



INTERIOR BOARD OF INDIAN APPEALS

Paul N. Jackson v. Anadarko Area Director, Bureau of Indian Affairs

4 IBIA 39 (04/29/1975)

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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

PAUL N. JACKSON

v.

AREA DIRECTOR, ANADARKO, ET AL.

IBIA 75-27-A

Decided April 29, 1975

Appeal from an administrative decision canceling lease, demanding possession of premises and demanding proceeds of 51 acres of wheat harvested therefrom.

Reversed and remanded.

1. Indian Lands: Leases and Permits: Violation: Damages

The measure of damages is governed primarily by applicable provisions of the lease to the extent specified and provided therein.

APPEARANCES: Virgil L. Upchurch, Attorney for Paul N. Jackson, appellant; Ryland L.

Rivas of the law firm of Pipestem, Rivas and Charloe, for Salome V. Nestell, et al., appellees.

OPINION BY ADMINISTRATIVE JUDGE WILSON

Paul N. Jackson, hereinafter referred to as appellant, through his attorney, Virgil L. Upchurch, has appealed the September 5, 1974 decision of the Acting Area Director, Anadarko Area Office, affirming the decision of August 5, 1974, of William W. Grissom, Superintendent, Anadarko Agency, Anadarko, Oklahoma.

The Superintendent in his said decision of August 5, 1974, canceled the appellant's lease, demanded possession of the premises, and demanded the proceeds of 51 acres of wheat harvested (wheat crop in trespass).

According to the record, the appellant on February 5, 1969, entered into Lease Contract No. 25257, hereinafter referred to as lease, with the owners of Kiowa Trust Allotment No. 240, described as NE 1/4, sec. 24, T. 7 N., R. 13 W., Indian Meridian, Caddo County, Oklahoma, for a term of five years beginning January 1, 1970, and ending December 31, 1974. The subject lease was approved by the Superintendent on February 24, 1969.

The lease in question makes no provision for any of the acreage to be cultivated. The appellant, according to the record, plowed and planted 51 acres of the premises to wheat in the fall of 1973. By

letter of July 24, 1974, the Superintendent advised the appellant of the violation and gave him ten days from the date thereof in which to show cause why the lease should not be canceled. In response thereto, the appellant, on July 30, 1974, attempted to justify his actions and offered to pay an additional \$425 rental for cropping the 51 acres.

The Superintendent on August 5, 1974, advised the appellant that his justification for plowing and planting the 51 acres as set forth in his letter of July 30, 1974, was unacceptable.

The Superintendent further advised the appellant as follows:

- (1) Your lease, above identified, is hereby cancelled, and
- (2) Demand is hereby made for the proceeds of 51 acres of wheat harvested (wheat crop in trespass), and
- (3) Demand is hereby made for the possession of the premises.

In appealing the Superintendent's decision of August 5, 1974, to the Area Director of the Anadarko Area Office the appellant in support of his appeal set forth the following reasons:

- (1) That there was a denial of due process of law to Mr. Jackson by failing to afford Mr. Jackson a hearing before the Superintendent after he had shown cause in his letter of July 30, 1974.

(2) That there is an error of law by the Superintendent in stating that a wheat crop was in trespass as Mr. Jackson was properly in possession under the lease which error violates Mr. Jackson's legal rights.

(3) That there is an error of law in stating the amount of damages if a crop was harvested in violation of the lease which error violates Mr. Jackson's legal rights.

The Area Director, on September 5, 1974, affirmed the decision of the Superintendent in the following language:

(1) It is contended there was a denial of due process of law to the lessee, Mr. Jackson, by not having a hearing before the Superintendent after the delivery of the response letter by Mr. Jackson of July 30, 1974. The 10-day period afforded the individual from the date of the 10-day notice is the period in which the lessee may come forward with his showings of why the lease should continue. The regulations do not contemplate a hearing after the lessee has filed objections in the form of a letter, all arguments whether oral or written are to be presented in the allotted 10-day period.

(2) It is contended that the Superintendent was in error in stating the wheat crop was in trespass since Mr. Jackson was in possession under the lease. We feel the Superintendent was correct in his decision that it was a wheat crop in trespass because it violated the express provisions of the lease requiring the establishment of lovegrass in the 35-acre tract and certainly the maintenance of the balance of the pasture land in its native grass state as it existed at the beginning of the lease. The trespass complained of is a trespass of the terms of the lease, not a trespass of the land. By plowing up the required lovegrass and an additional amount of existing pasture Mr. Jackson committed a trespass of the lease provisions to plant the 35 acres of lovegrass and to maintain the other pasture land.

(3) The amount of damages to satisfy the lease violation was stated in the August 5, 1974 cancellation letter, namely the full proceeds of 51 acres of wheat harvested.

The Area Director in his decision of September 5, 1974, further stated:

After having reviewed your reasons for challenging the decision of the Anadarko Agency Superintendent to cancel the subject farming and grazing lease, we affirm the Superintendent's finding that the lease is cancelled, demand is made for possession of the leased premises, and payment of the gross proceeds of 51 acres of harvested wheat is requested to be paid to the Bureau of Indian Affairs for the benefit of the Indian owners.

It is from the foregoing decision that the appellant has appealed to this forum.

The three reasons set forth in support of the appeal are not repeated herein since they are substantially the same as those set forth in appellant's appeal to the Area Director as hereinabove set forth.

The appellant in his brief filed with this Board under date of January 3, 1975, sets forth the fact that actual possession of the premises in question has been delivered to the succeeding lessee, therefore rendering moot the cancellation issue. Accordingly, only the issue regarding the amount of damages demanded by the Superintendent, as affirmed by the Area Director, remains for the consideration of this Board.

It is the contention of the appellant that the proper measure of damages in this case is a fair and reasonable rental for the use

of land in question. In support of his contention the appellant cites Section 62, Title 23 of the Oklahoma Statutes; Kelly v. Weir (D.C. Ark. 1965), 243 F. Supp. 588; Schradsky v. Stimson (8th Cir. 1896), 76 F. 730 and Long-Bell Lumber Company v. Martin, 11 Oklahoma 192, 66 P. 328 (1901).

We are not in complete agreement with the appellant's contention regarding damages or the authorities cited in support thereof. In the first instance, state law would be inapplicable for measuring the damages since trust or restricted lands are involved. Federal laws in cases involving trust or restricted lands have been held paramount to state law. Sperry Oil and Gas Company v. Chisholm, 264 U.S. 488, 44 S. Ct. 372 (1924). Act of Congress supplants the laws of Oklahoma in relation to Indians. Blanset v. Cardin, 256 U.S. 319 (1921).

In the second instance, the cases cited by appellant in support of his contention involved trespass on fee or nontrust lands whereas this appeal involves a landlord-tenant relationship on trust or restricted Indian lands.

The Superintendent, on the other hand, takes the position that the measure of damages is the entire proceeds from the 51 acres of wheat which was planted in violation of the lease contract. No

authority, however, is cited by the Superintendent in support of his position. Apparently, it is based on the equitable doctrine that "one should not profit from his wrong." Appellees' counsel contends generally that appellant's actions resulted in damage to the land and to allow him to profit therefrom would lead to his unjust enrichment as well as leaving the appellees with the damaged land to restore. Counsel, however, fails to state what the measure of damages should be for appellant's wrongful action.

[1] It appears rather strange that the parties in their respective set forth above completely fail to take into consideration the provisions of the lease, particularly Section VIII. SOIL CONSERVATION REQUIREMENTS. Clearly, the measure of damages in this appeal is to be governed primarily by applicable provisions of the lease to the extent specified and provided therein.

Subsection C, Section VIII of Additional Lease Requirements incorporated into and made a part of Lease Contract No. 25257 provides:

Native grass is not to be plowed up at any time and alfalfa shall not be plowed up in the last year of the lease without written permission from the approving officer. (Damages, \$25.00 per acre) (Emphasis supplied.)

In light of the fact that the lease herein allows for no cultivation it is quite evident and clear that the appellant's action in plowing up the 51 acres was in direct violation of subsection C, supra, and subject to the penalties specified therein.

In addition to the penalty or damages specified, under subsection C, supra, the appellees are entitled to have the 51 acres restored to its condition immediately prior to the violation, i.e., restoring it to pasture or a cash payment in lieu thereof.

Considering the foregoing, the Board finds that the damages for the apparent willful and deliberate plowing of the 51 acres in violation of the lease subsection C, supra, are \$1,275. The Board further finds that the 51 acres in question shall be restored by appellant to its original condition prior to the violation or in lieu thereof make payment of an equivalent cash value as determined by the Superintendent under Section VIII of the Additional Lease Requirements. Accordingly, the decision of the Superintendent as affirmed by the Area Director should be overruled and remanded to the Superintendent for implementation of the Board's findings set forth above.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR

4.1, and 211 DM 13.7 issued December 14, 1973, the decision of August 5, 1974, of the Superintendent, Anadarko Agency, as affirmed by the Area Director on September 5, 1974, is hereby OVERRULED and in lieu thereof it is HEREBY ORDERED as follows, to-wit:

(1) that the appellant make payment of \$1,275 for the violation of subsection C, Section VIII of Additional Lease Requirements, and

(2) that the appellant restore to its original condition the 51 acres plowed in violation of the lease or in lieu thereof, if agreeable to appellees, to pay them an equivalent cash value, the value to be determined by the Superintendent of the Anadarko Agency under Section VIII of the ADDITIONAL LEASE REQUIREMENTS.

This decision is final for the Department.

Done at Arlington, Virginia.

//original signed
Alexander H. Wilson
Administrative Judge

I concur:

//original signed
Mitchell J. Sabagh
Administrative Judge