
STATUTORY INSTRUMENTS

1997 No. 798

The Reserve Forces Appeal Tribunals Rules 1997

PART IV

DETERMINATION OF APPEALS

Power to determine an appeal in the absence of the parties

21.—(1) The Tribunal may—

- (a) if neither party has expressed an intention to be present or represented at the hearing; or
- (b) if every party who expressed that intention notifies the Secretary that he no longer intends to be present or represented; or
- (c) in the circumstances described in rule 11(a) or (b) above,

determine an appeal, or any particular issue, in the absence of the parties.

(2) Where a date is fixed for the Tribunal to determine an appeal under this rule the Secretary shall give not less than 5 days' notice in writing (or such shorter period as the parties may consent to in writing) of that date, but no such notice shall be required of any adjourned hearing.

(3) Before determining the appeal under this rule the Tribunal shall consider the notice of appeal, reply and any other document or record sent to it by any party or witness. It may, if it thinks fit, direct a party or witness to provide in writing further information about any matter relating to the appeal.

(4) The provisions of rule 25(5) below shall apply in respect of the determination of an appeal or any particular issue under this rule.

Hearings to be in public: exceptions

22.—(1) All hearings by the Tribunal shall be in public except where—

- (a) a direction under paragraph (4) has been made; or
- (b) the Tribunal is satisfied that, by reason of the disclosure of matters which relate to intimate personal or financial circumstances, are commercially sensitive, consist of information communicated or obtained in confidence or concern personal or national security, it is just and reasonable for the hearing or any part thereof to be in private.

(2) Except where a direction under paragraph (4) has been made, the following persons shall be entitled to attend the hearing, whether or not it is in private—

- (a) any members of the panel of chairmen or members appointed under section 90 or 91 of the Act, notwithstanding that they do not constitute the Tribunal for the purpose of the hearing;
- (b) a member of the Council on Tribunals or of the Scottish Committee of that Council.

(3) Except where a direction under paragraph (4) has been made, the Tribunal, with the consent of the parties, may permit any other person to attend a hearing which is held in private.

(4) The Secretary of State may on grounds of national security direct the Tribunal to hold part or all of the hearing in private.

(5) A direction under paragraph (4) shall not prevent an officer appointed in accordance with section 92(2) of the Act from attending the hearing if the Tribunal so requires.

(6) Without prejudice to any other powers it may have, the Tribunal may exclude from the hearing, or part of it, any person whose conduct has disrupted or is likely, in the opinion of the Tribunal, to disrupt the hearing.

Failure of parties to attend hearing

23.—(1) If a party who expressed an intention to attend or be represented at a hearing fails to attend or be represented at that hearing the Tribunal may—

- (a) unless it is satisfied that there is sufficient reason for such absence, hear and determine the appeal in the party's absence; or
- (b) adjourn the hearing,

and may make such order under rule 28(1) below as to costs or expenses as it thinks fit.

(2) Before deciding to dispose of any appeal in the absence of a party, the Tribunal shall consider any representations in writing submitted by that party and, for the purpose of this rule, the notice of appeal and any reply, any amendments to either of them, any documents submitted with them and any supplementary statements shall be treated as representations in writing.

(3) Where an appellant has failed to attend a hearing of which he was duly notified, and the Tribunal has disposed of the appeal, no fresh appeal may be made by the appellant to a Tribunal against the same disputed determination without the prior leave of the Tribunal:

Provided that nothing in this paragraph shall preclude the appellant from making an application for a review of the Tribunal's determination under rule 27 below.

Representation at hearing

24. At the hearing, a party may conduct his case himself (with assistance from any person if he wishes) or may appear and be represented by any person whether or not legally qualified:

Provided that if in any particular case the Tribunal is satisfied that there are good and sufficient reasons for doing so, it may refuse to permit a particular person to assist or represent a party at the hearing.

Procedure at hearing

25.—(1) Subject to this rule, the Tribunal shall conduct the hearing in such manner as it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings; it shall so far as appears to it appropriate seek to avoid formality in its proceedings.

(2) At the beginning of the hearing the Chairman shall explain the order of proceeding which the Tribunal proposes to adopt.

(3) The parties shall be heard in such order as the Tribunal shall determine. They shall be entitled to give evidence, to call witnesses, to question any witness and to address the Tribunal both on the evidence and generally on the subject matter of the appeal.

(4) Evidence before the Tribunal may be given orally or, if the Tribunal so orders, by affidavit or statement, but the Tribunal may at any stage of the proceedings require the personal attendance of any maker of an affidavit or statement.

(5) The Tribunal may admit evidence of any fact which appears to it to be relevant notwithstanding that such evidence would be inadmissible in proceedings before a court of law, and shall admit any evidence which is admissible at law and is relevant.

(6) At any hearing the Tribunal may, if it is satisfied that it is just and reasonable to do so, permit a party to put forward any evidence not presented or known to the Authority before or at the time it made the disputed determination.

(7) The Tribunal may require any party or witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

Determination of Tribunal

26.—(1) A determination of a Tribunal may be made by a majority and the determination shall record whether it was unanimous or taken by a majority.

(2) The Tribunal may make its determination at the end of the hearing or may reserve it. If the determination is made at the end of a hearing it may be announced.

(3) Every determination shall be recorded immediately in a document which—

(a) save in the case of a determination by consent, shall also contain a statement of the reasons for its determination; and

(b) shall be signed and dated by the Chairman.

(4) Subject to paragraph (5), particulars of every document referred to in this rule shall, as soon as may be, be entered in the register and the Secretary shall send or deliver a copy of such documents and the entry to each party.

(5) Where any such document refers to any evidence that has been heard in private, copies of the complete document shall be sent or delivered to the parties together with a copy of the entry, but the entry in the register shall not include or refer to such evidence.

(6) Except where a determination is announced at the end of a hearing, it shall be treated as having been made on the date on which a copy of the document recording it is sent or delivered to the parties.

Review of Tribunal's determination

27.—(1) If, on the application of a party or on its own initiative, the Tribunal is satisfied that—

(a) a determination was wrongly made as a result of an error on the part of the Secretary; or

(b) a party, who was entitled to be heard at a hearing and expressed an intention to attend or be represented but failed to appear or be represented, had good and sufficient reason for failing to appear; or

(c) new evidence has become available since the conclusion of the hearing to which the determination relates, the existence of which could not have been reasonably known of or foreseen; or

(d) the interests of justice require,

the Tribunal may review and, by certificate under the Chairman's hand, set aside or vary the relevant determination.

(2) An application for the purposes of paragraph (1) may be made immediately following the determination at the hearing. If an application is not made at the hearing, it shall be made by delivering it in writing, stating in full the grounds of application, to the Secretary not later than 5 days after the date on which the determination was received by that party. When the Tribunal proposes to review its determination on its own initiative, it shall give written notice of that proposal to the parties within 5 days of so proposing.

(3) The parties shall, if they so request, have an opportunity to be heard on any application or proposal for review under this rule. The review shall be determined by the Tribunal which determined the case or, where this is not practicable, by another Tribunal selected under section 92 of the Act. If as a result of a review the determination is set aside or varied, the Tribunal shall by certificate under

the Chairman's hand substitute such determination as it thinks fit or order the same or a differently constituted Tribunal to redetermine the appeal.

(4) The certificate of the Chairman as to the setting aside or variation of the Tribunal's determination under this rule shall be sent to the Secretary and the Secretary shall immediately make such correction as may be necessary in the register and shall send a copy of the entry so corrected to the parties.

Orders for costs

28.—(1) The Tribunal shall not normally make an order awarding costs, but may, subject to paragraph (2), make such an order—

- (a) against a party (including a party who has withdrawn his appeal or reply) if it is of the opinion that that party has acted frivolously or vexatiously or that his conduct in making, pursuing or resisting an appeal was wholly unreasonable; or
- (b) against the Authority, where it considers that the determination against which the appeal is brought was wholly unreasonable; or
- (c) as respects any costs incurred as a result of a postponement or adjournment of a hearing at the request of a party; or
- (d) in the circumstances described in rule 5(2), 6(b), 10(2) or 23(1) above.

(2) No order shall be made under paragraph (1) against a party without first giving that party an opportunity of making representations against the making of the order.

(3) An order under paragraph (1) may require the party against whom it is made to pay the other party either a specified sum in respect of the costs incurred by that other party in connection with the proceedings or the whole or part of such costs as taxed (if not otherwise agreed).

(4) Any costs required by an order under this rule to be taxed may be taxed in the county court according to such of the scales prescribed by the county court rules for proceedings in the county court as shall be directed in the order. Such costs shall, if a county court so orders, be recoverable by execution issued from a county court.

(5) In the application of this rule to a Tribunal sitting in Scotland the word "costs" shall be deemed to mean "expenses", and any expenses to be taxed may be taxed according to such part of the table of fees prescribed for proceedings in the sheriff court as shall be directed in the order and thereafter the Tribunal shall issue an order for payment of the amount as taxed.

(6) In the application of this rule to a Tribunal sitting in Northern Ireland any costs which may be determined by the Tribunal under paragraph (1) above shall be determined by reference to the scales prescribed by rules of court for proceedings in the county court in Northern Ireland and any costs required to be taxed where the costs are not otherwise agreed shall be taxed in the same manner as costs in equity suits or proceedings in the county court in Northern Ireland.