

*Court BK 1.º 15/1935. (1)*

IN THE HIGH COURT OF AUSTRALIA.

---

*Faussey*

---

V.

*The Supremacy Board*

---

---

REASONS FOR JUDGMENT.

*of the Justice Clerk*

---

Judgment delivered at *Melbourne*

on *12th December 1935*

CAWSEY

V.

THE SUPERANNUATION BOARD.

JUDGMENT

STARKE J.

In my opinion, the provisions of Sec. 60N of the Superannuation Act 1922-30 are subject to the provisions of Sec. 60o. And, in the opinion of the Superannuation Board, the extent of the injury to which this appellant is subjected is only fifteen per centum of total incapacity in relation to civil employment. The medical evidence which has been given cannot assign no physical reason for the pain the appellant says he is suffering, or for his inability to do hard work, which he says he is unable to do. In the face of the evidence, I am unable to say that he is suffering from injury of a greater degree than the Board has decided, and in those circumstances I must dismiss the appeal.

I would point out that under Sec. 60o (2)(a), if the cause of the incapacity and pain which the appellant says he is suffering, becomes more apparent and less obscure than it is, I should think the Board could reconsider the matter and redetermine ~~the~~ his pension. But that would not be possible if he accepts a lump sum, as he is entitled to do under subsection (2)<sup>(b)</sup> of sec. 60o. It would be better, I should think, if he took the pension awarded to him, in the hope that the passing of time may make his inability and incapacity more clearly manifest than at present.

The appeal is dismissed. There will be no costs.

.....