



Australian Government

Defence Honours and Awards Appeals Tribunal

Knight and the Department of Defence re: Gall [2020] DHAAT 14 (30 July 2020)

File Number(s) 2019/020

Re **Mr D. Knight** on behalf of **Mrs M. Gall** for her late husband
Mr Thomas Gall
Applicant

And **Department of Defence**
Respondent

Tribunal Mr M. Sullivan, AO, (Presiding Member)
Brigadier M.D. Bornholt, AM (Retd)
Mr G. Mowbray

Hearing There were no appearances and the review was conducted on the papers following agreement by both parties.

DECISION

On 30 July 2020 the Tribunal decided to:

- a. Affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Thomas Gall is not eligible for the award of the 1939-45 Star, the Pacific Star, the Defence Medal and the Australian Service Medal 1945-75 with Clasp 'SW PACIFIC',
- b. Set aside the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Thomas Gall is not eligible for the award of the Australia Service Medal 1939-45, and
- c. Substitute its decision that Mr Thomas Gall is eligible for the award of the Australia Service Medal 1939-45 and to direct that the medal be issued to his widow.

CATCHWORDS

DEFENCE AWARDS – Australia Service Medal 1939-45 - Australian Service Medal 1945-75 with Clasp 'SW PACIFIC' - War Medal 1939-45 - Defence Medal - Pacific Star - 1939-45 Star – Civilian Employees – Cable and Wireless Company - TELCOM

LEGISLATION

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

Defence Regulation 2016 Section 36

UK Command Paper 8533 - Campaign Stars and Commemorative Medals Instituted for the 1939-45 War – dated 11 June 1948

Summary of the Conditions of Award of the Campaign Stars, the Defence Medal and the War Medal dated December 1948 (from The Dedman Papers).

Commonwealth of Australia Gazette S374, Amendment of Conditions for Award of the 1939-45 Star dated 17 September 2001.

Commonwealth of Australia Gazette S91, Royal Warrant, The Australia Service Medal 1939-45 - dated 30 November 1949.

Commonwealth of Australia Gazette S309, Amendment of Royal Warrant for Award of the Australia Service Medal 1939-45 - dated 21 August 1996.

Commonwealth of Australia Gazette S122, The Australian Service Medal 1945-1975 Regulations - dated 3 April 1995.

The Australian Service Medal 1945-1975 Regulations - Ministerial Determination dated 6 April 1998.

Commonwealth of Australia Gazette S230, Declaration and Determination under the Australian Service Medal 1945-1975 - Clasp 'SW PACIFIC' dated 29 June 2001.

REASONS FOR DECISION

Background

1. On 17 January 2019 Mrs Margaret Gall made application to the Directorate of Honours and Awards in the Department of Defence (the Directorate) on behalf of her late husband Mr Thomas Gall seeking a full assessment of his medallic entitlement.¹ The application indicated that Mr Gall had passed away on 4 October 2018 and that his war service took place between 1 January 1944 and 30 November 1946 as ‘a civilian member of Cable and Wireless (TELCOM) for service with the British and Commonwealth Forces’.²

2. In the application Mrs Gall nominated Mr Douglas Knight from the Inner East Branch of Melbourne Legacy as her representative.

3. On 20 March 2019, the Directorate wrote to Mr Knight and advised that in response to the application, it had decided that Mr Gall was ‘not eligible for the Australian Service Medal 1945-75 with Clasp ‘SW PACIFIC’ because:

*Mr Gall did not serve as a member of a determined class of persons made by the Minister as per Commonwealth of Australia Gazette, Australian Service Medal 1945-1975 Regulations Determination under Paragraph 4(1), dated 6 April 1998.*³

4. On 19 June 2019 Mr Knight wrote to the Tribunal seeking review of the refusal decision and also seeking assessment of Mr Gall’s entitlement to the 1939-45 Star and the Australia Service Medal 1939-45.⁴ The Tribunal advised Mr Knight that as these later medals had not been refused by the Directorate, the Tribunal would not have jurisdiction to review them.⁵

5. On 20 August 2019 the Directorate provided an additional response to Mr Knight’s initial application.⁶ The Directorate had conducted a further assessment and in doing so, refused to recommend the following medals in addition to the Australian Service Medal 1945-75:

- 1939-45 Star,
- Pacific Star,
- Defence Medal, and
- Australia Service Medal 1939-45.

¹ Application for Defence Medals dated 17 January 2019.

² Ibid.

³ DHA BN4007721 letter to Mr Knight dated 20 March 2019.

⁴ Mr Knight’s letter to the Tribunal dated 19 June 2019.

⁵ DHAAT OUT 2019/148 to Mr Knight dated 26 June 2019.

⁶ DHA BN7173177 letter to Mr Knight dated 20 August 2019.

6. In its response to Mr Knight, the Directorate acknowledged that in 1998, Mr Gall had made application to the United Kingdom Ministry of Defence for the War Medal 1939-45 and the General Service Medal 1914-62.⁷ The Ministry responded to Mr Gall on 5 January 1999 acknowledging his claim and the medals were subsequently approved and issued.⁸

7. On 5 September 2019 Mr Knight made application to the Tribunal seeking review of the Directorate's decisions to refuse the Australia Service Medal 1939-45, the Australian Service Medal 1945-75 and 'Campaign Stars'.⁹

Tribunal Jurisdiction

8. 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. Section 36 of the *Defence Regulation 2016* specifies what constitutes defence awards for the purposes of s110T of the Defence Act. Included in the defence awards and relevant to this matter are the 1939-45 Star (item 3), the Pacific Star (item 7), the Defence Medal (item 11), the Australia Service Medal 1939-45 (item 13) and the Australian Service Medal 1945-75 (item 24). Therefore, the Tribunal has jurisdiction to review the decision by the Directorate to refuse those medals.

Steps taken in the conduct of the review

9. In accordance with its Procedural Rules, on 12 September 2019, the Tribunal wrote to the Secretary of the Department of Defence informing him of Mr Knight's application for review and requested that he provide a report and reasons for decisions in relation to Mr Gall's eligibility for the 1939-45 Star, the Pacific Star, the Defence Medal, the Australia Service Medal 1939-45 and the Australian Service Medal 1945-75 with Clasp 'SW PACIFIC'.¹⁰

10. On 25 October 2019 the Directorate, on behalf of the Secretary, provided the Tribunal with a report.¹¹ In that report, the Directorate confirmed its position that Mr Gall:

Was neither in a designated civilian category to be eligible for the reviewed awards, nor in a qualifying area for the 1939-45 Star, the Pacific Star or Defence Medal,

⁷ Letter from Mr Gall to the Ministry of Defence dated 28 December 1998.

⁸ Ministry of Defence AMO/CIV/408 to Mr Gall dated 5 January 1999.

⁹ Application for Review of Decision dated 5 September 2019.

¹⁰ DHAAT OUT 2019/218 to the Secretary of Defence dated 12 September 2019.

¹¹ DHA OUT 2019/0043 to the Tribunal dated 25 October 2019.

... was not eligible for the ASM 1939-45 as he was not in a designated civilian category to qualify for the award, and

... was not eligible for the ASM 1945-75 with Clasp 'SW PACIFIC' as he was not in a designated civilian category to qualify for this award.

Mr Gall's Service

11. Mr Gall was an Australian employee of the British communications entity, Cable and Wireless Company Ltd based in Adelaide. He was deployed by the Company to Ceylon in May 1945. In a letter to the Department of Veterans' Affairs (DVA) dated December 1998, Mr Gall provided extensive details of his service with Cable and Wireless Ltd in Ceylon and Batavia.¹²

12. Mr Gall stated that:

... on 27 May 1946 (sic 1945), together with other members of the Telcom teams trained by Cable and Wireless Ltd in Adelaide, I arrived in Colombo, Ceylon. We departed Melbourne on 11 May per troopship SS Moreton Bay. This particular TELCOM unit, comprising Australian and New Zealand personnel, had been trained and brought together to provide front line telecommunication support services to the British and Commonwealth forces involved in the South East Asian War theatre. On arrival in Colombo I became an integral part of the South East Asian Command (SEAC) under the overall command of Lord Louis Mountbatten.'

I remained in Colombo until November 1945 when I transferred per troopship SS Matiana to Singapore and then to Batavia, Netherlands East Indies (NEI), arriving there per SS Van Heutz, at that time a hospital ship, on 15 November 1945. On 2 September 1945 SEAC assumed responsibility for the NEI.

Telcom units operating in the NEI, in Batavia and Surabaya, came within the command structure of what was generally known as Allied Forced Netherlands East Indies (AFNEI). Whilst the British Military Administration (BMA) ceased on 31 March 1946, the British military involvement in NEI was not terminated until 29 November 1946. SEAC was dissolved on 30 November 1946. My period of service with Telcom in the NEI from 15 November 1945 until 1 November 1946 was under command of AFNEI. On departing Batavia on 1 November 1946, military service with the British Army terminated and I reverted to civilian status within Cable and Wireless.

¹² Letter from Mr Gall to the Department of Veterans' Affairs dated 28 December 1998.

13. There is no dispute that Mr Gall was employed by Cable and Wireless Company and was deployed by them in Ceylon from 27 May 1945 to early November 1945. There is no evidence as to exactly when he left Ceylon, however there was no dispute that he left Ceylon in early November and arrived in Batavia on 15 November 1945 on the island of Java, which at the time was part of the Netherlands East Indies, and remained there until 1 November 1946.

TELCOM

14. **Background to Telcom.** The Cable and Wireless Company Ltd provided communication support including submarine cables, telegraph services and mobile wireless assembly teams to allied forces in North Africa and Italy and then in Asia and the Pacific during the War.¹³ They provided this support through teams known as ‘Telcom Teams’. From July 1944 the task of the Telcom teams was to carry the cable-heads and advanced wireless stations of the Empire’s telecommunication network into enemy occupied territories.¹⁴

15. The staff of Cable and Wireless suffered the risks, discomforts and frustrations of servicemen in the field with no formal claim to support of the armed services with whom they worked in close association. Securing food and accommodation presented problems and as civilians in plain clothes they faced the risk of being treated as ‘irregulars’ if taken prisoner.

16. To remedy this, the Company proposed to the Army Council that their staff working in forward areas be enrolled in a uniformed organisation and after some consultation, the mutually advantageous Telcom Charter was created to provide protection and support to the employees.

17. **The Telcom Charter.** The Telecom Charter dated May 1944, outlined a scheme to enable employees of Cable and Wireless Ltd, and their associated companies to co-operate more closely with the Armed Forces in a theatre of active operations.¹⁵ The Charter contains the following relevant statements:

Messrs. Cable & Wireless Ltd., though not under the control of the United Kingdom Government or the Services, co-operate very closely with the Services in London and in theatres of active operations, and many submarine cables have been diverted by agreement with the company to serve service needs. At the same time Cable & Wireless personnel are and will continue to be civilians having no military status whatever.

¹³ <https://www.company-histories.com/Cable-and-Wireless-plc-Company-History.html>

¹⁴ ‘Zodiac’ July 1944.

¹⁵ NAA A816, 41/301/76 Barcode 170948 2C-6 -War Office Letter 32/Gen/417 dated May 1944 – *Charter for Telcom.*

TELCOM shall be operative in such theatres of war from time to time determined by the British Joint Communications Tribunal, in consultation with the company concerned, with reference, where necessary to the consent and agreement of the Allied Supreme Commander concerned.

18. The Charter determined that Article 81 of the International Convention Relative to the Treatment of Prisoners of War applied to all members of Telcom. It further declared that all members of Telcom were to wear uniforms to distinguish them from ‘civilians’ and also made provisions to define their individual status by providing equivalent military rank pursuant to Article 81. Mr Gall was designated as a Lieutenant.¹⁶

19. In relation to discipline, the Charter provided that all Telcom members would be ‘subject to all rules, regulations, orders and instructions applicable to British civilians in the theatre of operations in which they are serving.’ Significantly, the Charter declared that members of Telcom would be subject to Military Law under Section 175(8) or Section 176(10) of the United Kingdom Army Act and to the provisions of the Naval Discipline Act when embarked as passengers on board any of His Majesty’s ships.

20. The Charter provided for members to wear a ‘unique’ uniform based upon khaki battledress with distinctive badges and titles. Significantly, the Telcom members ‘retained their civil employment and pay’.¹⁷

Recognition of Mr Gall as a Veteran for the Purposes of the Veterans’ Entitlements Act (1986)

21. In support of the application Mr Knight included documents from Mr Gall’s DVA file. Mr Knight asserted that because Mr Gall had been accepted by DVA as a veteran, then he should also be eligible for related medallic recognition.¹⁸ The DVA file-notes contain mention of two of Mr Gall’s Cable and Wireless colleagues from South Australia, who had applied to DVA for service pensions and Department of Defence medals.

22. The Tribunal noted that on 17 February 1999, Mr Gall was accepted by DVA as a ‘veteran’ for the purposes of the *Veterans’ Entitlements Act (1986)* (the VEA).¹⁹ He was ‘taken to have rendered eligible war service by virtue of *Section 7* of the VEA in relation to service between 27 May 1945 and 1 November 1946’. He also rendered qualifying service for the purposes of the VEA in relation to this service.

23. The basis of the DVA Delegate’s decision to accept Mr Gall as a veteran was that he was deemed to be carrying out a ‘special mission’ as defined in *Section 5C* of the VEA. The Delegate said that he was:

¹⁶ Prisoner of War Certification – Thomas Bruce Gall, Telcom Operator dated 7 June 1945.

¹⁷ ‘Zodiac’ July 1944.

¹⁸ Mr Knight’s letter to the Tribunal dated 19 June 2019.

¹⁹ Report on Eligibility for Service Pension dated 17 February 1999.

satisfied that Mr Gall, by means of his service as an employee of the Commonwealth on special mission while attached to Cable and Wireless (Australia & New Zealand), in conjunction with British Telcom, meets the criteria for 'incurred danger' for an Australian veteran by virtue of his overseas service prior to August 15th 1945.²⁰

24. Because of this decision, Mr Gall became eligible for and received a disability pension which was converted to a war widow's pension upon his death. He also became eligible for official commemoration by the Office of Australian War Graves.²¹

25. Relying on this information, Mr Knight submitted that because Mr Gall 'was an Australian, serving his country in time of war, assessed by DVA as eligible for a Gold Card, that in addition to the awards already made by UK MoD that he is entitled to be awarded the uniquely Australian awards for his wartime and post war operational service'.²²

26. The Tribunal notes that in 2002, the Repatriation Commission retrospectively determined that employees of Cable and Wireless/Telcom were not undertaking a 'special mission' as defined in the VEA and thus invalidated the previous special mission decisions about these cases.²³ The Commission decided to 'grandfather' those cases that had already been approved thus preserving the entitlements granted to Mr Gall.

27. The Tribunal notes that Mr Knight has asserted that the VEA and Defence awards should be linked. The Tribunal is of the view that it is clear that veterans' entitlements are established for the purposes of rehabilitation and are legislated by the VEA. By contrast, entitlements to Defence honours and awards are legislated through the Defence Act and various Royal Warrants, Letters Patent and Regulations. The VEA and the Defence Act are two separate pieces of legislation. They serve different and separate purposes. Despite Mr Knight's assertion that they should be linked, the fact is they are not. Entitlement to honours and awards are established by the Defence Act, Royal Warrants and Letters Patent and Regulations which in turn create the qualifying conditions for awards.

Qualifying Criteria for Campaign Stars and Commemorative Medals for the 1939-45 War

28. **Imperial Basis.** In June 1946 the Imperial Committee on the Grant of Honours, Decorations and Medals announced through White Paper Command 6833 that His Majesty

²⁰ Request for Determination Qualifying Service dated 18 February 1999.

²¹ Office of Australian War Graves letter to Mrs Gall dated 15 October 2018.

²² Mr Knight's letter to the Tribunal dated 19 June 2019.

²³ C47/2002 *Determinations of Special Mission* - Employees of Cable and Wireless/Telcom dated 25 October 2002.

King George VI had approved the institution of a War Medal and various other awards for service in the Second World War including the Defence Medal.²⁴

29. On 11 June 1948 the War Office produced Pamphlet 8533 which gave details of the ‘conditions and qualifying areas for the award of campaign stars, clasps, emblems and medals instituted for the 1939-45 War’.²⁵ The Pamphlet was based upon Command Paper 6833 and provided amplification of the qualifying conditions for Imperial awards established in that Paper. The Pamphlet also delegated administration of those Imperial Second World War campaign stars, clasps, emblems and medals for personnel from the Dominions to their respective Governments.²⁶

30. The introduction to the Pamphlet provides for ‘Civilians – special approved categories’:²⁷

9. Civilians.

(i) Specially approved civilian categories.

The specially approved civilian categories eligible for campaign stars and the War Medal 1939-45 for service in army operational commands, or for the Defence Medal and the War Medal 1939-45 for service overseas from or outside the territory of residence in a non-operational area subjected to enemy air attack or closely threatened, are as follows:

...

(e) Other Organisations and independent members (overseas)

...

Telcom Personnel (Cable and Wireless Ltd.)

...

(ii) Conditions for awards.

(a) It is a condition that civilians wore the approved civilian uniform of their organisation, were full time workers, were subject in certain cases to military law and satisfied the conditions appropriate for military personnel.

²⁴ White Paper Command 6833, referred to in the preamble to *Campaign Stars and Commemorative Medals Instituted for the 1939-45 War*.

²⁵ Pamphlet 8533 ‘*Campaign Stars and Commemorative Medals Instituted for the 1939-45 War*’ dated 11 June 1948.

²⁶ *Ibid.* Sect III, Para 83.

²⁷ *Ibid.* Para 9.(e).

31. **Australian Conditions for the Award of Imperial Campaign Stars and Commemorative Medals for the 1939-45 War.** In Australia a paper titled *Summary of the Conditions of Award of the Campaign Stars, the Defence Medal and the War Medal* was issued in December 1948 under the authority of the Honourable John Dedman, MP, Minister of State for Defence (the Dedman Papers). The Dedman Papers set out the conditions for the award of medals, awards and emblems approved by the King in Command Paper 6833.²⁸

32. The Dedman Papers do not contain the same detail regarding civilian entitlement to awards as the source Imperial Command Paper. They do however discuss approved categories of civilians for the purposes of eligibility for the War Medal 1939-45:

116. Civilians.

(a) The few approved categories of civilians who qualify for Campaign Stars, for instance:

(i) full-time uniformed representatives of the Red Cross and other philanthropic bodies, e.g. Australian Comforts Fund, Y.M.C.A. and Salvation Army serving in operational areas,

(ii) recognised uniformed Press Correspondents serving in army operational commands or in Naval or R.A.A.F. Establishments in the area thereof,

(iii) air crew of civil air transport who have flown on specified routes into theatres of war, or

(iv) other full-time uniformed persons accredited to the Forces in operational areas, will be eligible for the War Medal in addition to the Campaign Stars, provided that 28 days of such qualifying service has been rendered.

(b) Civil categories similar to those described in (i), (ii), (iii) and (iv) above who served outside the country of residence in non-operational areas will not qualify for the War Medal unless such service outside the country of residence was rendered in a territory subjected to enemy air attack or closely threatened.

33. By contrast to the source Imperial Command Paper, the Dedman Papers do not list specific companies such as Cable and Wireless. A summary of the criteria for the awards the applicant seeks, drawn from the Dedman Papers follows:

34. **The 1939-45 Star Qualifying Criteria.** The Dedman Papers state that the 1939-45 Star is granted for service in operations during the period from the 3rd September 1939 to the

²⁸ *Commonwealth of Australia - Summary of the Conditions of Award of the Campaign Stars, the Defence Medal and the War Medal* – issued by the authority of The Hon. John J. Dedman, MP., Minister of State for Defence – dated December 1948.

2nd September 1945.²⁹ The conditions are silent regarding civilian categorisation. The eligibility criteria specifies the minimum qualification periods and declares qualifying areas for the award.

35. For the Navy and Army, the minimum qualification period is six months within the qualifying area and two months for the Air Force. Ceylon is specifically excluded as a qualifying area for the award.³⁰

36. **The Pacific Star Qualifying Criteria.** The Dedman Papers state that the Pacific Star is awarded for entry into operational service in the Pacific theatre between the 8th December 1941 and the 2nd September 1945, inclusive.³¹ In the Army and the Air Force there is no prior time qualification. In the Navy the 1939-45 Star must be earned by six months service in operations before a person can qualify for the Pacific Star. 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.

37. The Dedman Papers define the ‘areas of qualifying operational service’ for Campaign Stars which apply to service on land.³² Java is included in the qualifying areas for the Pacific Star provided service occurred prior to 2 September 1945.³³

38. **The Defence Medal Qualifying Criteria.** The Defence Medal is to be granted to members ‘serving for six months in non-operational areas subjected to enemy air attack, or closely threatened’ and who served for six months in the aggregate at any time between 3 September 1939 and 2 September 1945.³⁴ ‘Non-operational areas subjected to enemy air attack or closely threatened’ are specified and include Ceylon between 3 September 1939 and 8 May 1945.³⁵ Batavia and Java are not specified.

Qualifying Criteria for Australian Service Medals from 1939 to 1975

39. **The Australia Service Medal 1939-45.** The Australia Service Medal 1939-45 was established by Letters Patent on 30 August 1949 to recognise services rendered between 3 September 1939 and 2 September 1945 by individuals who, when their country was in danger, answered the call and saw service in their country’s defence.³⁶

40. Eligible persons included ‘representatives of philanthropic bodies, official press correspondents, official photographers and other civil personnel attached to the Armed Forces in an official capacity for full-time duty in uniform’.

²⁹ Ibid. Para 1.

³⁰ Ibid. Para 4(b).

³¹ Ibid. Para 36.

³² Ibid. Para 121.

³³ Ibid. Para 127.

³⁴ Ibid. Para 101.

³⁵ Ibid. Para 110.

³⁶ *Commonwealth of Australia Gazette S91, Royal Warrant, The Australia Service Medal 1939-45* - dated 30 November 1949.

41. The period of qualifying service for full-time duty was originally eighteen months, at home or overseas; and three years for part-time duty. The periods for full-time duty were reduced to 30 days on 10 February 1995.³⁷

42. **Australian Service Medal 1945-75.** The Australian Service Medal 1945-75 was established by Letters Patent on 22 February 1995 for the purpose of according recognition to members of the Defence Force, and certain other persons, who rendered service in non-warlike military operations.³⁸ The award is governed by the Regulations set out in the Schedule, these state that the Governor-General may:

3. *declare a non-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 16 September 1975, to be a declared operation for the purposes of the Regulations.*

Conditions for award of the Medal are that:

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 the purposes of these Regulations:*

who served in connection with a declared operation.

(2) *The conditions for the award of the Medal are determined by the Governor-General on the recommendation of a Minister.*

(3) *The Medal may only be awarded to a person who fulfils the conditions for the award of the Medal.*

43. On 6 April 1998, the Minister made a determination pursuant to paragraph 4(1)(b) of the above Regulation.³⁹ The Minister determined that the classes of persons who may be awarded the Australian Service Medal 1945-75 with Clasp 'SW PACIFIC' were:

(a) *civilian members of the Department of Defence;*

(b) *civilian contactors of the Department of Defence:*

...

44. On 8 June 2001 the Governor General made a declaration pursuant to the Regulation.⁴⁰ He declared that:

³⁷ Commonwealth of Australia Gazette S309, Amendment of Royal Warrant for Award of the Australia Service Medal 1939-45 - dated 21 August 1996.

³⁸ Commonwealth of Australia Gazette S122, The Australian Service Medal 1945-1975 Regulations - dated 3 April 1995.

³⁹ The Australian Service Medal 1945-1975 Regulations - Ministerial Determination dated 6 April 1998.

⁴⁰ Commonwealth of Australia Gazette S230, Declaration and Determination under the Australian Service Medal 1945-1975 - Clasp 'SW PACIFIC' dated 29 June 2001.

... the following non-warlike operations in which members of the Australian Defence Force were engaged to be a declared operation for the purposes of the Regulations:

- (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

...

45. In the same declaration, the Governor General also determined that:

... that the conditions for award of the Australian Service Medal 1945-75 with Clasp 'SW PACIFIC' ("the Medal") for the declared operation are:

- (i) the Medal may be awarded to a member of the Australian Defence Force who rendered service as such a member while posted to or serving as a member of the Australian element of the declared operation for a period of 30 days, or for periods amounting in the aggregate to 30 days;

...

- (v) the Medal may be awarded to a person who rendered service as part of the Australian element of the declared operation for a period of 30 days or more, or for periods amounting in the aggregate to 30 days or more and who, in accordance with a determination made by the Minister under paragraph 4(1)(b) of the Regulations, is in a class of persons who may be awarded the Medal;

...

The Defence Reasons for Refusal

46. The Defence Report dated 25 October 2019 affirms its decision that Mr Gall is not eligible for the 1939-45 Star, Pacific Star, Defence Medal, Australia Service Medal 1939-45 and the Australian Service Medal 1945-75 with Clasp 'SW PACIFIC'. The report states that:

... the review confirmed Mr Gall was neither in a designated civilian category to be eligible for the reviewed awards, nor in a qualifying area for the 1939-45 Star, the Pacific Star or Defence Medal.⁴¹

47. Defence said that assessments for eligibility for defence honours and awards usually rely on material within an Australian Defence Force service record. As Mr Gall was not a member of the Australian Defence Force there are no official records available for this assessment. As a result, this assessment was reliant purely on the information provided in the application to the Directorate dated 17 January 2019.

⁴¹ The Defence Submission dated 25 October 2019, Para 48.

Tribunal's Consideration of the Matter

48. **Mr Gall's Status and Overseas Service.** Noting the material supplied by Mr Gall in support of his DVA claims, the history of Telcom and its Charter, the material provided by Mr Knight and the Defence Report, the Tribunal is reasonably satisfied that Mr Gall was a civilian employee of Cable and Wireless Company Limited. In making this finding the Tribunal gave great weight to the fact that the Charter indicated that the staff of Cable and Wireless retained their civilian employment and were paid by the Company. Whilst members wore uniform, it was distinctive and was done to provide them with protection. Similarly, whilst they may have been subjected to military law, it is the Tribunal's view that this was done for administrative expediency in order to allow access to services and to allow the military to retain control when necessary. The fact is that the Company was tasked to supply commercial wireless and cable communication services to the British and Commonwealth Forces but their employees could not be compelled to either work or remain employed. This is a fundamental difference between servicemen and civilians.

49. Turning to Mr Gall's status as a 'veteran', while Mr Gall may have subsequently been declared to be a veteran for the purposes of the VEA because he participated in a 'special mission' as defined in that Act, there is no evidence to suggest that he was at any time a member of the Armed Forces or the Department of Defence. The Tribunal also notes that this status was subsequently revoked. While Mr Gall may have been subject to military law and been authorised to wear uniform, the Tribunal is reasonably satisfied that these measures were emplaced at the time to protect individuals who were not members of the Forces.

50. In relation to his overseas service, there is no dispute that Mr Gall was deployed as a member of a Telcom team which was a subsidiary of Cable and Wireless Company to Ceylon from 27 May 1945 until early November 1945. There was also no dispute that he then re-deployed to Batavia arriving there on 15 November 1945 and remained in Batavia until 1 November 1946.

51. **Finding in Relation to Status and Service.** Having reviewed the material before it and particularly the history of Telcom and its Charter and the applicant's evidence, the Tribunal finds that during the period from 27 May 1945 to 1 November 1946, Mr Gall was a civilian employee of Cable and Wireless Company working in a Telcom team who, by virtue of his employment, was authorised to wear military uniform and was subject to military law.

52. Having determined Mr Gall's employment status, the Tribunal turned to consider whether or not he meets the eligibility criteria for the five awards that the applicant seeks.

53. **Legislative Basis for Campaign Stars and Medals.** The Tribunal is reasonably satisfied that the Dedman Papers provide the authorisation for Campaign Stars and Medals for service during the World War Two. Each award has specific and different eligibility criteria

as detailed previously in this report. Turning to Mr Gall's eligibility for Campaign Stars and Medals, the Tribunal makes the following findings.

54. **Mr Gall's Eligibility for the 1939-45 Star.** The Tribunal notes that Mr Gall's eligible period of service for the 1939-45 Star was from 27 May 1945 to 2 September 1945, a period of three months and 6 days and this period of service was in Ceylon. As Ceylon is specifically excluded as a qualifying area, Mr Gall does not meet the eligibility criteria for the 1939-45 Star and is not entitled to the award regardless of the category of his civilian employment.

55. **Mr Gall's Eligibility for the Pacific Star.** The Tribunal notes that Mr Gall's potential eligible period of service for the Pacific Star was from 15 November 1945 to 1 November 1946 when he was in Batavia. Batavia is on the north coast of Java and, as service in Java must have occurred prior to 2 September 1945 and Mr Gall did not arrive there until 15 November 1945, he does not meet the eligibility criteria for the Pacific Star and is not entitled to the award regardless of the category of his civilian employment.

56. **Mr Gall's Eligibility for the Defence Medal.** The Tribunal notes that Mr Gall's service in Ceylon commenced on 27 May 1945. Eligibility for the Defence Medal requires the completion of six months service in Ceylon prior to 8 May 1945. Mr Gall does not satisfy this requirement for his service in Ceylon.

57. The Tribunal notes that there may be an argument that Mr Gall could be considered to be 'other full-time (sic full-time) uniformed persons accredited to the Forces in operational areas' for the purposes of the Defence Medal. However even if this were the case, he still would not qualify as his service in the qualifying area commenced after 8 May 2015 which was the cut off date for service in Ceylon. Java and Batavia are not specified as qualifying areas for the Defence Medal.

58. The Tribunal finds that Mr Gall does not meet the eligibility criteria for the Defence Medal and is not entitled to the award regardless of the category of his civilian employment.

59. **Legislative Basis for Australian Service Medals.** The Tribunal is reasonably satisfied that the respective Service Medals are Australian awards and therefore the eligibility conditions for these awards are specified in the Regulations. For the Australia Service Medal 1939-45, the Regulation is specified in *Commonwealth of Australia Gazette S91, Royal Warrant, The Australia Service Medal 1939-45* - dated 30 November 1949. For the Australian Service Medal 1945-75, the Regulation is specified in *Commonwealth of Australia Gazette S122, The Australian Service Medal 1945-1975 Regulations* - dated 3 April 1995. The details of these Regulations and subsequent Determinations and Declarations have been addressed earlier in this report. Turning to Mr Gall's eligibility for these awards, the Tribunal makes the following findings:

60. **The Australia Service Medal 1939-45.** The Tribunal notes that the reason provided in the Defence Report for refusing Mr Gall's entitlement to the Australia Service Medal 1939-45 was that 'Cable and Wireless Company Limited and Telcom team employees are not in a designated civilian category for this award'.⁴² The eligibility criteria indicates that 'other civil personnel attached to the Armed Forces in an official capacity for full-time duty in uniform shall also be eligible'.⁴³ The Tribunal notes that there is no requirement in the criteria that an individual be 'in a designated civilian category' as claimed by Defence.

61. The Tribunal previously established that Mr Gall was a full-time civilian employee of Cable and Wireless Company and the company was officially engaged to provide services through Telcom teams in support of the War effort. Mr Gall was also in uniform. Having carefully reviewed the eligibility criteria, the Tribunal is reasonably satisfied that Mr Gall was an eligible person.

62. The Tribunal is also reasonably satisfied that Mr Gall completed more than 30 days of qualifying service as stipulated by the amended Regulation as he was in Ceylon from 27 May 1945 and remained there until the cessation of the War on 2 September 1945 – a period of 128 days.

63. Accordingly, the Tribunal finds that Mr Gall meets the eligibility criteria for the Australia Service Medal 1939-45.

64. **The Australian Service Medal 1945 -75 with Clasp 'SW PACIFIC'.** The Tribunal is reasonably satisfied that for the purposes of the Australian Service Medal 1945-75 Regulations, Mr Gall 'rendered service in non-warlike military operations' whilst in Batavia from 15 November 1945 to 1 November 1946.⁴⁴ Further, the Tribunal is reasonably satisfied that this service was in an area which was declared as an operation for qualifying purposes - the Netherlands Indies.⁴⁵ The Tribunal is also satisfied that Mr Gall could reasonably be considered to have been 'part of the Australian element of the declared operation for a period of 30 days or more'.⁴⁶

65. However, to be eligible for the award, Mr Gall must also be in 'the class of persons determined by a Minister'.⁴⁷ The two potentially relevant classes⁴⁸ are either as a 'civilian member of the Department of Defence' or as a 'civilian contactor of the Department of Defence'.⁴⁸ Having already found that Mr Gall was a civilian employee of Cable and Wireless Company Ltd, and noting that there is no evidence to suggest that Mr Gall was either a member of the Department of Defence or contracted by them, the Tribunal is reasonably

⁴² Defence Submission dated 25 October 2019, Para 44.b.

⁴³ *Commonwealth of Australia Gazette S91, Royal Warrant, The Australia Service Medal 1939-45* - dated 30 November 1949, Para 4.

⁴⁴ *Commonwealth of Australia Gazette S230, Declaration and Determination under the Australian Service Medal 1945-1975 - Clasp 'SW PACIFIC'* dated 29 June 2001, Para (c)(v).

⁴⁵ *Ibid.* Para (a)(i).

⁴⁶ *Ibid.* Para (c)(i).

⁴⁷ *Commonwealth of Australia Gazette S122, The Australian Service Medal 1945-1975 Regulations* - dated 3 April 1995, Para 4(b).

⁴⁸ *The Australian Service Medal 1945-1975 Regulations* - Ministerial Determination dated 6 April 1998.

satisfied that for the purposes of the Regulation, Mr Gall cannot be considered to have been ‘a person in a class of persons determined by a Minister.’

66. Accordingly, the Tribunal finds that Mr Gall does not meet the eligibility criteria for the Australian Service Medal 1945-75 with Clasp ‘SW PACIFIC’.

DECISION

67. The Tribunal decided to:

- a. Affirm the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Thomas Gall is not eligible for the award of the 1939-45 Star, the Pacific Star, the Defence Medal and the Australian Service Medal 1945-75 with Clasp ‘SW PACIFIC’,
- b. Set Aside the decision of the Directorate of Honours and Awards of the Department of Defence that Mr Thomas Gall is not eligible for the award of the Australia Service Medal 1939-45, and
- c. Substitute its decision that Mr Thomas Gall is eligible for the award of the Australia Service Medal 1939-45 and to direct that the award be issued.