

PAT/1/91

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice

Friday, 5th July 1991

Before:

MR. JUSTICE DRAKE

Crown Office List

SECRETARY OF STATE FOR SOCIAL SECURITY

-v-

WILLIAM S. MUIR

JUDGMENT

(As approved by Judge)

MR. JUSTICE DRAKE: This is an appeal by the Secretary of State against a decision of the Pensions Appeal Tribunal who allowed an appeal by Mr. Muir. They found that the disablement condition from which he suffered was attributable to and aggravated by service. Mr. Muir served for a period of time in the RAFVR. It seems from the documents that he was at first accepted into the RAF for the brief period of a day but the documents show that he was, as it is said, "embodied" in the RAF on 13th September 1943. That is the effective date upon which everybody is agreed. There he did aircrew training, but for some reason he did not complete that. Whether or not he failed to pass some of the necessary qualifications or, as he said in a statement which he made, aircrews were not required for a time and so he did not progress with the course, one does not know, but what is clear is that on 10th or 11th June 1964 he left the RAF, in the normal sense of the word, and for a time worked down the mines.

The Tribunal found as a fact that he had worked in the mines and was on the Reserve from the RAF from June 1944 until March 1947, and on that basis it appears that he went back to the RAF merely for the purpose of being discharged from the RAFVR.

The point taken on behalf of the appellant, the Secretary of State, is that if he was indeed working in the mines from June 1944 until June 1947, that is not a service occupation. It is accepted that his condition of bronchitis and asthma arose from working in the mines. It is said

that if he was on the Reserve and not in service life, then he cannot be entitled to a pension for a condition or aggravation of a condition attributable to service, since the condition would be attributable to a civilian occupation.

There was some dispute upon the facts before the Tribunal as to his exact status during the period between June 1944 and 1947. Accordingly, the Tribunal, applying Article 4 to that question, concluded their decision in these words:

"The evidence at present available fails to satisfy us beyond reasonable doubt that the Appellant was not a serving airman whilst he was working in the mines, which was, clearly, the point at which the disability became aggravated."

The Secretary of State accepts that the burden is upon him to show that Mr. Muir's condition arose from a non-service occupation, but it is said that that burden can be discharged because it has been established, irrespective of his precise status, that his condition arose from a civilian occupation.

It seems to me that on the findings of fact made by the Tribunal there is a finding that he was working in the coal mines from June 1944 until March 1947. On that basis, I would be entitled to hold that the matter is a matter of fact. I cannot go behind that finding. However, Mr. Methuen has taken me through the documents to show that there is confusion, and that in the circumstances the Tribunal were entitled to reach the conclusion they did, that there was doubt as to his status during that time. I do not think that will work. Irrespective of the status, it seems to me that on the Tribunal's finding he was working in the mines.

However, I have looked at the documents and I shall refer to them. The points relied on by Mr. Methuen are that the applicant himself before the Tribunal had made a statement -- it is page 14 of the Tribunal's statement of case -- in which he stated:

"The statement of Service indicates I volunteered for the Coal Mines. This was not so, I completed the final stages of my training as a pilot in the RAF - a bottle neck developed and I was temporarily released and seconded to the Coal Mines. ... my RAF pay book shows clearly that I was in the (RAF) service from 7.11.42 until 10.3.47"

At page 15 in the Statement of Case there is a reference to a letter from the Ministry of Defence, Innsworth. Innsworth was the old RAF records headquarters. The letter there says:

"I have checked our records and I am able to confirm that the above named airman was released from the Royal Air Force for employment in the mines on 18 July 1944. He was discharged from the Royal Air Force on 10 March 1947. During this period he was considered as being in full-time service."

That goes to his status during that time but not as to what he was doing between 1944 and March 1947. Then, at page 16 it is shown that the Department of Social Services made further enquiries to the Ministry of Defence, asking for confirmation beyond doubt as to precisely what the position was between 1944 and 1947.

At page 17 of the Statement of Case, the reply to their enquiries recorded this:

".... I can only reiterate what was said to you in my letter of 20 March It might, however, be helpful if I explained again that Mr. Muir was released from the RAF in June 1944 and volunteered to work in the coal mines. Such employment was of a civil nature ... I apologise for the misunderstanding which has arisen over the differing advice which emanated from this Department in respect of Mr. Muir's status, however, I can now confirm that the above interpretation is the concerted view of all concerned."

Mr. Methuen is right in saying that the documentation thus far does on some points appear to be somewhat confused. But it seems to me that the matter is made clear beyond any peradventure by the certificate of discharge of Mr. Muir. That is given in March 1947. It is difficult to read the date, but it looks as though it is 20th March, but it is clearly 1947. That is from the Records Office, Royal Air Force. That says "date reported for regular service 13th September 1943" and "date of discharge 10th March 1947". At the foot of the certificate is this statement:

"This airman was under training as a Pilot Navigator Bomber but was withdrawn from air crew training and volunteered for service in the coal mines.
Released from service under the Armed Forces (Conditions of Service) Act 1939 from 11th June 1944 to 10th March 1947."

It seems to me that this certificate does put the matter beyond doubt to show that Mr. Muir did in fact serve in the coal mines over that period of time. In those circumstances, it seems to me that his precise status during that time is not the important matter. To put it beyond doubt, it seems to be clear that he was on the Reserve at that time. But it seems to me to be absolutely clear that from June 1944 until March 1947 he was working in a civilian occupation. Therefore, the Secretary of State has proved beyond reasonable doubt that this man is not entitled to a service pension. Accordingly, I will allow this appeal.

MR. JAY: The question of costs is provided for under the Scheme.
