CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

DD-90-005

Ottawa, Monday, April 30, 1990

Appeal Nos. 2437, 2438, 2485, 2591 and 2592

IN THE MATTER OF motions heard on September 14, 1989, in respect of appeals filed pursuant to section 47 of the *Customs Act*, R.S.C. 1970, c. C-40;

AND IN THE MATTER OF decisions of the Deputy Minister of National Revenue for Customs and Excise dated November 22, 1985, November 29, 1985, January 29, 1986, and May 20, 1986, with respect to requests for re-determination filed pursuant to section 46 of the *Customs Act*.

BETWEEN

THE DEPUTY MINISTER OF NATIONAL REVENUE FOR CUSTOMS AND EXCISE — **Applicant-Respondent**

AND

UNICARE MEDICAL PRODUCTS INC. — **Respondent-Appellant**

DECISION OF THE TRIBUNAL

The motions to dismiss Appeal Nos. 2437, 2438, 2485, 2591 and 2592 for want of prosecution are denied. However, the Tribunal orders that these appeals be scheduled to be heard at Ottawa, Ontario, on the 9th day of May 1990 at 10:00 a.m.

Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

W. Roy Hines
W. Roy Hines
Member

Robert J. Martin
Robert J. Martin
Secretary

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CANADIAN INTERNATIONAL TRADE TRIBUNAL
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UNOFFICIAL SUMMARY

Appeal Nos. 2437, 2438, 2485, 2591, 2592

THE DEPUTY MINISTER OF NATIONAL REVENUE FOR CUSTOMS AND EXCISE — **Applicant-Respondent**

and

UNICARE MEDICAL PRODUCTS INC. — **Respondent-Appellant**

Customs Tariff - Motions to dismiss for want of prosecution - Whether the Canadian International Trade Tribunal has jurisdiction to dismiss an appeal for want of prosecution where the appellant, which has filed notices of appeal under section 47 of the Customs Act, R.S.C., c. C-40, within the statutorily prescribed time limits, has failed to submit briefs in support of the appeal.

DECISION: *The motions are denied. The Tribunal is not explicitly empowered to grant the Deputy Minister's motions. When sections 31 and 32 of the Canadian International Trade Tribunal Act*[1] *are read together with section 47 of the Customs Act, it becomes clear that Parliament has directed the Tribunal to allow an appellant, who has filed a notice of appeal within prescribed time limits, an opportunity to be heard at an oral hearing. Nor is the Tribunal implicitly empowered to grant the motions because there is no evidence that a power to grant such motions is a matter of practical necessity for the Tribunal to carry out its legislative mandate of affording the appellant an opportunity to be heard. Finally, the Tribunal is not empowered to grant the motions on the basis that the Tribunal is master of its procedure. To do so would be, under the guise of a procedural matter, an attempt by the Tribunal to restrict the substantive right granted by Parliament of an opportunity to be heard at an oral hearing.*

As Unicare has filed its appeals in accordance with the Customs Act, as the Tariff Board had agreed to postpone the hearing of Unicare's appeals and as the Tribunal has not yet rescheduled a date for the hearing of Unicare's appeals, the Tribunal considers that it is not empowered to grant the respondent's motions to dismiss Unicare's appeals for want of prosecution on the basis that Unicare has failed to submit briefs in respect of its appeals.

The Tribunal, however, is empowered to set a date for the hearing of Unicare's appeals. Accordingly, the Tribunal orders that these appeals be scheduled to be heard at Ottawa, Ontario, on the 9th day of May 1990 at 10:00 a.m.

Place of Hearing: *Ottawa, Ontario*
Date of Hearing: *September 14, 1989*
Date of Decision: *April 30, 1990*

Tribunal Members: *Robert J. Bertrand Q.C., Presiding Member*
Sidney A. Fraleigh, Member
W. Roy Hines, Member

Clerk of the Tribunal: Janet Rumball

1. S.C. 1988, c. 56.

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Appearances:	*René LeBlanc and* *Dominique Gagné, for the respondent*
Cases Cited:	*Okanagan Helicopters Ltd. v. Canadian Pacific Ltd. [1974] 1 F.C. 465; Ex Parte Quevillon (1974) 20 C.C.C. (2d) 555; The Queen v. Livingston [1977] 1 F.C. 368; Interprovincial Pipe Line Ltd. v. National Energy Board [1978] 1 F.C. 601; Ref Re National Energy Board Act [1986] 3 F.C. 275.*
Statutes and Rules Cited:	*Canadian International Trade Tribunal Act, S.C. 1988, c. 56., ss. 31, 32 and 60, subss. 17(2) and 54(2), par. 16(c); Code of Civil Procedure of Quebec, art. 265; Customs Act, R.S.C. 1970, c. C-40, subss. 47(1) and 47(2); Customs Act, R.S.C. 1985 (2nd. Supp.), c. 1, subs. 169(2); Federal Court Rules, C.R.C. 1978, c. 663, rule 440 as amended.*

CANADIAN INTERNATIONAL TRADE TRIBUNAL
TRIBUNAL CANADIEN DU COMMERCE EXTÉRIEUR

Appeal Nos. 2437, 2438, 2485, 2591, 2592

THE DEPUTY MINISTER OF NATIONAL REVENUE FOR CUSTOMS AND EXCISE — **Applicant-Respondent**

and

UNICARE MEDICAL PRODUCTS INC. — **Respondent-Appellant**

TRIBUNAL: ROBERT J. BERTRAND, Q.C., PRESIDING MEMBER
SIDNEY A. FRALEIGH, MEMBER
W. ROY HINES, MEMBER

REASONS FOR DECISION

SUMMARY

Unicare Medical Products Inc. (Unicare) filed five different appeals with the Tariff Board more than three years ago. The appeals were commenced pursuant to section 47 of the *Customs Act*[2] and were filed within the time limit prescribed by the *Customs Act*. The appeals were filed because Unicare did not agree that the goods it imported were correctly classified under the tariff items chosen by the Deputy Minister of National Revenue for Customs and Excise (the Deputy Minister).

On September 14, 1989, at a hearing before the Canadian International Trade Tribunal (the Tribunal), the Deputy Minister, the respondent in the appeal, moved for dismissal of the five appeals for want of prosecution. Unicare, although notified that the motions would be made on that date, did not respond to the motions nor attend the hearing. The motions were argued on the grounds that Unicare had neglected and/or refused, without cause, to take the necessary steps to proceed with its appeals because it had not submitted briefs in support of its appeals.

The issue before the Tribunal is whether it should grant the Deputy Minister's motions and dismiss Unicare's five appeals for want of prosecution, even though Unicare has filed notices of appeal under section 47 of the *Customs Act* within the statutorily prescribed time limit, because the appellant failed to submit briefs in support of the appeals.

The motions are denied. The Tribunal is not explicitly empowered to grant the Deputy Minister's motions. When sections 31 and 32 of the *Canadian International Trade Tribunal Act*[3] are read together with section 47 of the *Customs Act*, it becomes clear that Parliament has directed the Tribunal to allow an appellant, who has filed a notice of appeal within the prescribed time limit, an opportunity to be heard at an oral hearing. Nor is the Tribunal implicitly empowered to grant the motions because there is no evidence that a power to grant such motions

2. R.S.C. 1970, c. C-40.
3. S.C. 1988, c. 56.

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is a matter of practical necessity for the Tribunal to carry out its legislative mandate of affording the appellant an opportunity to be heard. Finally, the Tribunal is not empowered to grant the motions on the basis that the Tribunal is master of its procedure. To do so would be, under the guise of a procedural matter, an attempt by the Tribunal to restrict the substantive right granted by Parliament of an opportunity to be heard at an oral hearing.

As Unicare has filed its appeals in accordance with the *Customs Act*, as the Tariff Board had agreed to postpone the hearing of Unicare's appeals and as the Tribunal has not yet rescheduled a date for the hearing of Unicare's appeals, the Tribunal considers that it is not empowered to grant the respondent's motions to dismiss Unicare's appeals for want of prosecution on the basis that Unicare has failed to submit briefs in respect of its appeals.

The Tribunal, however, is empowered to set a date for the hearing of Unicare's appeals. Accordingly, the Tribunal orders that these appeals be scheduled for hearing at Ottawa, Ontario, on the 9th day of May 1990 at 10:00 a.m.

THE FACTS

Unicare filed five different appeals with the Tariff Board more than three years ago. The appeals were commenced pursuant to section 47 of the *Customs Act*, and were filed within the time limit prescribed by the *Customs Act*. The appeals were filed because Unicare did not agree that the goods it imported - a Flotation Bed Pad; Heel Cushion and Full Insoles; Cervical Neck Pillows; Hygienic bath and shower accessories; a Convaid folding invalid chair - were correctly classified under the tariff items chosen by the Deputy Minister.

Although the appeals were originally commenced before the Tariff Board, the appeal is taken up and continued by the Tribunal in accordance with subsection 54(2) and section 60 of the *Canadian International Trade Tribunal Act*. Consequently, the Tribunal is the proper forum to deal with matters pertaining to those appeals.

On September 14, 1989, at a hearing before the Tribunal, the Deputy Minister, the respondent in the appeal, moved for dismissal of the five appeals for want of prosecution. Although Unicare, as the facts below indicate, was notified of the hearing, it did not appear.

The pertinent facts giving rise to the motions by the applicant Deputy Minister follow.

Appeal Nos. 2437 & 2438

Appeal No. 2438 was filed on December 26, 1985. Appeal No. 2437 was filed on December 27, 1985. They were scheduled to be heard on May 6, 1986; but on April 1, 1986, Unicare requested a postponement. On October 8, 1986, Unicare requested that the Tariff Board place the appeals on hold. Unicare was not sure whether it wanted to continue the appeals. On January 19, 1987, Unicare told the Tariff Board that it wanted to have the appeals heard and so a hearing date was scheduled for January 12, 1988.

On November 24, 1987, Unicare requested another postponement. The Tariff Board indicated it would reschedule the hearing only when Unicare submitted its briefs. Unicare agreed

to inform the Tariff Board when it would submit the briefs, but failed to do so. Instead, on November 1, 1988, Unicare informed the respondent that it was not sure whether it wanted to proceed with the appeals.

Again, on April 10 and April 27, 1989, Unicare contacted the Tribunal. It told the Tribunal that it would be informed at some point in the future as to whether Unicare intended to proceed. Unicare has yet to do so.

On June 12, 1989, Unicare was sent a letter by registered mail in which counsel for the Deputy Minister advised Unicare that if it did not file its briefs in support of these two appeals by June 26, 1989, counsel for the Deputy Minister would ask the Tribunal to dismiss the appeals for want of prosecution.

By letter dated July 7, 1989, counsel for the Deputy Minister, not having received briefs or other documents in support of Unicare's appeals, requested the Tribunal to set a date to hear a motion to dismiss the appeals for want of prosecution.

By letter dated August 9, 1989, the Secretary of the Tribunal notified Unicare that the Chairman of the Tribunal had directed that a hearing to entertain the motion for dismissal be held September 14, 1989. Unicare was also notified of the time and place of the hearing.

Finally, by registered letter dated August 24, 1989, counsel for the Deputy Minister provided Unicare with copies of a motion to dismiss for want of prosecution.

Appeal No. 2485

Appeal No. 2485 was filed on February 5, 1986. Before a hearing date was scheduled, Unicare requested on October 8, 1986, that the Tariff Board place the appeals on hold. It was not certain whether it wanted to continue the appeal. On January 19, 1987, Unicare informed the Tariff Board that it wanted to have the appeals heard and so a hearing date was scheduled for January 12, 1988.

On November 24, 1987, Unicare requested another postponement. The Tariff Board indicated that it would reschedule the hearing only when Unicare submitted its briefs. Unicare agreed to inform the Tariff Board when it would submit the briefs, but failed to do so. Instead, on November 1, 1988, Unicare informed the respondent that it was not certain whether it wanted to proceed with the appeals.

Again, on April 10 and April 27, 1989, Unicare contacted the Tribunal. It told the Tribunal that it would be informed at some point in the future as to whether Unicare intended to proceed. It has yet to do so.

On June 12, 1989, Unicare was sent a letter by registered mail in which counsel for the Deputy Minister advised Unicare that if it did not file its briefs in support of these two appeals by June 26, 1989, counsel for the Deputy Minister would ask the Tribunal to dismiss the appeals for want of prosecution.

By letter dated July 7, 1989, counsel for the Deputy Minister, not having received a brief or other document in support of Unicare's appeal, requested the Tribunal to set a date to hear a motion to dismiss the appeal for want of prosecution.

By letter dated August 9, 1989, the Secretary of the Tribunal notified Unicare that the Chairman of the Tribunal had directed that a hearing to entertain the motion for dismissal be held September 14, 1989. Unicare was also notified of the time and place of the hearing.

Finally, by registered letter dated August 24, 1989, counsel for the Deputy Minister provided Unicare with copies of a motion to dismiss for want of prosecution.

Appeal Nos. 2591 & 2592

Appeal Nos. 2591 and 2592 were filed on June 13, 1986. Before a hearing date was scheduled, Unicare requested on October 8, 1986, that the Tariff Board place the appeals on hold. It was not certain whether it wanted to continue the appeals. Evidently Unicare decided to proceed with the appeals because on July 26, 1988, it notified the Tariff Board that it would contact the Board within a week and, at that time, inform the Board when it would file its briefs. Unicare never contacted the Board. Instead, on November 1, 1988, it informed the respondent that it was not certain whether it wanted to proceed with the appeals.

Again, on April 10 and April 27, 1989, Unicare contacted the Tribunal. It told the Tribunal that it would be informed at some point in the future as to whether Unicare intended to proceed. It has yet to do so.

On June 26, 1989, Unicare was sent a letter by registered mail in which counsel for the Deputy Minister advised Unicare that if it did not file its briefs in support of these appeals by August 11, 1989, counsel for the Deputy Minister would ask the Tribunal to dismiss the appeals for want of prosecution.

By letter dated August 15, 1989, counsel for the Deputy Minister, not having received briefs or other documents in support of Unicare's appeals, requested the Tribunal to set a date to hear a motion to dismiss the appeals for want of prosecution.

By letter dated August 23, 1989, the Secretary of the Tribunal notified Unicare that the Chairman of the Tribunal had directed that a hearing to entertain the motion for dismissal be held September 14, 1989. Unicare was also notified of the time and place of the hearing.

Finally, by registered letter dated August 24, 1989, counsel for the Deputy Minister provided Unicare with copies of a motion to dismiss for want of prosecution.

THE ISSUE

The issue before the Tribunal is whether it should grant the Deputy Minister's motions and dismiss Unicare's five appeals for want of prosecution because the appellant failed to submit briefs

in support of the appeals, even though Unicare has filed a notice of appeal under section 47 of the *Customs Act* within the statutorily prescribed time limit. If the Tribunal grants the motions, then subject to the Tribunal's decision being overturned on appeal, Unicare will lose its statutory right to appeal the Deputy Minister's decisions in respect of the goods Unicare has imported.

The position of the Deputy Minister was that the motions should be granted. The argument of counsel for the Deputy Minister in support of the motions was twofold. First, counsel argued that the Tribunal, being a superior court of record, by virtue of section 17 of the *Canadian International Trade Tribunal Act*, has the inherent jurisdiction to grant motions to dismiss for want of prosecution. In support of this point, counsel cited rule 440 of the *Federal Court Rules*,[4] which enables the Federal Court-Trial Division to dismiss an action for want of prosecution, and article 265 of the *Code of Civil Procedure of Quebec*.

Second, and dealing with the merits of the motions, counsel for the Deputy Minister argued that more than three years have elapsed since Unicare filed its appeals. According to counsel, the facts giving rise to these motions clearly indicate that during this time, Unicare has neglected and/or refused, without cause, to take the necessary steps to proceed with its appeals. Indeed, according to counsel, Unicare's absence at the hearing of the motions provides conclusive evidence that it does not wish to proceed any further with the appeal.

Counsel argued that should the Tribunal not dismiss the appeals for want of prosecution, it should, in the alternative, order Unicare to file briefs for the five appeals within a time period that the Tribunal considers proper. In the event that Unicare does not file its briefs by the end of that time period, the Tribunal should dismiss the appeals.

DECISION

Before considering the merits of the motions, the Tribunal must address the underlying issue of jurisdiction and decide first if it has the power to grant such motions to dismiss the appeals for want of prosecution.

The Canadian International Trade Tribunal is a body created by statute as a court of record. According to subsection 17(2) of the *Canadian International Trade Tribunal Act*, it has such powers, rights and privileges as are vested in a superior court of record, but only

> *... as regards the attendance, swearing and examination of witnesses, the production and inspection of documents, the enforcement of its orders and other matters necessary or proper for the due exercise of its jurisdiction ...*

As a statutory agency, its jurisdiction is entirely derived from Parliament. It only has the authority conferred explicitly or implicitly by its own enabling statute or other federal statutes that give it jurisdiction.[5]

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4. C.R.C. 1978, c. 663 (as amended).
5. The Federal Court of Canada, as a statutory court, is in a similar position: Okanagan Helicopters Ltd. v. Canadian Pacific Ltd. [1974] 1 F.C. 465; Ex Parte Quevillon (1974) 20 C.C.C.

The express jurisdiction of the Tribunal with respect to appeals is, according to paragraph 16(c) of the *Canadian International Trade Tribunal Act*, to

> *hear, determine and deal with all appeals that, pursuant to any other Act of Parliament or regulations thereunder, may be made to the Tribunal, and all matters related thereto;*

Therefore, the jurisdiction of the Tribunal is to be found in the relevant statute providing for the present appeals.

As Unicare's appeals were initiated prior to the coming into force of the *Customs Act*, as enacted on November 10, 1986, these appeals are, in accordance with subsection 169(2) of the new *Customs Act*,[6]

> *... continued and completed as if this Act and any regulations made hereunder had not been enacted.*

It follows that the relevant statutory provisions governing the present appeals are to be found in the *Customs Act* as it existed prior to the enactment of 1986 (the former *Customs Act*).

Subsection 47(1) of the former *Customs Act* provides that:

> *A person who deems himself aggrieved by a decision of the Deputy Minister*
>
> *(a) as to tariff clarification or value for duty,*
> *(b) made pursuant to section 45, or*
> *(c) as to whether any drawback of customs duties is payable or as to the rate of such drawback,*
>
> *may appeal from the decision to the Tariff Board by filing a notice of appeal in writing with the secretary of the Tariff Board within sixty days from the day on which the decision was made.*

Parliament has therefore expressly and effectively provided not only for a right of appeal, but also for the procedure as to how an appeal may be made: by filing a notice in writing within the stated time limit. Parliament has not imposed any other requirement for an appeal to be validly instituted and, once that sole requirement is satisfied, the Tariff Board (now the Tribunal) is seized of the appeal. The former *Customs Act* provides in subsection 47(2) that:

> *Notice of the hearing of an appeal under subsection (1) shall be published in the Canada Gazette at least twenty-one days prior to the day of the hearing, and any person who, on or before that day, enters an appearance with the secretary of the Tariff Board* [now the Tribunal] *may be heard on the appeal.*

(2d) 555; The Queen v. Livingston [1977] 1 F.C. 368.
6. R.S.C. 1985 (2nd. Supp.) c. 1.

This statutory requirement to provide for a hearing corresponds to the right to be heard that any person has when his or her pecuniary interests are to be affected by a decision of an administrative tribunal.

The Tribunal must therefore afford an opportunity to be heard on the subject matter of the appeal to the appellant and to intervenors, if any. Furthermore, it may be inferred from the wording used in sections 31 and 32 of the *Canadian International Trade Tribunal Act* that the Tribunal must provide for an oral hearing. Those sections read as follows:

> *31. All parties to a hearing before the Tribunal may appear in person or may be represented at the hearing by counsel or an agent.*
>
> *32. A hearing before the Tribunal may, on the request of any party to the hearing, be held in camera if that party establishes to the satisfaction of the Tribunal that the circumstances of the case so require.*

The reference in those sections to personal appearance, representation by counsel as agent and to *in camera* hearing suggest that an oral hearing was contemplated by Parliament.

In the Tribunal's view, those sections, taken together with subsection 47(2) of the former *Customs Act*, direct the Tribunal to allow or provide for an opportunity to be heard at an oral hearing which may be held *in camera*. It does not mean, however, that if the parties choose not to avail themselves of that opportunity (to be heard orally) that they cannot present their case in writing and, in such a situation, the Tribunal would have to dispose of the appeal on the basis of the material before it.

Considering the statutory framework governing the present appeals according to which Parliament has explicitly spelled out the obligations of the Tribunal while not mentioning any obligation for the appellant other than the filing of a notice of appeal within the prescribed time limit, the Tribunal considers that Parliament has dealt exhaustively with the issue of how an appeal is to be made. Accordingly, the Tribunal does not have the explicit authority to decide and dispose of the appeal on motions to dismiss for want of prosecution on the ground that the appellant has failed to file a written brief. To grant such motions would, in the Tribunal's view, be tantamount to asserting, contrary to the express statutory provision, that the Tribunal may dispose of an appeal on the motion itself, without providing for a hearing on the subject matter of the appeal.

In view of the foregoing statutory framework, the Tribunal also considers that it does not have an implied jurisdiction to dismiss the appeals for want of jurisdiction on the ground that there has been a failure to file a brief.

The doctrine of implied jurisdiction, as it pertains to statutorily created agencies like the Tribunal, has been dealt with in the Federal Court of Appeal decisions in *Interprovincial Pipe*

Line Ltd. v. National Energy Board[7] and in *Ref Re National Energy Board Act*.[8] As Mr. Justice Le Dain noted (at p. 608) in the Interprovincial Pipe Line Ltd. case (*supra*), while there may be no explicit authority in a constitutive statute for the exercise of a particular power, it may nevertheless exist by necessary implication from the nature of the regulatory authority that has been conferred on the agency in question.

The test, as articulated in Ref Re *National Energy Board Act* (*supra*), to determine whether a power can be claimed to fall, by necessary implication, within the jurisdiction of a statutorily created agency is this: is there " ... evidence of practical necessity for the exercise of the power to enable the regulatory body to attain the objects expressly prescribed by Parliament."[9] (Emphasis added)

Clearly, in an appeal commenced pursuant to the former *Customs Act*, one of the objects expressly prescribed by Parliament is to impose on the Tribunal an obligation to afford the appellant an opportunity to an oral hearing provided an appeal notice is filed in a timely manner. Claiming, as the Deputy Minister does, that the Tribunal has the added power, by necessary implication, to deny that opportunity because briefs have not been filed - even though an appeal notice has been filed within the prescribed time limit - would not, in the Tribunal's view, further the Tribunal in carrying out its statutorily imposed mandate of providing such appellant with an opportunity to be heard. Rather, the Tribunal considers that an implied parliamentary grant of power to dismiss an appeal for want of prosecution because briefs have not been filed would enable the Tribunal to circumvent the obligation, expressly prescribed by Parliament, to afford the appellant an opportunity of an oral hearing.

Finally, while the Tribunal is aware that it is master of its own procedure, it does not consider that this authority empowers it to dismiss the appeals for want of prosecution because the appellant has failed to file briefs. The Tribunal's authority over its own process is, of course, subject to its constitutive statute (i.e., the *Canadian International Trade Tribunal Act*), the other federal statutes that give it jurisdiction (i.e., the *Customs Act* in the present instance), and the duty to observe the rules of natural justice.

Given the foregoing statutory context in which appeals under the former *Customs Act* are evaluated, the Tribunal considers that obliging an appellant, who has filed an appeal notice in a timely manner, to provide a brief under threat of dismissal of the appeal, for want of prosecution, for failing to meet such an obligation would no longer constitute a matter of procedure. Rather, it would constitute an excess of jurisdiction in that it would be, under the guise of a procedural matter, an attempt by the Tribunal to restrict the substantive right granted by Parliament of an opportunity to be heard at an oral hearing.

In short, as Unicare has filed its appeals in accordance with the former *Customs Act*, as the Tariff Board had agreed to postpone the hearing of Unicare's appeals and as the Tribunal has not yet rescheduled a date for the hearing of Unicare's appeals, the Tribunal considers that it is not

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7. [1978] 1 F.C. 601.
8. [1986] 3 F.C. 275.
9. *per* Heald J. at p. 286.

empowered to grant the respondent's motions to dismiss Unicare's appeals for want of prosecution on the basis that Unicare has failed to submit briefs in respect of its appeals.

However, as master of its own procedure, the Tribunal is empowered to set a date for the hearing of Unicare's appeals, to have the Secretary of the Tribunal notify Unicare that it is requested to appear before the Tribunal at that date and that the Tribunal will proceed *ex parte* if the appellant does not show for the hearing. If the appellant does not show for the hearing, the Tribunal will then be empowered to dispose of the appeals on the basis of the record.

CONCLUSION

Accordingly, the motions to dismiss for want of prosecution on the grounds that Unicare has not filed its briefs are denied. However, the Tribunal orders that these appeals be scheduled to be heard at Ottawa, Ontario, on the 9th day of May 1990 at 10:00 a.m.

Robert J. Bertrand, Q.C.
Robert J. Bertrand, Q.C.
Presiding Member

Sidney A. Fraleigh
Sidney A. Fraleigh
Member

W. Roy Hines
W. Roy Hines
Member