

Excerpts from *Bell v. United States*, 1960

Excerpt 1

Pgs. 405-408

It is against this background that we turn to the Government's contention that the Missing Persons Act authorized the Army to refuse to pay the petitioners their statutory pay and allowances in this case. The provisions of the Act which the Government deems pertinent are set out in the margin." Originally enacted in 1942 as temporary legislation," the Act was amended and re enacted several times, and finally was made permanent ini 1957.' So far as relevant here, this legislation provides that any person in active service in the Army "who is -officially determined to be absent in a status of . . . captured by a hostile force" is entitled to pay and allowances; that "[t]here shall be no entitlement to pay and allowances for any period during which such person may be officially determined absent from his post of duty without authority"; that the Secretary of the Army or his designated subordinate shall have authority to make all determinations necessary in the administration of the Act, and for purposes of the Act determinations so made as to any status dealt with by the Act shall be conclusive. We are asked first to hold that "[s]ince the Missing Persons Act is later in time, is comprehensive in scope, and includes within its provisions the whole subject matter of R.S. 1288 [the statute upon which the petitioners rely], any inconsistency or repugnancy between the two statutes should be resolved in favor of the Missing Persons Act." This step having been taken, we are asked to decide that the petitioners, because of their behavior after their capture, were no longer in the "active service in the Army ...of the United States," and that they were therefore not covered by the Act. It is also suggested, alternatively, that the Secretary of the Army might have determined that each of the petitioners after capture was "absent from his post of duty without authority," and, therefore, not entitled to pay and allowances under the Act. We can find no support for these contentions in the language of the statute, in its legislative history, or in the Secretary's administrative determination.

Excerpt 2

Pgs. 412-416

The simple fact is that no such administrative determination has ever been made. The only reason the Army ever advanced for refusing to pay the petitioners was its determination that they had "advocated, or were members of an organization which advocated, . . . the overthrow of the United States Government by force or violence." That determination has now been totally abandoned. The Army has never even purported to determine that the petitioners were not in active service or that they were absent from their posts of duty." The Army cannot rely upon something that never happened, upon an administrative determination that was never made, even if it be assumed that such a determination would have been permissible under the statute and supported by the facts. (See *Service v. Dulles*, 354 U. S. 363; *Vitarelli v. Seaton*, 359 U. S. 535). For these reasons we hold that the petitioners were entitled under the applicable statutes to the pay and allowances that accrued during their detention as prisoners of war. Throughout these proceedings no distinction has been made between the petitioners' pay rights while they were prisoners and their rights after the Korean Armistice when they voluntarily declined repatriation and went to Communist China. Since both the Army and the Court of Claims denied the petitioners' claims entirely, no separate consideration was given to the petitioners' status after their release as prisoners of war until the date of their administrative discharges. Nor did the petitioners in this Court address themselves to the question of the petitioners' rights to pay during that interval. Yet, it is evident that the petitioners' status during that period might be governed by considerations different from those which have been discussed. Other statutory provisions and regulations would come into play. Accordingly we express no view as to the petitioners' pay rights for the period between the Korean Armistice and their administrative discharges, leaving that question to be fully canvassed in the Court of Claims, to which in any event this case must be remanded for computation of the judgments. The disclosure of grave misconduct by numbers of servicemen captured in Korea was a sad aftermath of the hostilities there. The consternation and self-searching which followed upon that disclosure are still fresh in the memories of many thoughtful Americans." The problem is not a new one." Whether the solution to it lies alone in subsequent prosecution and punishment is not for us to inquire. Congress may someday provide that members of the Army who fail to live, up to a specified code of conduct as prisoners of war shall forfeit their pay and allowances. Today we hold only that the Army did not lawfully impose that sanction in this case. The judgment is reversed, and the case is remanded for further proceedings consistent with this opinion.