



Australian Government

Defence Honours and Awards Appeals Tribunal

Rutherford and the Department of Defence DHAAT 6 (3 June 2021)

File Number(s) 2020/029

Re: **Major Phillip Rutherford (Retd)**
Applicant

And: **Department of Defence**
Respondent

Tribunal

Air Vice-Marshal John Quaipe AM (Retd) Presiding Member
Rear Admiral James Goldrick AO CSC RAN (Retd)
Mr David Ashley AM

Hearing Date 10 May 2021

DECISION

On 3 June 2021, having reviewed the decision of the Department of Defence of 29 May 2020 refusing Major Rutherford's application for the award of the Republic of Vietnam Civil Actions Medal Unit Citation as a member of Australian Army 547 Signal Troop, the Tribunal decided to affirm the decision that members of 547 Signal Troop are not eligible for the award.

CATCHWORDS

FOREIGN AWARD – *Republic of Vietnam Civil Actions Medal Unit Citation* – eligibility criteria – *547 Signal Troop* – *303rd Radio Research Battalion*.

LEGISLATION

Defence Act 1903 – Part VIIC - Sections 110T, 110V(1), 110VB(2).

REASONS FOR DECISION

Introduction

1. The applicant, Major Phillip Rutherford (Retd) seeks review of a decision by Ms Allison Augustine, Assistant Director Policy and Tribunal Management of the Directorate of Honours and Awards in the Department of Defence (the Directorate) to not recommend the award of the Republic of Vietnam Civil Actions Medal (RVCAM) Unit Citation to Major Rutherford for his service in Vietnam. That decision was based on a conclusion that members of the Australian Army's 547 Signal Troop are not eligible for the award.

2. On 21 June 2018, Major Rutherford applied to the Directorate seeking the award of the RVCAM Unit Citation to 547 Signal Troop for its service in Vietnam. At the time of his application to the Directorate, the Tribunal was, in response to a separate application from Major Rutherford, preparing to review the eligibility of members of 547 Signal Troop to be awarded the Republic of Vietnam Cross of Gallantry with Palm Unit Citation (RVCGPUC). The Tribunal did not proceed with that separate matter as, during the review process, the Minister accepted a recommendation from Defence to allow the award.

3. On 29 May 2020, Ms Allison Augustine wrote to Major Rutherford advising him that she could not recommend him for the RVCAM Unit Citation. In refusing Major Rutherford's application, Ms Augustine stated that although it was not possible to receive advice from the Government of the Republic of Vietnam, the Directorate had consulted the United States of America Embassy in Canberra seeking the United States Government's position. That advice was duly provided with the conclusion '*... there is no avenue to award a U.S. unit decoration to the 547th Signal Troop*'.

4. On 20 August 2020, Major Rutherford made application to the Tribunal for review of Ms Augustine's decision.

Tribunal jurisdiction and decision under review

5. Pursuant to s110VB(2) of the *Defence Act 1903* (the Act) the Tribunal has jurisdiction to review a reviewable decision relating to a foreign award 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 or group of persons for a defence honour, defence award, or foreign award, in response to an application. Section 110T of the Act defines a foreign award as an honour or award given by a government of a foreign country, or by an international organisation.

6. The Tribunal was satisfied that Major Rutherford's application of 21 June 2018 constituted an application as required by s110V(1)(c) of the Act. The Tribunal was satisfied that Ms Augustine's response of 29 May 2020 constituted a refusal to recommend Major Rutherford for the Republic of Vietnam Civil Actions Medal (RVCAM) Unit Citation, thus satisfying the requirements of s110V(1)(a) and (b) of the Act and constituting the *reviewable decision*.

7. The Tribunal is bound by the eligibility criteria that governed the making of the reviewable decision, as required by s110VB(6) of the Act. In accordance with s110VB(2) of the Act, as the Applicant seeks a foreign award, the Tribunal has the power to affirm the decision or set the decision aside.

Conduct of the review

8. In accordance with the Tribunal's Procedural Rules, on 23 October 2020, in response to Major Rutherford's application for review, Defence provided the Tribunal with a report detailing departmental consideration of the matter. Major Rutherford has read and provided comments on that report.

9. A public hearing was conducted in Canberra on 10 May 2021. Major Rutherford, Lieutenant Colonel Peter Murray (Retd), Lieutenant Colonel Steven Hart (Retd), Lieutenant Colonel Ian Bowen (Retd) and Major Bob Hartley (Retd), all former members of 547 Signal Troop, were present and gave evidence. Defence was represented by Ms Augustine, Ms Jo Callaghan (Assistant Director Service and Campaign Awards), Colonel Bronwyn Johnstone CSM (Army Headquarters), and Ms Melissa Jones (Defence People Group Special Counsel).

Major Rutherford's written submission

10. Major Rutherford's application for the RVCAM Unit Citation is based on that award having been made by the Government of the Republic of Vietnam and accepted by the United States Army 303rd Radio Research Battalion. Major Rutherford contends that 547 Signal Troop was a subordinate element of the 303rd Radio Research Battalion and that members of the troop should be eligible to accept and wear the award in the same manner as other subordinate United States Army elements listed in United States Department of the Army General Order 6/74 (DAGO 6/74).

11. Major Rutherford's extensive and well researched submission documents the making of the award and the processes under which he assesses that United States authorities failed to recognise and include 547 Signal Troop as a subordinate element. Major Rutherford regards the previous Defence recommendation for 547 Signal Troop to be considered eligible for the RVCGWPU on the basis of its command relationship with United States Army forces as setting a precedent for the award of the RVCAM Unit Citation to the troop.

RVCAM Unit Citation award to 303rd Radio Research Battalion

12. The RVCAM was established by the now defunct Government of the Republic of Vietnam on 12 May 1964, to be awarded to its military personnel and to allied military personnel for the performance of outstanding achievements in civil affairs. On 20 January 1968, a unit citation emblem and streamer were created to allow it to be awarded as a unit citation.

13. On 31 July 1971, General Cao Van Vien, Chief of the Joint General Staff of the Republic of Vietnam Armed Forces wrote to General Creighton W. Abrams, Commander of United States Military Assistance Command Vietnam (US-MACV) offering the award of the RVCAM First Class to the 303rd Radio Research Battalion. On 28 September 1971, General Abrams responded with the advice that the award would be accepted if offered by the Government of the Republic of Vietnam.

14. On 11 October 1971, General Vien signed a decree making the citation. The award was made to the 303rd Radio Research Battalion, United States Army, and cited six '*outstanding achievements*' of the battalion as follows:

- *Sending Civil Affairs Teams, on a rotational basis, to operate at Da Minh Orphanage, and Bien Hoa Mental Hospital. These teams distributed children's toys, shoes, tooth paste, soap and clothing and carried out the Orphanage and Mental Hospital development projects.*
- *Making self-contributions and establishing contact with International Charitable organisations to provide 5,600 dollars and 196,000 Vietnamese piasters for the Da Minh Orphanage.*
- *Providing 2,7500 (sic) man-hours for the benefit of the children of Da Minh orphanage and patients at Bien Hoa Mental Hospital.*
- *Distributing 2,550 pounds of clothing.*
- *Providing 18,800 pounds of rice.*
- *Rebuilding and painting the two floors of the temporary shelter at Bien Hoa Mental Hospital.*

15. On 26 October 1971, Major M.G. Benware, Assistant Adjutant General, Headquarters, United States Army Vietnam, wrote to the commanding officer of the 509th Radio Research Group (the 303rd Radio Research Battalion's parent unit) advising that the RVCAM Unit Citation had been awarded to 303rd Radio Research Battalion for the cited period. Major Benware's letter went on to request a troop listing of all assigned and attached units to be included in the award.

16. On 4 November 1971, Captain G.W. Londergan, 509th Radio Research Group Adjutant, provided the requested listing. It did not include 547 Signal Troop or any other allied unit. That listing was eventually set out in DAGO 6/74.

Major Rutherford's evidence at hearing

17. Major Rutherford commenced his oral submission with his view that the hearing should focus on one question: '*was a unit of the Australian Army under operational control of a unit of the US Army?*' Major Rutherford then proceeded to examine that question through a number of accepted precedents and references. Major Rutherford is of the view that if the nature of the command relationship between 547 Signal Troop and the United States Army 303rd Radio Research Battalion was correctly understood, then members of the troop would be eligible for the RVCAM Unit Citation. He again presented the argument that the position taken by Defence with respect to the award of the RVCGWPU to 547 Signal Troop and 1 Royal Australian Regiment is directly opposed to the position taken with respect to the RVCAM Unit Citation.

18. In response to a question from the Tribunal, Major Rutherford explained that in his view the nature of 547 Signal Troop's operations in Vietnam and the service of its members have not been adequately recognised. He also expressed his view that the secrecy of 547 Signal Troop's work in Vietnam and sensitivity regarding its relationship with other United States government agencies meant the troop's role in Vietnam and its command-and-control relationships were not acknowledged at the time and consequently remain unknown, and unknowable from contemporaneous records.

19. Major Rutherford was asked by the Tribunal about 547 Signal Troop's contribution to the specific outstanding achievements listed in the Vietnamese citation. He agreed that 547 Signal Troop was located some seventy kilometres away from the location of the orphanage and the hospital identified in the citation and stated that the troop had been engaged in 'similar activities'. This testimony was confirmed by other witnesses, notably that these were Australian led and organised.

Defence's written submission

20. The Defence report submitted in response to Major Rutherford's application for review identifies that the RVCAM Unit Citation was awarded to the United States Army 303rd Radio Research Battalion. The report notes internal United States Army correspondence to identify the listing of units assigned and attached to 303rd Radio Research Battalion and the subsequent promulgation of the award in DAGO 6/74.

21. The Defence report includes a response received from the United States Embassy in Canberra that notes the absence of documentation recording formal assignment or attachment of 547 Signal Troop. On this basis, the Embassy advice concludes, '*there is no avenue to award a U.S. unit decoration to the 547th Signal Troop.*'

22. The Defence report also states that the RVCAM Unit Citation is not an award included in the Schedule of Approved Countries and Awards made subordinate to the Guidelines concerning the acceptance and wearing of foreign awards by Australians, and that Defence does not have the ministerial delegation to approve the acceptance and wearing of the award.

Defence submissions at hearing

23. At the hearing, Ms Augustine stated that the key reason why Defence could not endorse the awarding of the citation is that no record or evidence could be found of the citation being offered or awarded to any Australian command or unit by the Government of the Republic of Vietnam. In this instance the Government of Republic of Vietnam offered the citation to the United States Government for the 303rd Radio Research Battalion. The United States Government accepted the citation and promulgated a list of those units it considered to be assigned to the battalion for the award. This listing did not include 547 Signal Troop. For this reason, the Directorate approached the United States Embassy for the guidance previously mentioned.

24. In response to Major Rutherford's arguments, Ms Augustine submitted, in summary, that the Army recommendation for 547 Signal Troop to be awarded the RVCGWPU was based on the troop being under the operational control of US-MACV

and thereby meeting the eligibility criteria as set out in the corresponding Vietnamese citation. Ms Augustine said that the same approach could not be taken for the RVCAM Unit Citation as the award was made to 303rd Radio Research Battalion which then identified the assigned units to be considered for the award. 547 Signal Troop was not listed. Unlike the RVCGWPU, the RVCAM Unit Citation was not awarded by the Government of the Republic of Vietnam to all units under the operational control of US-MACV.

25. Ms Augustine said that Defence regarded the Vietnamese citation and the United States list of assigned units as the authority for the award of the RVCAM Unit Citation to 303rd Radio Research Battalion. As 547 Signal Troop was not included in those documents, in Defence's view is that 547 Signal Troop cannot be awarded the RVCAM Unit Citation.

Other Evidence at Hearing

26. Lieutenant Colonel Bowen and Lieutenant Colonel Hart both told the Tribunal of the lack of awareness within the United States military organisation in Vietnam of 547 Signal Troop and its contribution. Major Hartley spoke of the long history of Army signals units engaging with local communities and a lack of recognition for such activities from the Australian Army. In his final comments to the Tribunal, Major Rutherford spoke of the absence of awareness of the war fighting contribution made by 547 Signal Troop. He said that rather than being seen as just another '*bit of bling*' the award would acknowledge that '*yes, we did good, even though no-one else here at home thinks so.*'

Tribunal consideration

27. **The Issue.** The issue for the Tribunal to consider is whether the Republic of Vietnam Civil Actions Medal Unit Citation was awarded to 547 Signal Troop.

28. In undertaking this consideration, the Tribunal is bound to apply the eligibility criteria. The citation issued by the Government of the Republic of Vietnam constitutes those criteria and that citation is quite specific in awarding the Civil Actions Medal to 'the 303rd Radio Research Battalion, United States Army.' Unlike other similar Vietnamese unit citation awards, the citation makes no mention of subordinate units under operational control, or of units attached or assigned, other than a specific mention of the US 175th Radio Research Company.

29. Major Rutherford has proposed that the nature of the command relationship between the 303rd Radio Research Battalion and 547 Signal Troop establishes 547 Signal Troop's eligibility for the award. The Tribunal does not accept this proposition. In the administration of any foreign award, the Australian government can only apply the eligibility criteria - being in this case the Vietnamese citation, which confers eligibility to the 303rd Radio Research Battalion. The question of the constitution of the unit that was awarded the citation, and whether that should include any Australian elements, can only be determined by the government of that unit, being the United States Government. That government's determination was promulgated by DAGO 6/74 and 547 Signal Troop was not included.

30. Although constrained by the eligibility criteria, the Tribunal did consider whether 547 Signal Troop should have been included in this award. The Tribunal concluded that the specific civil actions identified by the Government of the Republic of Vietnam in its citation reinforced that government's intent to make this award specifically to the 303rd Radio Research Battalion. While the Tribunal acknowledges the role of 547 Signal Troop in Vietnam and the command arrangements detailed by Major Rutherford, the evidence is that the troop did not participate in the specified actions. The Tribunal accepts that members of 547 Signal troop participated in *similar* activities, but cannot interpret that as conferring eligibility for the RVCAM Unit Citation awarded to the 303rd Radio Research Battalion.

Conclusion

31. The Tribunal finds that members of 547 Signal Troop are not eligible for the Republic of Vietnam Civil Actions Medal Unit Citation awarded to the United States Army 303rd Radio Research Battalion.

TRIBUNAL DECISION

32. Having reviewed the decision of the Department of Defence refusing Major Rutherford's application for the award of the Republic of Vietnam Civil Actions Medal Unit Citation as a member of Australian Army 547 Signal Troop, the Tribunal decided to affirm the decision that members of 547 Signal Troop are not eligible for the award.