



INTERIOR BOARD OF INDIAN APPEALS

Marvin Murphy v. Anadarko Area Director, Bureau of Indian Affairs

3 IBIA 47 (09/09/74)

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United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ADMINISTRATIVE APPEAL OF

MARVIN MURPHY

v.

AREA DIRECTOR, ANADARKO

AREA OFFICE, ET AL.

IBIA 75-18-A

Decided September 9, 1974

Appeal from a decision of a Special Board of Appeals impanelled by the Commissioner, Bureau of Indian Affairs, affirming the action of the Iowa Tribal Council canceling a tribal land assignment.

Dismissed.

Indian Lands: Assignments--Indian Lands: Tribal Lands--Indian Lands:
Generally

Cancellation of Tribal land Assignments are governed by the terms of the assignment as agreed upon by the parties thereto.

APPEARANCES: Marvin Murphy, pro se.

OPINION BY ADMINISTRATIVE JUDGE WILSON

Marvin Murphy, the Appellant herein, under date of July 1, 1974, directed a letter to Rogers C. B. Morton, Secretary of the Interior, regarding a decision of a Special Board of Appeals confirming the cancellation of a tribal land assignment by the Iowa Tribal Council through its Executive Committee. The letter will be considered as an appeal by the Board.

The appeal, together with the administrative record regarding the matter, was referred to this Board on August 12, 1974, by the Bureau of Indian Affairs for review and final disposition.

The events leading to the appeal herein, according to the record, are as set forth hereinafter.

The assignment, comprising tribal lands described as Plot 3, Tract 4, more particularly described as that portion of Tract 4 lying "South of the Road," contained in lots 5 and 6 of the SE 1/4, sec. 12, T. 1 S., R. 18 E., 6th P.M., containing 50 acres, was originally the assignment of one Homer B. Campbell.

The acreage in question was reassigned to the Appellant on March 24, 1956, by the Iowa Tribal Council. The possession and use thereof remained unchallenged through and including January 6, 1973, when the General Council of the Iowa Tribe through Resolution Number 73-R-16, canceled and revoked the Appellant's assignment effective as of that date for the following reasons:

- (1) Assigned lands do not constitute your usual place of residence,
- (2) Assignment is not personally operated by you; and
- (3) Use fees have not been paid since 1967.

The Appellant thereafter appealed the Tribe's cancellation under the provisions of section 7(b) of the assignment which in pertinent part provides:

If an assignment is revoked without the consent of the assignee, he may thereupon appeal within sixty (60) days from the date of notice of revocation to the Commissioner of Indian Affairs, who thereupon shall establish a Board of Appeals as described above. Pending a decision by the Board of Appeals, the right of the assignee to the continued use and occupancy of the assignment shall not be abridged.

The method of creating the Board of Appeals by the Commissioner, Bureau of Indian Affairs, is set forth in section 7 of the assignment which provides:

Upon receiving such protest, the Commissioner shall authorize the creation of a Board of Appeals, one member to be named by the person or group making the protest, one to be named by the Iowa Executive Committee, and a third member to be designated by

the Commissioner of Indian Affairs, Provided, that the third member shall not be affiliated with the tribe and shall not be an employee of the Indian Service within the administrative region.

The Board of Appeals thereafter was impanelled by the Commissioner, Bureau of Indian Affairs, to conduct a hearing on Appellant's appeal.

The record indicates several attempts were made to hold the hearing but without success. Finally, on April 10, 1974, the Special Board convened with only two members since the Appellant refused to participate therein. Based on the findings of said hearing, an order was issued by the Special Board on April 10, 1974, wherein it affirmed the Iowa Tribe's cancellation of the Appellant's assignment. A copy of the Special Board's Hearing Order is attached hereto and made a part hereof.

The only issue to be resolved by this Board is whether the decision of the Special Board impanelled by the Commissioner, Bureau of Indian Affairs, pursuant to section 7 of the Assignment, was final for the Department.

In this connection it is noted that section 7(f) of the assignment specifically provides:

The decision rendered by the Board of Appeals in any of the above disputes shall be final. (Emphasis supplied)

The Appellant in accepting the reassignment of the land in question was bound by the provisions of the assignment. Accordingly, the Board finds that the decision of the Special Board of Appeals of April 10, 1974, affirming the Tribe's cancellation of Appellant's assignment is final for the Department and that no further administrative remedy is available to the Appellant. The appeal should therefore be dismissed.

Assuming arguendo, that the Special Board of Appeals' decision was not final for the Department, a review of the administrative record indicates quite clearly that the Appellant was extended every opportunity to resolve the matter. The record reflects his uncooperative attitude to resolve the matter through the appeals procedure set forth in the assignment. Evidence thereof is indicated by his refusal to accept certified mail, requests for postponements, and his refusal to participate, personally or through counsel, in either of the hearings as scheduled. Moreover, the record further indicates Appellant's refusal to designate a member to sit on the Special Board as provided in the assignment. In light of the foregoing circumstances, the Appellant can hardly say he was deprived of the opportunity to be heard and to refute the charges on which the cancellation of his assignment was effected.

NOW, THEREFORE, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior

(Section 211.137, Departmental Manual, December 14, 1973), the appeal of Marvin Murphy is hereby DISMISSED.

Done at Arlington, Virginia.

//original signed

Alexander H. Wilson
Administrative Judge

I concur:

//original signed

David J. McKee
Chief Administrative Judge

Attachment

BEFORE A SPECIAL BOARD OF APPEAL

AUTHORIZED BY THE ACTING ANADARKO AREA DIRECTOR UNDER
DELEGATION BY THE ASSISTANT TO THE SECRETARY OF THE INTERIOR

In The Matter of the
LAND ASSIGNMENT OF MARVIN MURPHY

HEARING ORDER

NOW, on this 10th day of APRIL 1971, comes to be heard the appeal of Marvin Murphy from the action heretofore taken by the Iowa Tribal Council in cancelling his assignment to certain lands described as Plot 3, Tract 4, more particularly described as that portion of Tract 4 lying "South of the Road", contained in Lots 5 and 6 of the Southeast Quarter, Section 12, Township 1 South, Range 18 East, containing 50 acres, Brown County, Kansas.

Mr. Murphy made an appearance with one, Leonard Fee, whom Mr. Murphy identified as his designee to the Board; however, he refused to allow Mr. Fee to sit as a Board member because he was without counsel and felt the Hearing should again be rescheduled for another date inasmuch as he had notified the Area Office that his attorney had other commitments this date. The Iowa Tribe's designee, Mrs. Merzl Schroeder and Mr. Louis White, the Commissioner's designee, made an appearance. Members of the Iowa Tribal Executive Committee present were: Forrest Fee, Albert Green and Murray Campbell.

There having been two previous postponements and one aborted Hearing, it was decided to convene the Hearing with two Board members presiding and

the third present. For the record, it should be stated that Mr. Murphy implied that he had no intent to participate in the Hearing. The following Findings and Conclusions are based on the documentation available for review and the limited verbal testimony presented.

Findings

According to the documentation before the Board which was not rebutted by Mr. Murphy we find that:

1. Mr. Murphy resides in Hiawatha, Kansas. His limited occupancy of the assignment does not reflect an intention of permanent residency on the assigned premises.
2. Mr. Murphy does not own farming equipment and is not personally utilizing the land nor is he engaged in a farming operation in a manner contemplated by the landless Indian assignment program. Evidence indicates that Dwight Fee operates the assignment without sanction or approval of the proper tribal officials.
3. He has paid no use fees since 1967.
4. The record reflects that the Tribal Officials made extensive efforts to resolve the land assignment to Mr. Murphy's advantage.
5. Mr. Murphy offered no evidence in his behalf to refute the above.

CONCLUSIONS AND ORDERS

1. Mr. Murphy was in violation of the Assignment Agreement for the above stated reasons.
2. The Tribe acted properly in effecting the cancellation of the Assignment.
3. In view of Mr. Murphy's failure to appear before the Tribal Land Assignment Committee by not accepting mail from the tribe or the Horton Agency or to make formal presentation before the tribe as provided in Sec. 7(e) of the Assignment, or before the Board, the cancellation is hereby affirmed. The Iowa Tribe shall have the right to immediate possession to all of said described real estate not now under cultivation. As soon as the 1974 crop is harvested, the operator or operators and assignee shall have no further rights thereon.

