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STATUTORY INSTRUMENTS

2000 No. 2370

The Summary Appeal Court (Navy) Rules 2000

PART VIII

APPEALS AGAINST FINDING

Application of Part VIII

44. This Part shall apply to the hearing of an appeal against a finding that a charge has been proved.

Power of respondent to give notice that he no longer contests an appeal against finding

45. The respondent may at any time during the hearing of an appeal against finding give notice that he no longer intends to contest the appeal; and, where he does so, the court shall quash the finding.

Addresses to the court

46.—(1) Without prejudice to paragraphs (3) and (4), the respondent and the appellant may each address the court once with respect to the case against the appellant on the charges being heard by the court.

(2) For the purposes of paragraph (1)—

(a) the respondent shall address the court immediately before adducing any evidence; and

(b) the appellant shall address the court immediately after the close of his case or, where there is more than one appellant, after the close of the case of each of the appellants.

(3) The respondent or appellant may with the leave of the court address it at any time during the hearing on any matter relating to the appeal or the charges which are being heard by the court.

(4) The court shall not exercise its powers under section 52FM(1)(b) of the Act to substitute another finding without affording the appellant and the respondent an opportunity to address it on the exercise of those powers in the particular case.

Provisions which are to apply where there are two or more appellants

47.—(1) The following provisions of this rule shall apply where in accordance with rule 32 the court has decided to hear appeals by more than one appellant at the same time.

(2) The respondent's case on each of the charges before the court shall be put before the case of any of the appellants, and he may make only one address in pursuance of rule 46(1).

(3) The judge advocate shall decide immediately before the hearing of the appeals the order in which the appellants are to put their case and to address the court in pursuance of rule 46(1).

(4) Before making a determination under paragraph (3) the judge advocate shall afford the respondent and each of the appellants the opportunity of making representations to him.

(5) Where the same legal representative represents two or more appellants, he may make only one address to the court in pursuance of rule 46(1).

(6) The court shall not close to deliberate on its decision in relation to any of the findings until the close of the case for each of the appellants and each of the appellants have had the opportunity to address the court in pursuance of rule 46(1).

Additional evidence during the hearing of the appeal

48.—(1) If after the commencement of the hearing of an appeal the respondent intends to adduce evidence other than any evidence served or notified to the appellant in accordance with rules 18 and 19, he shall where practicable serve notice in writing of such intention together with the particulars of the additional evidence on the appellant and the judge advocate.

(2) Where notice and particulars are served on the appellant in accordance with paragraph (1), or where evidence is adduced without such notice being given, he may apply to the judge advocate for an adjournment of the hearing.

Expert evidence

49. Expert evidence shall not be adduced at the hearing of an appeal without the leave of the judge advocate, unless the party proposing to rely on it has served on the other party to the appeal a statement setting out the substance of the expert evidence not less than 14 days before the date on which the hearing has been fixed to begin.

Exhibits

50.—(1) Any exhibit admitted in evidence shall be marked sequentially with either a number or a letter.

(2) Each exhibit or a label attached to it shall be signed by a member of the court hearing the appeal.

(3) Each exhibit shall be retained with the record of the proceedings, unless in the opinion of the judge advocate, having regard to the nature of the exhibit or for some other good reason, it is not expedient to retain the exhibit with the record.

(4) Where an exhibit is not retained with the record of proceedings, the judge advocate shall ensure that steps are taken for its safe custody.

Presence of witnesses

51.—(1) Except where the person is the appellant, or is present to give expert evidence or evidence as to a person's character, a person who is to be called to give evidence shall not, except by leave of the judge advocate, be present at the hearing of an appeal against a finding until he is called to give evidence and examined.

(2) If while a witness is under examination a question arises as to the admissibility of a question put to him or otherwise with regard to the evidence, the judge advocate may direct the witness to withdraw until the question is determined.

(3) The judge advocate may direct any person, who is to give expert evidence or evidence as to a person's character, to withdraw from the court if he considers that the person's presence is undesirable in the interests of justice.

Examination of witnesses

52.—(1) The judge advocate may allow a request that the cross-examination or re-examination of a witness be postponed if he is satisfied that there is a good reason for such a request and there is no injustice in doing so.

(2) The judge advocate may question any witness and, if he considers it appropriate, may put to the witness a question from any other member of the court.

(3) If in the opinion of the judge advocate it is in the interests of justice to do so, the court may at any time—

(a) call any witness whom it has not already heard;

(b) recall a witness;

(c) permit the appellant or the respondent to recall a witness.

Submission of no case to answer

53.—(1) At the close of the case for the respondent the appellant may submit, in respect of any charge, that the respondent has failed to establish a case for him to answer.

(2) Where such a submission is made the respondent shall be given the opportunity to address the court on the submission.

(3) Any issue raised on such a submission shall be determined by the judge advocate who shall give such directions to the court as he thinks fit.

Finding that charge has not been proved after the close of the respondent's case

54.—(1) The court may at any time after the close of the case for the respondent find that a charge has not been proved, and where they so find they shall quash the finding that the charge has been proved made under section 52D of the Act.

(2) The court shall give an opportunity to the respondent to address it before making a finding under paragraph (1).

Witnesses for the appellant

55. Except with the leave of the judge advocate, if the appellant elects to give evidence he shall be called before any other witnesses for the appellant.

Evidence in rebuttal

56. With the leave of the judge advocate, the respondent may call or recall a witness to give evidence on any matter raised by the appellant in relation to a charge which the respondent could not—

(a) properly have dealt with before the appellant disclosed his case; or

(b) reasonably have foreseen.

Deliberation on finding

57.—(1) After the close of the case for the appellant, the court shall close to deliberate on its decision in relation to each finding.

(2) During its deliberation on any such finding, the court shall not separate until the decision on the finding has been reached, unless the judge advocate directs that in the interests of justice the court may separate.

(3) The vote of each member of the court shall be given orally; and the vote of each member of the court qualified for membership under section 52FH of the Act or rule 23 shall be given in reverse order of seniority and before the vote of the judge advocate.

(4) In paragraph (1) and in rule 58, the reference to each finding is to each finding under section 52D of the Act to which the charges heard by the court relate.

Record of decision of the court on finding

58.—(1) The decision of the court on each finding, and (except where the decision is to quash the finding) the reasons for it, shall be announced separately in open court by the member of the court presiding at the hearing of the appeal.

(2) The decision of the court on a finding, and the reasons for it, shall be recorded in writing and dated and signed by the members of the court hearing the appeal.