalullail, Yang di-Pertuan Agong of Malaysia, 3 March 2004.

<sup>13</sup> 'Award of the Pingat Jasa Malaysia for Australian Service during the Malay Emergency and Indonesian Confrontation by the Government of Malaysia'.

**Finding**

20. For the above reasons we find that Mr Boreham is not eligible for the award of the PJM because his 45.5 days of qualifying service are less than the total of 90 days required. We therefore find that the decision of the Directorate should be affirmed and that Mr Boreham should not be awarded the PJM.

**DECISION**

21. The Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Victor Robert Boreham is not eligible for the award of the Pingat Jasa Malaysia Medal.