



INTERIOR BOARD OF INDIAN APPEALS

Jake Ring v. Aberdeen Area Director, Bureau of Indian Affairs

6 IBIA 137 (08/10/1977)



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 JAKE RING, ET AL.

v.

AREA DIRECTOR, ABERDEEN

IBIA 77-38-A

Decided August 10, 1977

Appeal from a decision of an Area Director sustaining an action of a Superintendent in awarding grazing privileges involving Indian preference.

Affirmed and Dismissed.

1. Indian Lands: Grazing: Sales: Indian Preference: Generally

Privilege of meeting high sealed bids of non-Indians in grazing sales is limited to adult tribal members, Indian corporations and Indian Associations according to preference determined by the governing body and concurred in writing by the Area Director.

APPEARANCES: Wally Eklund, Esq., of Johnson, Johnson and Eklund for appellants, Jake Ring, Robert Ring, William Letellier, Kate Eaglebear, Simon Brokenleg, Rasmus Eaglebear, Joseph Eaglebear, Rufus Eaglebear, Irvin Larvie, Lucy Medicine Blanket, Emory Amiotte, hereinafter referred to as appellants.

OPINION BY CHIEF ADMINISTRATIVE JUDGE WILSON

This appeal comes before the Board for review and decision upon referral thereof by the Commissioner, Bureau of Indian Affairs, pursuant to 25 CFR 2.19.

The appeal is from the January 12, 1977 decision of the Area Director, Aberdeen Area Office, sustaining the action of the Superintendent, Rosebud Agency, in awarding grazing privileges on Range Units Nos. 261 and 269 to Ed Charging Elk pursuant to an advertised sale of grazing privileges.

The appeal as we see it focuses on the issue of whether or not Ed Charging Elk was required to prove ownership of livestock in order to exercise Indian preference under Section III-A of Rosebud Sioux Tribal Resolution 76-116.

The appellants argue that proof of ownership on the part of Ed Charging Elk was required under the tribal resolution which was made a part of the advertisement and that it was improper on the part of the Superintendent to deviate therefrom.

The Area Director on the other hand contends that proof of ownership was not required according to the Rosebud Sioux Tribal Council's interpretation of September 17, 1976, of Section III-A which the Superintendent concurred in and announced at the time of the bid openings.

[1] Authority for granting Indian preference in grazing sales is found in 25 CFR 151.11 which in relevant part provides: "(a) Grazing privileges * * * advertisements shall be * * * (5) shall limit the privilege of meeting high sealed bids of non-Indians to adult tribal members, Indian Corporations, and Indian Associations, according to preference determined by the governing body and concurred in writing by the Area Director." (Emphasis supplied.)

Requirements for Indian preference involved in this appeal were adopted by the Rosebud Sioux Tribal Council as the governing body on June 16, 1976, through Resolution 76-116. The resolution was concurred in by the Area Director on July 16, 1976, and accordingly was made a part of the advertisement. On September 17, 1976, the Superintendent of the Rosebud Agency requested of the Tribal Council clarification of the resolution in issue. In response thereto, the Rosebud Tribal Council in its meeting of Friday, September 17, 1976, voted against requiring proof of ownership as a requirement for exercising Indian preference on any unit where only one Indian bidder was involved. The vote was 21 in favor and 2 opposed. The interpretation is deemed to have been concurred in by the Superintendent as the representative of the Area Director in view of the fact that such interpretation was announced prior to opening of bids. Accordingly, we find that proof of ownership was not required as a condition to exercising Indian preference by Ed Charging Elk.

The appellants furthermore contend that if they had been notified in advance of the interpretation, bids in greater amounts would have been submitted by them. Notwithstanding the failure to notify appellants in advance of the interpretation of the resolution in question, we fail to see how appellants' rights were affected since any bids submitted by appellants would have been subject to Indian preference with the right to meet the high bids.

