

## MILITARY SERVICE PENSIONS ACT, 1934

### ADOPTING THE 1916 STANDARD

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#### Introduction

The most significant effect of the 1934 Act was that applications for the award of pensions were now to be considered from persons who were deemed to have been serving in the Forces while such person was "rendering active service" in any of the bodies which constituted the Forces. The specific requirement to have service in the National Forces/Defence Forces after 1 July 1922 did not now apply.

Cumann na mBan was also included in the "military bodies" constituting the Forces<sup>1</sup>. A Referee was appointed and an Advisory Committee consisting of four members was established<sup>2</sup>; to whom all applications for a "service certificate" were referred and reported upon to the Minister (for Defence) as to whether "...the applicant is or is not a person to whom this Act applies"<sup>3</sup>.

The "Service Periods" were set out from 1 to 10, inclusive, covering the same years as under the Act, 1924 and computed to the same maximum of 14 years service<sup>4</sup>. While the rank structure set out

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<sup>1</sup> Military Service Pensions Act, 1934 Sections 1 (f), 2 & 3.

<sup>2</sup> Ibid Section 6 (2) (a) "Two members being persons who held high rank in the Forces before 11 July 1921...." John McCoy, Humphrey Murphy (died 13th November 1935) replaced by Seamus Robinson.

<sup>3</sup> Ibid Section 8 (2) (a)

<sup>4</sup> Ibid Second Schedule

remained the same as in the Act, 1924 ( five grades A to E ); a change was effected in that Rank "E" referred to Privates and Non Commissioned Officers in the Act, 1934. Rank "E" referred to rank higher than Major General in the Act, 1924.

The Referee and Advisory Committee "adopted the standard applied by the Board of Assessors (1924) and recognised active service...only in...Dublin City and County and Counties Galway, Wexford and Louth-Meath, having awarded only a few pensions to particular individuals elsewhere."<sup>5</sup>. See report "Easter Week 1916. 1 (Historical), dated [ ] November 1946, which is to be found in **A/21 (4) B/124** (10pp)". Also, a number of pensions were later granted, under the Military Service Pensions (Amendment) Act, 1949, for operations by members of the Portlaoighise Company, Irish Volunteers for cutting railway lines at Colt Wood and Maganey during Easter Week 1916<sup>6</sup>.

Elsewhere in that report<sup>7</sup>, the Referee notes "Active Service has almost exclusively been interpreted as taking part in engagements with the British forces. The intention, or even the most intensive desire, to take part in such engagements has never been admitted to constitute active service" and "Any relaxation of the standard for Easter Week must inevitably give rise to a demand for a similar modification in respect of the standards for the Tan War. There are thousands of men who had some engagements with the British during the Tan War and rendered valuable routine service over a prolonged period who are not eligible for pensions under the present standards; numbers of these have served in columns and lay in ambush on numerous occasions; others were members of an ambush party who held a road leading to the ambush position detached from an ambush party as part of the plan of an ambush., but, through circumstances over which they had no control, did not participate in the ambush; all these and numerous other categories would have a justifiable grievance if pensions were awarded for mere mobilisation under arms in Easter Week"<sup>8</sup>.

### Rules and the Referee

It is likely that the Referee and Advisory Committee, having examined cases where clear evidence of qualification was present and looking at other cases where qualifying active service was only proven after lengthy investigation set a standard or "rules" for like cases. This appears evident in their

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<sup>5</sup> MSP34REF54971 James Riordan; 24SP1, Sean O'Murthuile and 24SP9375, Michael Brennan.

<sup>6</sup> See MSP34 REF22571, Patrick Joseph Ramsbottom.

<sup>7</sup> A/21 (4) B (p131)

<sup>8</sup> A/21 (4) B (p132 (c))

practice of cross referencing decisions across a number of applicant's files for claimed operations of a similar nature or outcome in different IRA Brigade areas. For example, the case of Patrick Flanagan<sup>9</sup> provides evidence that "applicants incapacitated from active service by wounds or illness attributable to activities shall be entitled to credit for pensionable service for the period of such incapacity" and "Where it is proved to the satisfaction of the Referee that an applicant has taken part in a major engagement during the 5th, 6th or 7th period in the Appendix to the Second Schedule, he shall be entitled to pensionable service for all subsequent periods if he proves that he was an active Volunteer for those periods, in the sense that he attended regularly the meetings and drills of his Company, and that he carried out, to the best of his ability all orders given to him by his superior officers during those periods". In all six such points are set out and appended to this file. In other cases reference is made to "Rule 1 applies" and the like, and the "rules" mentioned are not spelled out. No document or file in which these supposed "rules" are consolidated or set out has been found to date.

### Key Men

It is clear that the Referee and Advisory Committee identified a class of service which they referred to as "key service" or "key men". These are men operating in almost whole time capacities, to carry out duties such as dispatch riders, custody of prisoners, cleaning and maintaining arms, orderlies, drivers and the like. The Referee recognised that men so employed while not having active service in a fighting capacity rendered service of such a nature as would warrant service of that nature being considered as qualifying service, if it could be shown that the service was rendered regularly and continuously, involved risk and danger and formed an integral part of the fighting activities. As a corollary where there was no fighting unit operating as such there could be no key or pivotal service recognised as qualifying active service. Cases in this category were identified, put aside and subjected to detailed investigation at a later stage by the Advisory Committee, consulting and gathering evidence from the relevant Brigade Advisory Officers. Decisions reached in individual cases are cross-referenced on like files.

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<sup>9</sup> MSP34REF455:1916 veteran, later Column Commander, ASU, Dublin Brigade and Vice Comdt 3rd Battalion, Dublin Brigade.

## Active Service during the Truce

The practice followed by the Referee and Advisory Committee in awarding pensionable service during the period commencing on the 12th day of July 1921 and ending on the 30th day of June 1922 (8<sup>th</sup> period) is set out in a decision appended to the file of Fintan Patrick Murphy<sup>10</sup>. Here it was pointed out that "the only active service which a claimant could have during the 8th period in Southern Ireland was active service against the British Forces, and, as, during that period, there was a truce in Southern Ireland, there could be no claim for active service from Southern Ireland...In practice, however, claimants who have been able to establish that they spent the truce (8th period) in camps or barracks undergoing military training, or in other preparations for active service, have been allowed active service...if they took part in active service when the occasion arose, viz; between 1st July 1922 and the 30th September 1923...."<sup>11</sup> It was further set out that "...there was considerable military activity against the Crown Forces (in Northern Ireland) during this period and claimants who can prove that they took part in such activity are entitled to pensionable service...Where claimants in June 1922 were ordered by their competent military authority to proceed to the Curragh for military training for projected action in Northern Ireland and, in pursuance of such order, did undergo a course of training in the Curragh, the period spent in training in the Curragh up to the time that the projected action was abandoned, shall count as pensionable service if:

- On their return to Northern Ireland they were forced to go on the run because of their activities during the 8th period, or
- They were imprisoned on their return to Northern Ireland for activities during the 7<sup>th</sup><sup>12</sup> or 8th period, or
- They were on the run and could not return to Northern Ireland.
- They fought for the Republic in the Civil War."

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<sup>10</sup> MSP34 REF11815. Awarded rank greater than Major General, onetime QMG IRA and Chief Liaison Officer.

<sup>11</sup> Leathan Miontuairisce (Minute Sheet) dated 9 Deireadh Fomhair (October) 1939 signed by Robinson, McCoy and Fahy, including copy "decision" dated 18 November 1937 (2pp)

<sup>12</sup> The period commencing on the 1st day of April 1921 and ending on the 11th day of July 1921

## Referees decisions

The Referee did not furnish details as to why pensions were refused to individual applicants. In such cases, the Certificate of Military Service form (Referee R3) was completed to the extent that service was claimed by the individual and if such service was not allowed, in part or in whole, the form was stamped "**Act does not appear to apply**". An appeals process required "new evidence".

Mr Sean McBride, S.C. was engaged by a number of applicants to argue their case as to the refusal of the Referee and Advisory Committee to award them service for Easter Week in County Galway. In a detailed submission to the Referee and Advisory Committee, McBride points to the unsatisfactory situation whereby the Referee, who admits to "existing standards"... that "have been evolved in the administration of this Act over the past ten years"....are "completely unknown to the applicant and me (McBride) ...and ... is another distinction from case law" (which is reported in books)<sup>13</sup>. The matter was subsequently brought before the High Court in the case of the State (William Corcoran) – v –The Referee, The Military Service Pensions Act, 1934. The High Court found the former standard for "active service" as applied prior to 27 April, 1945 in certain "Galway cases" to be erroneous and that the Referee (Mr. Justice Tadhg Mac Firbhisigh) "...recognised his own right to differ from the ruling of his predecessor and that he would advisedly make up his own mind on the matter." Accordingly, service certificates were issued by Justice Mac Firbhisigh to applicants to whom they had been refused by previous Referees. The ruling in the case and the change in the existing standard for "active service" for Easter Week, "...which previously demanded the firing of shots against the enemy or service of an outstanding nature..", did not find favour with all members of the Advisory Committee<sup>14</sup>.

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<sup>13</sup> A/21 (4) B/18 and B/25 Submission made by Mr. McBride, S.C. to Referee and Advisory Committee re Volunteer Activity in County Galway-dated 9 April 1945.

<sup>14</sup> See copy Judgement on file MSP 34 Ref 9368 William Corcoran and MSP 34 Ref 9061 Martin McEvoy and others.

## Cumann na mBan Service

General principles in interpreting Qualifying Service and Active Service under the Act, 1934 for Cumann na mBan members are set out in a Memo by Advisory Committee member, John Mc Coy<sup>15</sup>.

He points out that the service recognised should be "service of a military nature" and "if pretty continuous during a qualifying period should be taken into account as the essence for qualifying purposes". He includes the following:

- "In charge of dispatches in a dispatch centre in an active service area or acting as a necessary link in an important dispatch line...carrying...constantly...through dangerous areas.
- Important service in connection with places used as a headquarters in an active service area...Brigade or Battalion Headquarters or for rest purposes between engagements by a column.
- In charge of dumps where a considerable supply of arms and other munitions were constantly kept...claimant with principal responsibility for safety and contents regularly handed out and replenished. Personal responsibility for the care and safety of important documents in claimants own house.
- Intelligence work....valuable.....pretty continuous and carried out under dangerous conditions.
- First aid where a claimant was specially detailed for attending wounded or looked after a wounded man in own house set aside for such purpose the continuity and perhaps danger of service should be evident.
- All full time work of a dangerous nature which was considered essential by Senior IRA officer in command of the area or full time work undertaken for Cumann na mBan Headquarters..."

McCoy also stated that he considered that the Constitution of the Organisation should not have any influence whatever on the question of assessing military service. *"The Constitution was drafted before the intensive military activity of the Tan War commenced...there is no mention made of the care of arms and dumps, despatches, intelligence work. These activities were generally more important than the activities mentioned in the Constitution"*.

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<sup>15</sup> CMB/163 General Headquarters-Cumann na mBan Service dated 21 June 1939 (4pp)