



Australian Government

Defence Honours and Awards Appeals Tribunal

Morrissey and the Department of Defence [2016] DHAAT 009 (14 March 2016)

File Number(s) 2014/040

Re **Mr P.R. Morrissey**
Applicant

And **Department of Defence**
Respondent

Tribunal Brigadier Mark Bornholt AM (Retd) (Presiding Member)
Ms Jane Schwager AO

Hearing Date 10 March 2016

DECISION

On 14 March 2016 the Tribunal decided to affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Percival Morrissey is not eligible for the award of the Australian Active Service Medal 1945-1975.

CATCHWORDS

DEFENCE AWARDS - Australian Active Service Medal 1945-1975

LEGISLATION

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

Defence Force Regulations 1952 – Schedule 3

Australian Active Service Medal 1945-1975 Regulations - Commonwealth of Australia Gazette No. S 18 dated 19 January 1998.

REASONS FOR DECISION

Introduction

1. The applicant, Mr Percival Morrissey (Mr Morrissey) 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 Australian Active Service Medal 1945-1975 (AASM 1945-75). On 24 May 2010 Mr Morrissey made application to the Directorate for the AASM 1945-75. On 9 August 2010 the Directorate advised Mr Morrissey that 'examination of your service record confirms that you have no qualifying service, as you were outside the qualifying dates, therefore you cannot qualify for this award'.¹

2. On 18 September 2015 Mr Morrissey made application for review of the decision, claiming that the ship he served on between September 1945 and November 1946 was involved in operational duties including evacuation of troops from Borneo and transport of prisoners from Ambon to Brisbane for war trials.²

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 AASM 1945-75. 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 noted that in the preparation of the Defence Submission into this matter, an assessment of Mr Morrissey's eligibility for the Australian Defence Medal (ADM) was conducted and he was found to be ineligible for this award.³ In the absence of an application for the ADM or an application for review of the Defence decision, the Tribunal determined that it did not have jurisdiction to examine the matter, therefore Mr Morrissey's entitlement to the ADM was not reviewed.

Conduct of the review

5. In accordance with its *Procedural Rules 2011*, on 15 October 2015, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Morrissey's application for review and requesting that he provide a report.⁴ On 3 December 2015, the Directorate, on behalf of the Secretary, provided the Tribunal

¹ DHA – PM7389 dated 9 August 2010

² Morrissey Application for Review dated 18 September 2015

³ DH&A OUT/2015/0247 – Defence Submission dated 3 December 2015, Paragraph 3

⁴ DHAAT OUT/2015/603 dated 15 October 2015

with a report.⁵ In that report the Directorate confirmed its position that Mr Morrissey was not eligible for the AASM 1945-75 as he did not meet the eligibility criteria for the award. On 14 December 2015 the Tribunal forwarded a copy of the report of the Directorate to Mr Morrissey for comment. On 21 December 2015 Mr Morrissey telephoned the Tribunal acknowledging receipt of the Defence Submission and indicating that the 'start date for the Active Service Medal should have been 3 September 1945 not 1948'.⁶

6. The Tribunal met on 10 March 2016 when it heard oral evidence from Mr Morrissey who agreed to be available by telephone that day.

Australian Active Service Medal 1945-1975

7. 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.

8. Veterans who have received or who are entitled to the Korea Medal, a General Service Medal for service in the Malayan Emergency 1948-1960 or the Indonesian confrontation 1962-1966, the Vietnam Medal or the Vietnam Logistic and Support Medal are eligible for the AASM 1945-75.⁷

9. The medal was instituted by Letters Patent dated 11 December 1997 and the conditions for the award are contained in the *Australian Active Service Medal 1945-1975 Regulations*.⁸ These Regulations state:

...

Prescribed operations

3. *The Governor-General, on the recommendation of a Minister, may declare a warlike operation in which members of the Defence Force were engaged at any time during the period that commenced on 3 September 1945 and ended on 13 February 1975, to be a prescribed operation for these Regulations.*

Conditions for award of the Medal

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.*

...

10. The AASM 1945-75 is awarded in the form of a medal and a clasp. The medal cannot be issued without a clasp. To be eligible for the medal applicants must

⁵ DH&A OUT/2015/0247 – Defence Submission dated 3 December 2015

⁶ Record of Conversation Birmingham/Morrissey at 1100 hours on 21 December 2015

⁷ www.itsanhonour.gov.au accessed on 22 February 2016

⁸ *Commonwealth of Australia Gazette No. S 18* dated 19 January 1998

have service in connection with a prescribed operation. Operations are prescribed by Declarations and Determinations under Regulation 3 of the Schedule to the Letters Patent.

11. Chronologically, the first operation to be prescribed was service during the Malayan Emergency from 16 June 1948 to 31 July 1960.⁹ The second operation to be prescribed was for service during the Korean War from 1 July 1950 to 27 July 1953.¹⁰ Subsequent operations which were conducted in the 1960s were also prescribed for the purposes of the award of the AASM 1945-75.

Mr Morrissey's Service Record

12. Defence did not include a copy of Mr Morrissey's service record in their report, however it did include the relevant dates of his service. Relying on the Defence Submission and confirmed by Mr Morrissey during the hearing, the Tribunal noted that he enlisted in the Royal Australian Naval Reserve (RANR) on 2 May 1944 and discharged on demobilisation on 6 December 1946. The Defence submission indicated he served for 'one year, three months', however the Tribunal was satisfied that his service totalled 19 months.¹¹

13. Tribunal research indicates that Mr Morrissey was posted to the armed merchant cruiser HMAS *Kanimbla* on 29 June 1945 as a cook. Whilst posted to HMAS *Kanimbla*, Mr Morrissey undertook operational service in the Pacific theatre during the final months of the Second World War. After cessation of hostilities, HMAS *Kanimbla* was engaged in repatriating Australian servicemen from the Pacific Islands and returning Dutch dependants to the East Indies.¹²

14. Mr Morrissey received the following awards and badge for his service between 2 May 1944 and 6 December 1946:

- 1939-45 Star;
- Pacific Star;
- War Medal 1939-45;
- Australia Service Medal 1939-45;
- Australian Service Medal 1945-75 (ASM 1945-75) with Clasps 'PNG' and 'SW PACIFIC'; and
- Returned from Active Service Badge.

Mr Morrissey's Submission

15. Mr Morrissey originally made application for both the '1945-75 Service Medal and the 1945-75 Active Service Medal'. Following receipt of the ASM 1945-75 with Clasps 'PNG' and 'SW PACIFIC', he contacted the Directorate claiming that:

⁹ *Commonwealth of Australia Gazette No. S 102* dated 23 March 2001

¹⁰ *Commonwealth of Australia Gazette No. S 54* dated 10 February 1998

¹¹ DH&A OUT/2015/0247 – Defence Submission dated 3 December 2015, Paragraph 23

¹² www.navy.gov.au/hmas-Kanimbla-i - accessed 22 January 2016

'... the time I served from September 1945 to November 1946 aboard HMAS Kanimbla comes with eligibility for the active service award ...';¹³

'... I served all over the South West Pacific area repatriating troops including bringing back Japanese prisoners of war from Ambon to Brisbane for war trials, my last trip taking British Commonwealth Occupying Force troops to Japan ...';¹⁴ and

'... the ship ... was involved in taking back some 500 Dutch nationals to Makassar, ... taking Angau troops from New Guinea to Rabaul to control Japanese prisoners, ... evacuation of troops from Balikpapan, Borneo to Morotai ...'.¹⁵

16. His basic contention is that his service on HMAS *Kanimbla* after cessation of the war should be classified as active service and he states that if this is not the case, he finds it 'hard to comprehend'. He stated that he would like to know 'why this time is not eligible'. During his oral evidence on 10 March 2016 he continued to press his claim that his service after the cessation of the war should have been classified as 'active service'.

Defence's Submission

17. The Directorate have consistently advised Mr Morrissey that his 'service after cessation of the war on 2 September 1945 was classified as non-warlike and therefore does not attract the AASM 1945-75'.¹⁶

18. The Directorate informed Mr Morrissey that they would complete an assessment of his eligibility against each Clasp associated with the AASM 1945-75. Accordingly, the Defence submission contains a comprehensive assessment of eligibility for each of the Clasps 'KOREA', 'MALAYA', 'MALAYSIA', 'THAILAND', 'THAI-MALAY' and 'VIETNAM'. In each case, the Directorate determined that Mr Morrissey had been discharged from the RANR on 6 December 1946, prior to the commencement of the prescribed period for each of these declared operations. The submission concludes that the decision to refuse Mr Morrissey the AASM 1945-75 should be affirmed as he did not meet the eligibility criteria for the award.

Tribunal Consideration

19. The Tribunal carefully considered Mr Morrissey's eligibility against the Regulations for the AASM 1945-75.

20. The Tribunal noted that Mr Morrissey was awarded the ASM 1945-75 with Clasp 'PNG' and Clasp 'SW PACIFIC'. The ASM 1945-75 was approved in 1995, and may be awarded for service in, or in connection with prescribed non-warlike

¹³ Morrissey undated handwritten Letter presumably written in September 2010

¹⁴ Morrissey undated Letter received 2 September 2010

¹⁵ Morrissey Application for Review dated 18 September 2015

¹⁶ DHA 201/1000040/197(9) dated 21 September 2010

operations during the period commencing on 3 September 1945 and ending on 16 September 1975. The medal has 14 clasps, including 'PNG' and 'SW PACIFIC'.

21. During the hearing on 10 March 2016, the Tribunal discussed the difference between the AASM 1945-75 and the ASM 1945-75 and asked Mr Morrissey if he knew why he had received the ASM 1945-75 with Clasp 'PNG' and Clasp 'SW PACIFIC'. He stated that he did not know what they were for, but reiterated his view that the period immediately after the cessation of World War Two should have been classified as 'active service'.

22. The Tribunal informed Mr Morrissey that this medal with the two clasps recognised his service following the cessation of the war in 'non-warlike' operations. The ASM 1945-75 with Clasp 'SW PACIFIC' was awarded to eligible members of the Australian Defence Force for:

(b)(i) 'participation in naval and military activities in the Netherlands Indies, Portuguese Timor, Sarawak, Brunei, British Borneo, Philippine Islands, Solomon Islands, Nauru and Ocean Islands, Morotai Island, Labuan Island, Thailand, Burma, Malaya and Singapore, and including all islands and waters forming part of those territories during the period that commenced on 3 September 1945 and ended on 24 November 1946 ...'.¹⁷;

23. The ASM 1945-75 with Clasp 'PNG' was awarded to eligible members of the Australian Defence Force for:

(b)(i) 'activities in which members ... render service engaged in nation building tasks, training and administering prospective members of the national armed forces of the Territory of Papua New Guinea and humanitarian relief in aid to the territory of Papua New Guinea, during the period commencing on 3 September 1945 and extending to the independence of Papua New Guinea on 16 September 1975 ...'.¹⁸;

24. The Tribunal noted that Mr Morrissey stated in 2014 that:

'... several years ago I applied for a 1945-75 Service Medal and 1945-75 Active Service Medal and I was awarded the Service Medal'.¹⁹

25. During the hearing, the Tribunal informed Mr Morrissey that he could not have two service medals for one activity (ie the ASM 1945-75 and the AASM 1945-75) and that the ASM 1945-75 with Clasp 'PNG' recognised his service aboard HMAS *Kanimbla* in transporting troops to Rabaul and the ASM 1945-75 with Clasp 'SW PACIFIC' recognised his service in HMAS *Kanimbla* throughout the South West Pacific from the cessation of the war until 24 November 1946. The Tribunal informed him that the Government had determined that service after cessation of the war on 2 September 1945 was not warlike and as a result, repatriation and 'mopping up' activities were recognised through the award of the Australian Service Medal and not the Australian Active Service Medal.

¹⁷ Commonwealth of Australia Gazette No. S 230 dated 29 June 2001

¹⁸ Commonwealth of Australia Gazette No. S 74 dated 30 April 2009

¹⁹ Morrissey undated Letter received 22 April 2014

26. Having reviewed Mr Morrissey's service post the cessation of the war and the Regulations for the ASM 1945-75; the Tribunal was satisfied that he had been correctly awarded the ASM 1945-75 with Clasps 'PNG' and 'SW PACIFIC' to recognise his service aboard HMAS *Kanimbla* from 3 September 1945 up to and including his discharge on 6 December 1946.

27. The Tribunal considered Mr Morrissey's claim that his service on HMAS *Kanimbla* after cessation of the war should be classified as active service and found that the assertion could not be sustained as the war had been formally concluded and there was no direct 'enemy threat'. The Tribunal acknowledged that conditions during the repatriation phase following the war were undoubtedly hazardous. It also noted that terms such as 'war-like' and 'non-warlike' were nature of service terms introduced many decades later; however, the Tribunal considered that the definition of 'non-warlike' was appropriate to the post World War Two repatriation phase and, for Mr Morrissey's clarification, repeats that definition here:

'Non-warlike operations are defined as those military activities short of warlike operations where there is risk associated with the assigned task(s) and where the application of force is limited to self-defence'.²⁰

28. The Tribunal further noted that the earliest operation to be prescribed under the AASM 1945-75 Regulations was the Malayan Emergency commencing on 16 June 1948. This commencement date was some 18 months after Mr Morrissey was demobilised and as a result, it was not possible for him to render service as required by the Regulations.

29. The Tribunal discussed the differences between 'warlike' and 'non-warlike' with Mr Morrissey during the hearing and he indicated at the conclusion that he 'now understood why he had been found to be ineligible'.

Finding

30. For the reasons stated above, the Tribunal finds that Mr Morrissey is not eligible for the AASM 1945-75 as he did not render service in any of the prescribed operations for this award.

DECISION

31. The Tribunal affirms the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Percival Morrissey is not eligible for the award of the Australian Active Service Medal 1945-1975.

²⁰ DHAAT *Inquiry into Recognition of Service with Operation Lagoon 1994* – dated 9 November 2012 – Paragraph 48