



## Australian Government

---

### Defence Honours and Awards Appeals Tribunal

## **Farrell and the Department of Defence [2016] DHAAT 35 (2 September 2016)**

**File Number(s)** 2014/035

**Re** **Mr Hendley Bernard Farrell**  
Applicant

**And** **Department of Defence**  
Respondent

**Tribunal** Ms Naida Isenberg (Presiding Member)  
Air Vice-Marshal John Quaipe AM (retd)

**Hearing Date** 23 June 2016

### **DECISION**

On 2 September 2016, the Tribunal affirmed the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Hendley Bernard Farrell is not eligible for the award of the Pacific Star.

### **CATCHWORDS**

DEFENCE AWARD – Pacific Star.

### **LEGISLATION**

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

*Defence Force Regulations 1952 - reg 93C and Schd 3*

*Delegation to Dominion Governments to Issue Imperial Awards – Extract from Campaign Stars and Commemorative Medals Instituted for the 1939-45 War.*

*Commonwealth of Australia, Summary of the Conditions of Award of the Campaign Stars, the Defence Medal and the War Medal, December 1948.*

*Control of Defence Issuing Authorities for Medals – List of Issuing Authorities for Medals – Extract from Dedman Paper*

*Military Board Instruction 36/47 – Medals, Campaign Stars and Clasps and Defence and War Medals – Conditions of Award*

## **REASONS FOR DECISION**

### **Introduction**

1. The applicant, Mr Hendley Bernard Farrell (Mr Farrell), a former member of the Royal Australian Air Force, seeks review of a 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 Pacific Star.

2. On 1 June 1945, Mr Farrell, then aged nineteen and serving as a Stores Hand at No 8 Stores Depot in Macrossan, Queensland, volunteered with two others to travel to the South West Pacific Area with a cargo of acid. Mr Farrell was included on the delivery flight to monitor the integrity, loading and the strap-down of the load.

3. On 9 August 2001, Mr G. Brown of the Directorate responded by letter to Mr Farrell's telephone enquiry regarding his eligibility for the Pacific Star as a consequence of that delivery flight. In his letter, Mr Brown advised Mr Farrell that as his service in the South West Pacific Area was not on the posted strength of a unit or on an operational sortie, it would be classified as a visit, journey or inspection. Mr Brown further advised that, as this service did not amount to 30 days, he did not qualify for the award.

4. On 14 August 2001, Mr Farrell wrote to the Directorate regarding this matter. On 17 September 2001, Lieutenant Colonel Paddy Devine of the Directorate responded and again advised Mr Farrell that he was not eligible for the award. In his letter, Lieutenant Colonel Devine made reference to an additional clause in the eligibility criteria that stated that aircrew members who made at least three landings in New Guinea from 7 March 1942 to 2 September 1945 would also qualify.

5. On 30 September 2001, Mr Farrell wrote a further letter to Lieutenant Colonel Devine. On 9 October 2001, Lieutenant Colonel Devine again advised Mr Farrell that he was ineligible for the award. In this correspondence, Devine referred to an Administrative Appeals Tribunal decision concerning Mr Farrell's eligibility for veterans' benefits. This decision, which the Directorate accepted, stated that Mr Farrell 'travelled by RAAF aircraft to New Guinea in June 1945 for the purpose of safeguarding and handling stores, being absent from Australia for some two to three days.'

6. Mr Farrell wrote to the Tribunal on 11 April 2014 seeking a review of his eligibility for the Pacific Star. The then Chair of the Tribunal, Mr Alan Rose AO, advised that the Tribunal had jurisdiction to undertake the review, however it would require a copy of the letter from Defence refusing to recommend him for the Pacific Star. Mr Farrell provided the correspondence in August 2015

### **The Tribunal's Jurisdiction**

7. 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 a defence award in response to an application. The Directorate made a decision to refuse to recommend Mr Farrell for the Pacific Star following his 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 defence awards set out in Part 2 is the Pacific Star. Therefore, the Tribunal has jurisdiction to review the Directorate's decision.

### **Steps taken in the conduct of the Review**

8. In accordance with the Defence Honours and Awards Appeals Tribunal Procedural Rules 2011 (No.1), on 3 September 2015, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Farrell's application for review and requesting that he provide a report. On 15 October 2015, the Directorate on behalf of the Secretary provided the Tribunal with a report. A copy of the report of the Directorate was forwarded to Mr Farrell for comment. On 5 November 2015, Mr Farrell provided his comments and broadly outlined that he wished to withdraw his application. After further telephone contact with the Tribunal Secretariat, Mr Farrell advised that he wished for the review to proceed.

9. The Tribunal met on 23 June 2016 to hear the case. The Tribunal considered material provided by Mr Farrell and the Directorate. It also heard oral evidence from Mr Farrell by telephone.

### **Eligibility Criteria for the award of the Pacific Star**

10. The Pacific Star and a number of other Stars are campaign medals of the British Commonwealth, established to recognise service in a number of operations, during the Second World War.

11. The eligibility criteria for the Pacific Star were established at the end of the war by way of United Kingdom Command Paper 6833. In 1948, the criteria were set out in the *Commonwealth of Australia, Summary of Conditions of Award of the Campaign Stars, the Defence Medal and the War Medal* of December 1948. The paragraphs relevant to Mr Farrell's service are as follows:

#### **PART 1 – CAMPAIGN STARS**

36. *The Pacific Star is awarded for entry into operational service in the Pacific Theatre between 8<sup>th</sup> December 1941 and the 2<sup>nd</sup> September 1945, inclusive.*

38. *In the Army and the Air Force there is no prior time qualification. For air crew who have not already qualified by service on land, the qualification is one operational sortie over the appropriate land or sea area. This qualification also applies to Naval aircrew.*

#### **41. Army**

*(a.) Qualifying service on land in the Army is restricted to operational service in territories in which there have been enemy or*

*Allied invasions The dates vary for each particular territory. Service in Burma is excluded.*

42. ***Air Force.***

*(a.) Air crew service in operations against the enemy will qualify. One operational sortie is the qualification.*

*(b.) Non-air crew service on land qualifies under the same rules as those for Army.*

***PART II – AWARD OF CAMPAIGN STARS TO AIRCREW PERSONNEL ENGAGED IN TRANSPORT AND FERRYING DUTIES***

77. *The following rules apply to the award of Campaign Stars to:*

*(a.) Air Force flying personnel posted for Transport and Ferrying duties and Naval Aircrews appointed for Transport and Ferrying duties, or loaned to Air Force for such duties.*

*(b.) Civilian aircrews employed in Transport and Ferrying duties.*

*(Note – Flights made by passengers and observers will not qualify)*

12. In consideration of the criteria for Army at para 41(a), qualifying service is defined by *Military Board Instruction 36/47 – Medals, Campaign Stars and Clasps and Defence and War Medals – Conditions of Award*. The paragraph relevant to Mr Farrell's service is paragraph 6, sub-paragraph (d) which states:

*(d.) Units, individuals, detachments and parties which moved into or through a qualifying operational area for the purpose of visits, tours, inspections, leave, staging or any other purpose of a temporary nature, are not eligible for the award by virtue of such visits, etc only. Where any one visit lasted for more than 30 days or where a number of such visits aggregated at least 30 days, visits may be counted towards qualifying service for the 1939-45 Star or as qualification for those Campaign Stars for which entry on the posted strength of a unit is a qualification. In all such cases, applications, containing a full statement of the facts, are to be made through the usual channels to AHQ for decision.*

**Mr Farrell's Service Record**

13. On 11 July 1944, Mr Farrell enlisted in the Permanent Air Force (PAF) as a Stores hand. His service commenced at No 2 Recruit Depot, Cootamundra followed by service in stores units in New South Wales and Queensland. In April 1945, Mr Farrell was posted to No 8 Stores Depot, Macrossan, Queensland where he remained until returning to Sydney for discharge in October 1945.

14. For his service in the PAF, Mr Farrell has been awarded the:

- 1939-45 Star;
- War Medal 1939-45;

- Australia Service Medal 1939-45; and
- Returned from Active Service Badge.

### **Mr Farrell's Submission**

15. In his application to the Tribunal, Mr Farrell has based his claim on his participation in a transport flight that delivered supplies to bases in New Guinea and his belief that he was a member of the crew on this operational flight, not a visitor as mentioned by the Directorate.

16. In correspondence with the Directorate, Mr Farrell outlined his experience as a Stores hand in Macrossan, when he volunteered to accompany cargo that loaded there which was delivered to a number of locations within the South-West Pacific Area. Mr Farrell claims his participation on this delivery flight meets the qualifying criteria for the award of the Pacific Star. Mr Farrell particularly objected to the Directorate's suggestion that his presence in the qualifying area was merely 'a visit'. Mr Farrell has based his claim for eligibility on the criteria displayed in Returned and Services League of Australia (RSL) clubs and Sub-Branched that distils the relevant criteria to 'for entry into operational service in the Pacific Theatre between 8<sup>th</sup> December 1941 and 2<sup>nd</sup> September 1945.'

17. At the hearing, Mr Farrell described his experience of being one of three volunteers taken at short notice from Macrossan by 'biscuit bomber' through a number of locations in the South West Pacific Area, to assist with the delivery of acid supplies. Mr Farrell described both the cargo and the nature of this temporary duty as unusual. Mr Farrell believed that the aircraft arrived at Macrossan, three crew members short of the required complement. He described how the nature of the cargo – sulphuric or hydrochloric acid stored in stacked demijohns – required the participation of himself and two other volunteer stores personnel to ensure correct loading and strap-down and the integrity of the load in flight. Mr Farrell could not recall the location of each of two or three deliveries, but told the Tribunal that he ended up in Port Moresby where he parted company with the delivery aircraft. He was required to catch a ride on a different aircraft to return to Macrossan. Mr Farrell told the Tribunal that his total absence from Macrossan was in the order of five days. Mr Farrell also confirmed to the Tribunal that he was mustered as a Stores Hand and not classified as Air Crew.

### **The Directorate's Submission**

18. In its written submission to the Tribunal, the Directorate noted Mr Brown's initial assessment that Mr Farrell did not qualify for the award as his service in the South West Pacific Area was not on the posted strength of a unit or in an operational sortie. His service would therefore be classified as a visit, journey or inspection requiring 30 days' completion within the qualifying area.

19. The Directorate's submission also reiterated the decision of Lieutenant Colonel Devine, confirming the Directorate's earlier advice that Mr Farrell did not qualify, that had been relayed to Mr Farrell in correspondence of 17 September 2001. The submission included a further assessment of Mr Farrell's eligibility for the Pacific Star. This assessment confirmed that Mr Farrell did not meet the criteria for the award under the relevant regulations and that he:

- a. *was in the Pacific Theatre between 8 December 1941 and 2 September 1945, as per the Administrative Appeals Tribunal Veterans' Appeals Division No N1999/297 decision;*
- b. *enlisted as a 'Stores hand' which is not a recognized position in Air crew, as identified by definitions in Attachments D and E;*
- c. *did not complete thirty days of visits, journeys or inspections; and*
- d. *was not posted for Transport and Ferrying duties.*

### **The Tribunal's Findings**

20. Mr Farrell's entry to the South West Pacific Area was as a volunteer participant in the delivery of a specific and dangerous cargo and the Tribunal accepts that Mr Farrell volunteered to accompany the air transport of acid to ensure the integrity of the load. Further, the Tribunal accepts Mr Farrell's evidence that the transport of acid was not a usual event. However, while the nature of this voluntary role may not have been a frequent occurrence, the ad hoc assignment of volunteers (such as ground based supply personnel) to the in-flight monitoring of dangerous goods is likely to have been typical for 1945 airlift operations.

21. Mr Farrell refers to the aircraft that conducted this transport task as a 'biscuit bomber'. In his evidence in the related matter before the Administrative Appeals Tribunal, consulting historian, Mr B.G. O'Keefe was reported to have concluded that this aircraft was almost certainly a RAAF DC3 (C47B) aircraft of No 34 Squadron. Standard crewing for RAAF transport aircraft made no provision for close in-flight load monitoring. The Tribunal understands that standard C47B crew composition was generally two pilots and one navigator, and that no aircrew qualification existed in 1945 for the cargo monitoring role described by Mr Farrell; pilots and navigators were responsible for all load considerations. If an aircraft captain determined that the nature of goods being transported demanded close monitoring, that task would be assigned to ground personnel in an ad hoc manner. Such assignments were infrequent but not unusual. This is Mr Farrell's experience.

22. Mr Farrell testified that the aircraft arrived at Macrossan short of three crew members required for the journey. While the Tribunal accepts that Mr Farrell was one of three personnel given responsibility for monitoring the dangerous cargo, the absence of any aircrew capability for this role simply reflected normal operating practice in 1945. Mr Farrell testified that he was not qualified as aircrew. Mr Farrell's participation in this journey was solely to monitor the integrity of dangerous cargo but this did not qualify Mr Farrell to be categorised as aircrew. Mr Farrell was not formally assigned to the crew of the aircraft, he was not posted or attached to the strength of the aircraft's operating unit, nor to any other unit associated with the delivery flight.

23. As outlined at Paragraph 11, the eligibility criteria for the award of the Pacific Star includes specific Part II provisions for Air Crew Personnel engaged in Transport and Ferrying Duties. To be eligible under this Part of the legislation, Mr Farrell

would have to have been Air Force flying personnel *posted* for Transport and Ferrying duty. Mr Farrell was not Air Force flying personnel and nor was he *posted* for transport or ferrying duty.

24. Mr Farrell's eligibility for the award must therefore be considered under Part I of the Summary of Conditions. The provision made for the completion of one operational sortie against the enemy does not apply to Mr Farrell. This provision does not apply to Transport or Ferrying duties as these duties are clearly and separately detailed in Part II.

25. Although not air crew personnel, Mr Farrell's unusual experience in participating in the air-delivery of dangerous goods is covered by the provisions of Paragraph 42 (b) i.e. 'Non-air crew service on land qualifies under the same rules as those for Army'. *Military Board Instruction 36/47* makes provision for individuals who move into or through the operational area for a purpose of a temporary nature, to qualify for the award. This provision is the only avenue open to Mr Farrell and unfortunately, the requirement is for such duty to comprise at least 30 days.

## **DECISION**

26. The Tribunal affirms the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Hendley Bernard Farrell is not eligible for the award of the Pacific Star.