



INTERIOR BOARD OF INDIAN APPEALS

J.B. Love v. Aberdeen Area Director, Bureau of Indian Affairs

3 IBIA 215 (01/03/1975)



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
J. B. LOVE
v.
AREA DIRECTOR, ABERDEEN, ET AL.

IBIA 75-32-A

Decided January 3, 1975

Appeal from an administrative decision of the Area Director, Aberdeen, South Dakota, affirming a decision of the Superintendent, Standing Rock Agency, Fort Yates, North Dakota.

Reversed.

APPEARANCES: J. B. Love, pro se.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

This is an appeal filed by J. B. Love, a non-Indian, hereinafter referred to as the appellant from the decision of the Acting Area Director, Bureau of Indian Affairs, Aberdeen, South Dakota, dated October 24, 1974, sustaining the action of the Superintendent, Standing Rock Agency, in modifying appellant's grazing permit.

By authority of law and under regulations prescribed by the Secretary of the Interior the appellant was granted a permit to graze 244 head of livestock on Range Unit No. 369 located on the Standing Rock Indian Reservation from November 1, 1972, to October 31, 1977, at an annual rental of \$6,126.

By letter dated April 24, 1974, the Superintendent, Standing Rock Agency, notified the appellant that "it may be necessary to withdraw part of the fees paid land from Range Unit 369 for allocation. The proposed withdrawal would be effective November 1, 1974."

On April 30, 1974, the appellant replied requesting among other things to be "advised as to what portion of RU 369 may be taken from me in order that I may make appropriate plans in connection therewith . . ."

The Superintendent did not respond to appellant's letter of April 30, 1974. Instead, on September 20, 1974, the Acting Superintendent wrote the appellant enclosing modification No. 1 on Range Unit 369 which showed the land to be allocated out of the unit on November 1, 1974. The Acting Superintendent further advised that the allocation approved by the Tribal Council would go to Felix G. Eagle, Fort Yates, North Dakota. On October 2, 1974, a permit was issued to Felix G. Eagle on Range Unit 368 which constitutes the northwest part of old Range Unit 369. J. B. Love appealed, contending that proper notice was not given for withdrawal of land for range unit allocation. By letter decision dated October 24, 1974, the Area Director concluded that proper notice was given and sustained the action of the Superintendent, Standing Rock Agency. The permittee appealed to the Commissioner, Bureau of Indian Affairs, and the appeal was referred to the Board of Indian Appeals pursuant to a delegation of authority from the Secretary.

The issue simply put is, was proper notice afforded the appellant for withdrawal of land for range unit allocation?

We think not.

Section 151.14(c) of the Title 25 Code of Federal Regulations provides:

The Superintendent may revoke or withdraw all or any part of a grazing permit by cancellation or modification on 180 day's written notice for allocated Indian use . . .

"Notice" in its legal sense may be defined as information concerning a fact, actually communicated to a person by an authorized person, or actually derived by him from a proper source, and notice is regarded in law as "actual" when the person sought to be affected by it knows thereby of the existence of the particular fact in question. U.S. v. Tuteur, C. A. Ill., 215 F.2d 415, 418.

Generally speaking, when a formal notice is required to be given, it should give the necessary information. It must be clear and explicit, and not ambiguous.

Advising a permittee it may be necessary to withdraw part of the fees paid land from Range Unit 369 for allocation and that the proposed withdrawal would be effective November 1, 1974, we find, does not constitute notice of cancellation or modification as

provided for in 151.14(c) above. At most, we interpret the Superintendent's letter of April 24, 1974, to mean that part of fees paid land from Range Unit might be withdrawn from Range Unit 369 for allocation and if it is, such withdrawal would take effect on November 1, 1974. (Emphasis supplied.)

We further find that if notice was given as provided for in 25 CFR 151.14(c), it was given for the first time by the Acting Superintendent in his letter of September 20, 1974, when he advised the appellant that the allocation as approved by the Tribal Council would go to Felix G. Eagle, and enclosing modification No. 1 on Range Unit 369.

Consequently, since 180 days would extend beyond November 1, 1974, we conclude that the action of the Superintendent, Standing Rock Agency, modifying appellant's grazing permit was not effected on November 1, 1974.

NOW, THEREFORE, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 211 DM 13.7, issued December 14, 1973, and 43 CFR 4.1C2), the decision of the Area Director, Aberdeen Area Office, Bureau of Indian Affairs dated October 24, 1974, is hereby REVERSED, and the modification of appellant's grazing permit relating to Range Unit 369 did not become effective on November 1, 1974.

This decision is final for the Department.

Done at Arlington, Virginia.

//original signed
Mitchell J. Sabagh
Administrative Judge

I concur:

//original signed
David J. McKee
Chief Administrative Judge