

IN THE MATTER OF A REFERENCE BY THE MINISTER OF PENSIONS AND NATIONAL HEALTH,

1931
 Jan. 26.
 Mar. 23.

AND

IN THE MATTER OF THE APPLICATION OF WILLIAM D. SKITCH FOR PENSION,

AND

PAULINE WADECLAIMANT.

Pensions Act—Federal Appeal Board—Jurisdiction—Board of Pension Commissioners—13-14 Geo. V, c. 62—14-15 Geo. V, c. 60—18-19 Geo. V, c. 38.

In January, 1923, the Board of Pension Commissioners refused pension in the matter of one Skitch on the ground that his death was not attributable to military service. An appeal was taken to the Federal Appeal Board under 13-14 Geo. V, c. 62, sec. 10, and the latter found the death was due to military service. By 14-15 Geo. V, c. 60, sec. 10, the Appeal Board was required to give certain information in its judgment. The Commissioners, claiming the Appeal Board had not complied with the statute, refused to pay the pension. After some correspondence between the Boards in which the Appeal Board claimed to have complied with the statute, a dispute having arisen as to the jurisdiction of the latter Board, the Minister, under 18-19 Geo. V, c. 38, sec. 30, ss. 8, referred the matter to this Court for determination.

Held that the only matter referred to this Court for its determination was as to whether the Appeal Board had jurisdiction to hear the appeal in question. That the appeal having been heard and decided in 1926, the question of its jurisdiction must be determined under the law in force at that time, and that under 13-14 Geo. V, c. 62, sec. 10, the Appeal Board had jurisdiction to hear and determine appeals from the refusal of pension by the Board of Pension Commissioners.

2. That the provisions of sec. 29, c. 38 of the Statute of 1928 requiring a certain course of action to be taken by the Appeal Board when the medical classification in respect of which the Board of Pension Commissioners had refused a pension is considered by the Appeal Board to be in error, being passed subsequent to the hearing or decision by the Appeal Board, did not apply to said appeal.
3. That whether or not the Appeal Board in giving its decision complied with the statute did not go to the question of jurisdiction.

REFERENCE by the Minister of Pensions and National Health to this Court to have a dispute as to the jurisdiction of the Federal Appeal Board decided and determined by this Court.

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The matter was heard before the Honourable Mr. Justice Maclean, President of the Court, at Ottawa.

George F. Henderson, K.C., for the Board of Pension Commissioners.

A. E. Fripp, K.C., for the Federal Appeal Board.

Clifford B. Reilly, K.C., for soldiers concerned and for dependents of Skitch.

Redmond Quain for claimant.

The case was heard on questions of law, which questions of law material to the issues are stated in the Reasons for Judgment.

THE PRESIDENT, now (March 23, 1931), delivered the following judgment.

This matter comes before the Court in the form of a reference by the Minister of Pensions and National Health, dated the 29th May, 1929.

It is well to quote the terms of the reference as it clearly sets out the question falling for determination by this Court, and has the additional advantage of brevity:

IN THE EXCHEQUER COURT OF CANADA

IN THE MATTER of the application of William D. Skitch, number 435035, for pension.

A dispute having arisen as to the jurisdiction of the Federal Appeal Board to entertain and determine an appeal from the refusal of pension in this case by the Board of Pension Commissioners, the undersigned, pursuant to the provisions of subsection 8 of section 51 of the Pension Act, as enacted by section 30, chapter 38 of the Statutes of 1928, hereby refers the said question of jurisdiction to the Exchequer Court for determination, and transmits herewith copies of all documents in the possession of the Federal Appeal Board, and originals of all documents of the Department of Pensions and National Health relating to the matter.

Dated at Ottawa, this 29th day of May, A.D. 1929.

J. H. KING,

Minister of Pensions and National Health.

It is obvious that the sole question calling for determination under the reference is whether the Federal Appeal Board, as it existed on the date when it pronounced its decision on the appeal in this case from the Board of Pension Commissioners, namely, the 3rd August, 1926, had

jurisdiction to "entertain and determine" the said appeal. It will be convenient to refer to the Board of Pension Commissioners as Commission, and The Federal Appeal Board as Board.

A consideration of the language of subsection (8) of section 30 of Chap. 38, An Act to Amend the Pension Act, 1928, reveals beyond all manner of doubt that the Exchequer Court of Canada is not thereby authorized and empowered to entertain an appeal from the Federal Appeal Board as was suggested by Mr. Quain. What the Court is required to do where there is a dispute as to the jurisdiction of the Federal Appeal Board, and it is referred, as this case has been, is to decide whether the Federal Appeal Board had jurisdiction to entertain and determine the appeal from the Board of Pension Commissioners in question. If it was the intention of Parliament to give an appeal, as the term is understood in the law, then the draftsman of the Act was extremely unhappy in his phraseology. To construe the language used by Parliament as doing anything more than to enable the Court to settle a dispute between the Board of Pension Commissioners and the Federal Appeal Board concerning the jurisdiction of the latter would be to disregard the wisdom of the rule laid down by Baron Pollock in *The Queen v. The County Court of Lincolnshire* (1),

A judge cannot give himself jurisdiction by construing an Act of Parliament or a document wrongly.

Confining, then, the duty of the Court under the statute and the Reference made thereunder to answer the question, has the Federal Appeal Board jurisdiction "to entertain and determine" the appeal in dispute from the Board of Pension Commissioners, that question must be answered by reference to The Pension Act of 1919, as amended by Chap. 62 of the Statutes of 1923, and as further amended by Chap. 60 of the Statutes of 1924.

The Commission, in January, 1923, refused pension in the matter of the application of Skitch. The decision of the Commission was: "Death not attributable to service." By Chap. 62, sec. 10, Statutes of Canada, 1923, assented to June 30, 1923, the Federal Appeal Board was created.

(1) (1887) 20 Q.B.D. 167, at p. 170.

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This statute provided that upon the evidence and record upon which the Commission gave its decision, an appeal would lie in respect of any refusal of pension by the Commission on the grounds that the disability or death of the applicant for pension was not attributable to military service. Upon an appeal to the Board in the case of Skitch, upon the same evidence and record, pension was allowed on August 3, 1926, the decision being:

After consideration of the evidence and record of the Board finds that death in this case following severe chronic ulceration of the legs and stated to have been due to acute indigestion was attributable to military service.

At that time the statute (chap. 60, sec. 10, Stat. of Canada 1924), directed that any judgment rendered by the Board should contain certain information, including the medical classification of the injury or disease causing the liability in respect of which the appeal was made, the medical classification of the injury or disease causing the disability in respect of which the appeal was allowed or disallowed, and if the appeal was allowed whether the injury or disease was attributable to military service. The Commission declined to act upon the decision of the Board and refused to pay pension until it was definitely established whether death was due to the ulceration of the legs, or acute indigestion, and the Commission asked that the Board amplify their judgment by stating the medical classification of the disease resulting in death, as required by sec. 10 of Chap. 60, Statutes of 1924. Considerable correspondence passed between the Board and the Commission, the former insisting it had complied with the statute, the Commission being equally insistent that the Board had not done so. The Board seems to have been of the opinion that this statutory provision did not apply to death claims, no reference being made therein to death claims. If the statute is applicable to death claims, then there was some reason for the contention that the Board did not fully comply with the statutory directions. The Reference is to determine whether the Board had jurisdiction to entertain and determine the appeal of Skitch from the decision of the Commission. Now, to pronounce an opinion upon this question, one can only look at the statute

law as it was when the Board heard the appeal in June, 1926, or at the date of the delivery of its decision in August of the same year, it matters not which date. At that time sec. 51 of the present Pension Act, as amended by sec. 29 Chap. 38, Statutes of 1928, was not in force. Sec. 51 of the Pension Act prescribes that certain things be done by the Board as a condition precedent to the jurisdiction of the Board being exercised in the final disposition of an appeal, and this arises where the Board considers the medical classification upon which the Commission refused pension, to be in error. This, however, is not applicable to the matter now before me, because that statute had not been enacted when the Board heard the appeal in question, and it has no retroactive effect. In fact at that time there was no statutory provision for a reference to the Exchequer Court in the case of a dispute as to the jurisdiction of the Board to hear and determine appeals.

The whole question at issue seems to be this: Did the Board comply with sec. 10, chap. 60, Statutes of Canada 1924, now sec. 51, ss. 7 of The Pension Act, in rendering judgment upon the appeal mentioned in the Reference, and if not, does that fact affect the jurisdiction of the Board to entertain and determine the appeal? I do not think the question of jurisdiction arises at all in this matter. The observance of these statutory requirements was not a condition precedent to the jurisdiction attaching. A question of jurisdiction could hardly arise after the hearing of the appeal, if there was jurisdiction when it was heard, and this is not disputed. The Board had undoubted jurisdiction to hear and determine the appeal, of that I have no doubt. The judgment of the Board is not really questioned on the ground of lack of jurisdiction to entertain and determine the appeal; it is apparently attacked because the written judgment does not contain certain information which the statute directs should be therein contained. Whether the Board did or did not comply with the statute in that respect, does not go to the question of jurisdiction,—and that is the only point referred to in the Reference—it only raises the question as to whether or not the Board fulfilled its statutory duties. If the Board re-

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refused to furnish the information required by the statute in its written judgment, then it seems to me that the proper course to pursue in that situation would be to set in motion the proper judicial proceedings to enforce the observance of such statutory duties. Whether the Board did or did not perform such duties is not before me for decision, but assuming that the Board did not perform its statutory duties in this respect, that would not, in my opinion, retroactively rob the Board of its jurisdiction to entertain and determine the appeal. I should very much doubt if the statute ever intended, that a judgment rendered on an appeal, by the Board, should be of no effect, because the statutory directions which I have already mentioned were not complied with; it is perhaps unnecessary that I should go so far, because that point was not argued before me, and I am only required to decide whether the Board had jurisdiction to entertain and determine the appeal. At any rate, any such deficiency in the judgment, if such there was, could not affect the jurisdiction of the Board to entertain and determine the appeal. I am of the opinion therefore that the Board had jurisdiction to entertain and determine the appeal mentioned in the Reference at the time it heard and determined the same.

There will be an order declaring that the Pension Appeal Board as it existed on the date of the Reference herein had jurisdiction to entertain and determine appeals from refusal of pension by the Board of Pension Commissioners.

In the circumstances I think there should be no costs allowed. Strictly speaking there were no parties to the Reference. It is true Mrs. Wade, formerly the widow of William D. Skitch, filed a statement of claim in the Court, but I must assume that this was done *ex abundantia cautela*. Her claim had been finally disposed of by the decision of the Board, and there was no party on the Reference having status to file a defence.

Judgment accordingly.
