

HIGH COURT OF JUSTICE

KING'S BENCH DIVISION

(Denning, J.)

6th October, 1948

WINDMAN v. THE MINISTER OF PENSIONS

JUDGMENT

MR. JUSTICE DENNING:- This is the case of Mr. Windman, who served for two years in the Royal Air Force. Eventually he was discharged on the ground of Hodgkin's disease. The Minister rejected a claim for attributability or aggravation but on appeal to a Tribunal there was found to be aggravation. Subsequently another Tribunal found that that aggravation had passed away.

The singular thing in this case is that the Tribunal which found that aggravation passed away did it on the ground that their medical member advised them that this man had never had Hodgkin's disease at all; Hodgkin's disease was, in his view, likely to be fatal, or, at all events, the man would have been very much worse than he was. On that ground the second Tribunal said the aggravation had passed away.

As I have said in other cases, if a Tribunal take the view that the original diagnosis is wrong they must not then and there substitute their own diagnosis. They must adjourn the case for reconsideration by the Medical Services Division, on the one side, and the man's doctor on the other. Take this very case: the man went back to the Middlesex Hospital and said: "The Tribunal said I haven't got Hodgkin's disease." The Middlesex Hospital, however, adhered to their view that he had Hodgkin's disease. It is quite clear that in such a situation the matter must be reconsidered.

Mr. Evans for the man, however, asks me to go further. He asks me to award attributability because the decision of the earlier Tribunal in 1944 against the man on that point was given without evidence. There was then only an unsigned decision of the Ministry put in evidence. That is a legal objection which is sufficient for the 1944 proceedings to be upset, but is not sufficient to enable me to substitute a finding of attributability. In cases before *Moxon's case* (¹) where unsigned decisions were acted on by Tribunals, my practice is not to substitute a finding of attributability but to remit it for reconsideration. In many cases the absence of signed medical report is in the nature of a technicality. It was nearly always, in fact, a medical report though unsigned. An absurd situation would be created if I then awarded attributability, when in fact he may not be suffering from Hodgkin's disease at all.

On both grounds, therefore, the right course is to allow the appeals but to remit the whole matter for reconsideration so that the case can be re-investigated to ascertain what disease he has and whether it is attributable to or aggravated by war service; and if it is only aggravated, whether it has passed away, and if so at what date.