



Australian Government

Defence Honours and Awards Appeals Tribunal

Green and the Department of Defence [2020] DHAAT 09 (5 June 2020)

File Number 2019/022

Re **Dr Neville James Green AM**
Applicant

And **The Department of Defence**
Respondent

Tribunal Mr Graham Mowbray (Presiding Member)
Mr David Ashley AM

Appearances Dr Neville Green AM
Ms Jo Callaghan, Directorate of Honours and Awards
Mr Wayne Parker, Directorate of Honours and Awards

Hearing Date 17 April 2020 (by telephone)

DECISION

On 5 June 2020 the Tribunal affirmed the decisions of the Department of Defence of 20 May 2002 and of 15 March 2005 that Dr Neville Green AM is not eligible for the award of the United Nations Service Medal for Korea.

CATCHWORDS

DEFENCE AWARD – United Nations Service Medal for Korea – date commenced ‘on the posted strength of a unit’ – service record entry of award – service commenced after terminal date for medal

LEGISLATION

Defence Act 1903 – ss 110VB(2), 110VB(6)
United Nations General Assembly Resolution 483(V), 12 December 1950
United Nations Service Medal Regulations, 25 September 1951
United Nations Service Medal Regulations – Korea, Annex 1, 17 October 1955
(RAAF) Air Board Order A.90 – The United Nations Service Medal – Award for Service in the Korean Operations on or after 27th June 1950, 10 August 1953

REASONS FOR DECISION

Introduction

1. Dr Neville James Green AM seeks review of the decisions of Mr M Jordan of 20 May 2002 and of Ms K Daly of 15 March 2005, both of the Department of Defence, that he was not entitled to the United Nations Service Medal for Korea (UNSM) for his service in the Royal Australian Air Force in Korea.¹
2. Dr Green's service in the RAAF consisted of six years from 10 December 1951 until his discharge on 9 December 1957, followed by enrolment in the RAAF Reserve from 10 December 1957.
3. Dr Green's overseas service with the RAAF in Japan and Korea extended from July 1954 until the end of January 1955. It is this period of service with which this review is concerned.
4. Dr Green has been awarded the following for his service with the Australian Defence Force
 - Australian Service Medal 1945-1975 with Clasp 'KOREA'
 - Australian General Service Medal for Korea
 - Australian Defence Medal
 - Returned from Active Service Badge.

Eligibility Criteria for the United Nations Service Medal for Korea

5. On 12 December 1950 the General Assembly of the United Nations empowered the Secretary-General to provide for recognition of forces who served on its behalf in repelling aggression in Korea.² The UNSM was then established by Regulations on 25 September 1951³ with eligibility extended relevantly in sub-section IIIA to

1. Members of land, sea and air forces dispatched to Korea or adjacent areas for service on behalf of the United Nations by States participating in the United Nations action in Korea;

...

6. Service was to be

2. With a national contingent designated by its national government for service in support of the United Nations action in Korea and certified by the

¹ This review also encompasses a further assessment of Dr Green's eligibility for the UNSM undertaken by Ms Jo Callaghan of Defence on 13 November 2019

² *United Nations General Assembly*, Resolution 483(V), 12 December 1950

³ *United Nations Service Medal Regulations*, 25 September 1951 sub-section IIIA

*United Nations Commander-in-Chief as having directly supported military operations in Korea.*⁴

7. The service must be ‘while on assignment’ to a unit provided for in sub-section IIIA⁵ for periods between 27 June 1950 and a terminal date to be announced later by the Secretary-General.⁶ On 17 October 1955 the terminal date, or cessation of the qualifying period, was set as 27 July 1954.⁷

8. The instrument by which the criteria were promulgated for RAAF use was Air Board Order A.90 dated 10 August 1953.⁸ This reported approval of acceptance of the UNSM approved by the General Assembly of the United Nations in recognition of service in Korea ‘between 27th June, 1950, and a terminal date to be announced later’.⁹ The Order relevantly set out eligibility conditions as¹⁰

4. Members of the Royal Australian Air Force ... who render the required service, will be eligible for the award provided they conform with the following qualifying conditions:

...

b. service of any period in Korea on the posted strength of a unit in Korea since 27 June, 1950, inclusive; (or)

c. service of any period in Japan on the posted strength of a unit in Japan since 27th June, 1950, inclusive, provided that the unit is certified by the United Nations Commander-in-Chief as having directly supported military operations in Korea;

...

9. The *General Qualifying Conditions* in the Order included

5. Personnel who have served since the 27th June, 1950, inclusive, on the posted strength of the following approved units are eligible for the award in accordance with paragraph 4 of this order:

No. 77 (Fighter) Squadron.

*Headquarters, B.C.O.F.*¹¹

No. 91 (Composite) Wing (including sub-ordinate units).

⁴ Ibid, sub-section IIIB 2

⁵ Ibid, paragraph IIIC 1.(a)

⁶ Ibid, sub-section IIIB

⁷ *United Nations Service Medal Regulations – Korea*, Annex 1, 17 October 1955

⁸ (RAAF) *Air Board Order A.90 – The United Nations Service Medal – Award for Service in the Korean Operations on or after 27th June 1950*, 10 August 1953

⁹ Ibid, paragraph 1

¹⁰ Ibid, paragraph 4

¹¹ (British Commonwealth Occupation Force)

6. *Only air-crew members who are on the posted strength of one of the units specified in paragraph 5 of this order and who are detailed as crew members of the aircraft engaged in operational flights over Korea or the waters immediately adjacent to Korea, may qualify for the award...*

8. *Service on the way to one of the units specified in paragraph 5 of this order, from anywhere outside Korea or Korean waters, will not be a qualification for the medal.¹²*

Uncontested Facts

10. Much of this matter rests on the timing of Dr Green's posting to and service in Japan in support of military operations in Korea.

11. Following the hearing, and through documents provided to us by the parties, we have been able to distil salient facts which are uncontested by both Dr Green and the representatives of the Department of Defence. These are

- Dr Green arrived at No. 91 (Composite) Wing Headquarters at Iwakuni, Japan on 29 July 1954
- from 30 July 1954 to 2 September 1954 he was posted to No. 491 (Maintenance) Squadron in Japan
- from 3 September 1954 to 17 October 1954 he was posted to No. 77 Squadron stationed in Korea, but moved to Japan on 13 October 1954
- from 18 October 1954 to 23 January 1955 he was posted to No. 36 Squadron in Iwakuni, Japan
- from 24 January 1955 to 27 January 1955 he was reposted to No. 91 (Composite) Wing Headquarters in Iwakuni, Japan
- Dr Green returned from Japan on 27 January 1955
- service in Japan with both No. 91 (Composite) Wing Headquarters and No. 491 (Maintenance) Squadron was certified by the United Nations Commander-in-Chief for the purposes of the UNSM
- one day's service in these units during the relevant period was sufficient for eligibility for the UNSM
- the relevant terminal date, or cessation of the qualifying period, for the UNSM was 27 July 1954.

¹² Ibid, paragraph 8

The Issues

12. The issues for the Tribunal are

- what was the correct commencement date for the UNSM for Dr Green's service in Japan – posting, dispatch, arrival or commencement 'on the posted strength' of the unit
- does service prior to arrival in the relevant unit, such as 'service on the way', count as service for the UNSM
- when did Dr Green's service in Japan commence for assessment of his eligibility for the UNSM
- what importance does an entry in Dr Green's personal file of the 'award' of the medal have
- does Dr Green meet the eligibility criterion for the UNSM-Korea?

Dr Green's Relevant Japan Service

13. The date at which Dr Green's Japan service commenced for assessment of his eligibility for the UNSM is a matter of contention. Is the critical date the one on which his posting to the unit was made or recorded, the date he was 'dispatched', the date of his arrival, or the date of his commencement with his unit in Japan?

14. The date of Dr Green's posting to No. 91 (Composite) Wing Headquarters was made or recorded was 17 June 1954.¹³

15. Relying on the wording in paragraph IIIA (1) of the United Nations regulations, 'Members of land, sea and air forces *dispatched* to Korea...', Dr Green argues that the critical date is the date he 'was *dispatched* from Depot 3 A.D. at RAAF Amberley Qld'.¹⁴ Dr Green says this was 12 July 1954. As indicated above his posting to No. 91 (Composite) Wing Headquarters was made on 17 June 1954, but his departure from Amberley was delayed because of a major aircraft accident that day at the base. The Posting Card for Dr Green says that he was at Richmond Air Base on 12 July 1954.¹⁵

16. It is agreed that Dr Green left Australia on either 27 or 28 July 1954,¹⁶ stayed in Manila in the Philippines, not arriving at No. 91 (Composite) Wing Headquarters in Iwakuni in Japan until 29 July 1954.¹⁷

17. Defence contends that the critical date is when Dr Green commenced 'on the posted strength' of his unit in Japan. This is the term used in subparagraphs 4(b) and (c), and paragraph 5 of the Air Board Order¹⁸ and in the comparable Military Board

¹³ RAAF Posting Card – Airmen – N.J Green; No. 91 (Composite) Wing Personnel Occurrence Report 38/54, 5 August 1954, page 2

¹⁴ Letter Dr N Green to the Tribunal, 24 January 2020

¹⁵ RAAF Posting Card – Airmen – N.J. Green; No 91 (Composite) Wing

¹⁶ Both dates are given in the documents. However, it is not material to the decision

¹⁷ RAAF Posting Card – Airmen, Neville Green; No 91 (Composite) Wing

¹⁸ op cit - see paragraphs 8 and 9 above

Instruction 61/1955.¹⁹ The Order also requires that the person be ‘in Korea’ or ‘in Japan’.²⁰ For No. 91 (Composite) Wing Headquarters this was 29 July 1954, his date of arrival in Iwakuni. He was then placed on the posted strength of No. 491 (Maintenance) Squadron on the next day, 30 July 1954.²¹

18. The Tribunal accepts Defence’s contention. As has been noted at paragraph 8 above, the Australian instrument by which the United Nations Regulations were promulgated for RAAF use was Air Board Order A.90 dated 10 August 1953. This therefore contains the criteria which the Tribunal must apply in assessing applications for the UNSM. Where there is doubt over the interpretation of provisions in the Air Board Order, the Tribunal may be assisted by reference to the United Nations Regulations. However, the relevant provisions in the Air Board Order are clear. The critical date for commencement of a person’s service for the UNSM is when that person came onto ‘the posted strength’ of the unit.

19. This is further confirmed by the wording of paragraph 8 of the Order set out in paragraph 9 above. Service ‘on the way’ to a unit ‘from anywhere outside Korea or Korean waters’ can not be counted towards qualification for the medal. Dr Green described this paragraph as ‘a puzzle’²² or only applying if the travel was to Korea not Japan.²³ The Tribunal does not agree. It makes it abundantly clear that any service by Dr Green before his arrival ‘on the posted strength’ of No. 91 (Composite) Wing Headquarters at Iwakuni in Japan on 29 July 1954 – ie. from 17 June 1954 until his 29 July 1954 arrival – is not relevant.

20. The Tribunal therefore concluded that Dr Green commenced on the posted strength of No. 91 (Composite) Wing Headquarters at Iwakuni in Japan on 29 July 1954.

21. Both No. 91 (Composite) Wing Headquarters and No. 491 (Maintenance) Squadron were certified by the United Nations Commander-in-Chief as having directly supported military operations in Korea, as required by paragraph 4(c) of the Air Board Order.²⁴

Service Record Entry

22. Dr Green placed great store on an undated entry in his Personal Record of Service which shows the entry ‘UNS Medal’ and the authority ‘91 WG 38/54’.²⁵ It is clear that this authority refers back to the No. 91 (Composite) Wing Personnel Occurrence Report 38/54, dated 5 August 1954. At page 3 of this Report Dr Green’s name is included with four other airmen under the heading ‘PART “B” (k) Honours and Awards’ against which the notation ‘Authorised to wear the ribbon of the United

¹⁹ Letter P Cole, Director Honours and Awards, Defence Department, to the Tribunal, 14 April 2020, page 2

²⁰ (RAAF) Air Board Order A. 90/1953; see paragraph 8 above

²¹ No. 91 (Composite) Wing Personnel Occurrence Report, *ibid*, page 2

²² Letter Dr N Green to the Tribunal, 15 May 2020, page 9

²³ Dr N Green, oral evidence, 17 April 2020

²⁴ Letter P Cole, Director Honours and Awards, Defence Department, 14 April 2020, *op cit*, Enclosure 1

²⁵ Personal Record of Service – Airman, Neville James Green, Item 16. Decorations, Medals, Mentions and Badges, undated entry

Nations Service Medal. AUTH. O.C. No. 91 C Wing' appears. This entry appears to be further annotated with a large cross.²⁶

23. In Dr Green's view this entry indicated his entitlement to the UNSM for Korea. He stated that

*... it would be on the authority of the Iwakuni 91 Wing Commanding Officer that my entitlement to this medal was entered in the category No 16 of my paper: ... Surely if the Commanding Officer, and not the office clerk authorized this medal and his decision should surely carry through to the present and I ask that you take into consideration an award authorised in 1954 and not one of rejection 65 years later.*²⁷

24. He noted that the Personnel Occurrence Report was signed by the Wing Administrative Officer, Squadron Leader R W Barber

*but neither he nor any other officer initialled or dated the large rough cross on that same page and therefore, the cross was quite likely seeking an opinion ... It appears to me that at first a medal that was uncertain and subsequently endorsed by: the proper Australian legislative instrument for award of this medal, ...*²⁸

25. Defence rejected Dr Green's interpretation of this entry in his Personal Record of Service

This notation reflects that the Officer Commanding ... authorised then Aircraftsman Green to wear the ribbon of the United Nations Service Medal ... It reflects a provisional entitlement only.

Paragraph 10 of ABO 90/1953 provided for the provision (sic) issue of the medal ribbon, with all such awards to be promulgated, provisionally, in unit personnel occurrence reports...

*pending confirmation of the provisional entitlement by the relevant Service Headquarters.*²⁹

26. We must accept Defence's contention as paragraphs 10 and 12 of the Air Board Order clearly have the effect that the Department submits.

27. Furthermore, the Personnel Occurrence Report is dated 5 August 1954, but the terminal date for the UNSM of 27 July 1954 was not set by United Nations Regulations until 17 October 1955.³⁰ It would thus have been impossible to confirm Dr Green's substantive entitlement on 5 August 1954 over a year before the terminal date had been set.

²⁶ A further copy of No. 91 (Composite) Wing Personnel Occurrence Report 38/54, dated 5 August 1954, provided by Dr Green to the Tribunal with his letter of 15 May 2020, page 3; Letter P Cole, Director Honours and Awards, Defence Department, 14 April 2020, op cit, Enclosure 4

²⁷ Letter Dr N Green to the Tribunal, 24 January 2020, op cit, pages 1-2

²⁸ Ibid, page 2

²⁹ Letter P Cole, Director Honours and Awards, Defence Department, 14 April 2020, op cit, page 4

³⁰ *United Nations Service Medal Regulations – Korea, Annex 1*, 17 October 1955, op cit

Dr Green's Eligibility for the UNSM

28. The Tribunal is satisfied on the following relevant facts

- the date of Dr Green's posting to No. 91 (Composite) Wing Headquarters was made or recorded was 17 June 1954
- he did not leave Australia until 27 July 1954, arriving at No. 91 (Composite) Wing Headquarters in Iwakuni in Japan on 29 July 1954
- he commenced on the posted strength of that unit in Japan on 29 July 1954
- he commenced on the posted strength of No. 491 (Maintenance) Squadron in Japan on 30 July 1954
- the United Nations Commander-in-Chief had certified service in both units, No. 91 (Composite) Wing Headquarters and No. 491 (Maintenance) Squadron, as having directly supporting military operations in Korea
- the terminal date, or cessation of the qualifying period, for the UNSM was 27 July 1954.

29. Although Dr Green's service with both of the above units in Japan satisfies most criteria for the UNSM, it fails on one critical element. To be eligible for the medal he must have commenced on the posted strength of the unit before the terminal date of 27 July 1954. He did not commence on the posted strength of No. 91 (Composite) Wing Headquarters until 29 July 1954, two days short.

Dr Green is not Entitled to the UNSM for Korea

30. For the reasons given above, the Tribunal finds that Dr Green, having commenced on the posted strength of No. 91 (Composite) Wing Headquarters in Japan after the cessation of the qualifying period, is not entitled to the award of the UNSM for Korea.

31. Furthermore, the Tribunal does not have any general power or discretion to ignore the rules for the UNSM laid down in the Air Board Order.

32. The Tribunal nevertheless acknowledges Dr Green's significant contribution through his service with the Royal Australian Air Force during the Korean War.

TRIBUNAL DECISION

33. The Tribunal affirms the decisions of the Department of Defence of 20 May 2002 and of 15 March 2005 that Dr Neville Green AM is not eligible for the award of the United Nations Service Medal for Korea.