



INTERIOR BOARD OF INDIAN APPEALS

Kenneth Willie and Anne Begay v. Commissioner of Indian Affairs

10 IBIA 135 (10/12/1982)



United States Department of the Interior

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

KENNETH WILLIE, ET AL.

v.

COMMISSIONER OF INDIAN AFFAIRS

and

ANNE BEGAY

v.

COMMISSIONER OF INDIAN AFFAIRS

IBIA 82-3-A, 82-4-A

Decided October 12, 1982

Appeals from decisions approving the leasing of appellants' Indian trust allotments to Mobil Oil Corporation for uranium exploration and development.

Dismissed in part, denied in part.

1. Board of Indian Appeals: Jurisdiction

The Board does not have jurisdiction to review decisions of the Assistant Secretary for Indian Affairs except as those decisions may be referred to it on a case-by-case basis or by appropriate rulemaking.

2. Board of Indian Appeals: Jurisdiction

An appeal from a decision of a BIA Area Director or the Commissioner of Indian Affairs (or Deputy Assistant Secretary-- Indian Affairs (Operations)) may be properly before the Board even though a related matter has been decided by the Assistant Secretary for Indian Affairs. However, when the parties in the case before the Board are similarly situated, and the issues arise from the same transaction and are identical to those decided by the Assistant Secretary, the Board, as a matter of comity, will defer to the Assistant Secretary's decision

because the appellant has already received a decision by a Secretarial official of the Department.

APPEARANCES: Wayne H. Bladh, Esq., and Paul E. Frye, Esq., DNA-People's Legal Services, Inc., Window Rock, Arizona, for appellants; Chedville L. Martin, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for appellee; Daniel Joseph, Esq., Randall Sarosdy, Esq., and Rory F. Quirk, Esq., Akin, Gump, Hauer & Feld, Washington, D.C., and Stephen J. Sorenson, Esq., Mobil Oil Corporation, Denver, Colorado, for Mobil Oil Corporation. Counsel to the Board: Kathryn A. Lynn.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Kenneth Willie, Mary Castillo Miller, Michael Castillo, Nelson Long, Jr., Rosie Tracey, Benjamin Castillo, and Anne Begay (appellants) are minority interest holders in Navajo Indian trust allotments 901, 905, 916, 917, 920, 921, and 933, 1/ located in McKinley County, New Mexico, outside the existing boundaries of the Navajo Reservation. 2/ Appellants have sought review of the approval by the Bureau of Indian Affairs (BIA) of leases of those trust allotments to Mobil Oil Corporation (Mobil) for uranium exploration and development. For the reasons discussed below, the Board finds that these appeals should be dismissed.

Background

In 1972 appellants, with other allotment holders, entered into 10-year leases of their Indian trust properties with Mobil for the exploration and development of uranium resources. 3/ In late 1976 Mobil began discussions with BIA and Geological Survey aimed at receiving extensions of those leases. These discussions were precipitated by Mobil's concern that it would not be able to reach production before the 1982 expiration of the leases, despite an apparently diligent exploration program and the investment of several million dollars in the properties. (By December 31, 1981, this investment exceeded \$57 million. See Mobil's answer brief at 6.) Failure to reach production would result in the automatic cancellation of the leases and the potential loss of Mobil's investment.

1/ Kenneth Willie owns an undivided 3 percent interest in allotment 901, and an undivided 1.5 percent interest in allotment 905. Mary Castillo Miller, Michael Castillo, and Benjamin Castillo each own an undivided 4.3 percent interest in allotment 920. Rosie Tracey owns an undivided 5.36 percent interest in allotment 920. Nelson Long, Jr., owns a .1 percent interest in allotment 933. Anne Begay owns undivided 2 percent interests in allotments 916 and 917, and a 1 percent interest in allotment 921. See appellants' opening brief at 1; Mobil's answer brief at 4-5.

2/ See appellants' opening brief at 1; appellee's answer brief at 1.

3/ Unless otherwise indicated, information in this section is drawn from appellants' opening brief at pages 1-3, 7-11, and/or Mobil's answer brief at pages 5-15. This recitation of facts is not intended as exhaustive of the circumstances leading up to the present appeals. It merely sets forth sufficient facts for a basic understanding of the case at hand.

On September 23, 1977, Mobil requested permission from BIA to seek approval from the Indian allottees to an amendment of the leases. The amendment would give Mobil an additional 2 years to reach production. Rather than approve this request, the Chief of the Division of Trust Services, BIA, determined that the parties should enter into new 10-year leases. In a meeting between BIA and Mobil on December 8, 1977, BIA undertook to draft a new 10-year lease. This draft was to set forth the minimum compensation for an acceptable lease. The individual allottees would then have the right to negotiate additional or improved terms or to refuse to sign a new lease. This procedure was set forth in a January 9, 1978, memorandum from the Assistant Secretary for Indian Affairs to the Navajo Area Director. The memorandum also granted the Area Director authority to approve the leases. 4/

The BIA developed the lease terms during the first 7 months of 1978. After the lease was prepared, BIA held meetings with the Indian allottees on August 11, 1978, and April 27 and 28, 1979, to explain the background leading up to the development of the new leases and to acquaint the allottees with the provisions of the leases and their rights to negotiate more favorable terms or not to sign a new lease.

All of the appellants, or their predecessors-in-interest, eventually signed new leases. 5/ The leases signed by appellants, which were identical, 6/ were approved by either the Navajo Area Director on April 18, 1980; 7/ the Commissioner of Indian Affairs on August 1, 1980; 8/ or the Assistant Secretary for Indian Affairs on January 15, 1981. 9/

4/ See appellants' statement of arguments, filed with the Commissioner of Indian Affairs on July 31, 1980, Exh. A, Doc. 60.

5/ Kenneth Willie signed leases for his interests in allotments 901 and 905 on Aug. 3, 1979. Charles Begay, husband of Anne Begay and since deceased, signed new leases for allotments 916, 917, and 921 on May 23, 1979. Leases on allotment 920 were signed by Mary Castillo Miller on May 17, 1979, and June 19, 1980; by Benjamin Castillo on June 6, 1979; by Michael Castillo on June 9, 1979; and by Rosie Tracey on Jan. 19, 1980. Nelson Long, Jr., signed a lease for allotment 933 on June 8, 1979. See Mobil's Exhs. 35-38; Mobil's answer brief at 16; appellants' opening brief at 7.

Most of the appellants were represented by DNA-People's Legal Services, Inc. (DNA), when they signed the leases. Nelson Long, Jr., signed a retainer with DNA on Apr. 19, 1979. Kenneth Willie retained DNA on Apr. 26, 1979. Mary Castillo Miller, Michael Castillo, and Charles Begay signed retainers with DNA on May 1, 1979. See Mobil's Exh. 11 and retainer attached to notice of appeal for Rosie Tracey, Benjamin Castillo, and Charles Begay, filed with the Commissioner of Indian Affairs on Nov. 13, 1979.

6/ See statement attached to appellants' additional exhibits, filed with appellants' opening brief: "Exhibit L is the lease of Allotment No. 901, identical in its terms to all the other leases at issue."

7/ The Area Director approved the leases of appellants' interests in allotments 916 and 917. See Mobil's Exh. 36.

8/ The Commissioner approved the leases of appellants' interests in allotments 901 and 905. See Mobil's Exh. 37.

9/ The Assistant Secretary approved the leases of appellants' interests in allotments 920, 921, and 933. See Mobil's Exhs. 35, 36, and 38.

Appellants allege that, although they signed the new leases, their agreement was always conditional upon BIA's conducting an acceptable economic analysis of the terms of the leases. ^{10/} Thus, when appellants learned of the existence of an April 11, 1980, agreement between the Navajo Area Director and Mobil that arguably committed BIA to approve the leases without further consideration of the adequacy of the compensation provided, appellants filed an appeal of that agreement with the Commissioner. A notice of appeal was filed on June 3, 1980. At the same time appellants requested access to any documents relating to economic evaluations of the lease terms. ^{11/} Briefs were filed with the Commissioner by appellants on July 31 and November 13, 1980, and by Mobil on November 5 and December 15, 1980. Appellants filed a reply brief on November 26, 1980.

By letters dated August 12, 1981, the Navajo Area Office informed appellants that the Commissioner had approved some of the leases on August 1, 1980. Following receipt of these letters, appellants appealed to the Board on September 16, 1981. Briefs have been filed in this appeal by all parties.

Jurisdiction

Both appellee and Mobil move that the appeals of those leases approved by the Assistant Secretary for Indian Affairs be dismissed because the Board does not have review authority over the decisions of the Assistant Secretary. Appellants concede that the Board cannot entertain appeals from those leases approved by the Assistant Secretary, unless the decisions were referred to the Board. Appellants, therefore, requested that the decisions be referred to the Board.

The Board's jurisdictional limits are set by regulation. The Board's review authority over the BIA was first defined in 1975 when regulations of the BIA and the Office of Hearings and Appeals were each amended to provide the Board, as an adjunct of the Secretary, with regular appellate jurisdiction over decisions of the Commissioner of Indian Affairs. ^{12/} See 40 FR 20625 (May 12, 1975), codified at 25 CFR Part 2 (1976); 40 FR 20819 (May 13, 1975), codified at 43 CFR Part 4 (1976). The purpose of establishing a right of appeal to the Board was to afford parties adversely affected by BIA decisionmaking with the due process safeguards of independent, objective review. ^{13/}

^{10/} See appellants' reply brief at page 29 and appellants' opening brief at pages 4-7 for a recitation of the facts alleged by appellants to show that a proper economic analysis of the leases was never conducted.

^{11/} Appellants in this appeal were Kenneth Willie, Mary Castillo Miller, Michael Castillo, and Nelson Long, Jr. An appeal for appellants Rosie Tracey, Benjamin Castillo, and Charles Begay was filed on Nov. 13, 1980.

^{12/} The successor position to the Commissioner of Indian Affairs is the Deputy Assistant Secretary--Indian Affairs (Operations). See memorandum of May 15, 1981, signed by the Assistant Secretary for Indian Affairs.

^{13/} "Exercise of the Secretary's review authority by the Board of Indian Appeals will insure impartial review free from organizational conflict in that the Board is a part of the Office of Hearings and Appeals in the Office of the Secretary and as such is independent of the Bureau of Indian Affairs." 40 FR 20819 (May 13, 1975).

From the inception of the Board's acquisition of review authority over the Commissioner, it was envisioned that the Secretary could be presented with Indian affairs controversies which he might prefer to forward to the Board of Indian Appeals for resolution. Accordingly, it is provided at 43 CFR 4.1(b)(2) that "[t]he Board also decides such other matters pertaining to Indians as are referred to it by the Director of the Office of Hearings and Appeals for exercise of review authority of the Secretary."

[1] When the procedural regulations of the Board of Indian Appeals were amended in January 1981, language was included to clarify that just as the Secretary may refer disputes to the Board for resolution, so too might the Assistant Secretary for Indian Affairs. See 43 CFR 4.330(a). ^{14/} However, in the absence of a referral to the Board by the Assistant Secretary of a matter pending before or decided by him, the Board is without jurisdiction over the Assistant Secretary. ^{15/}

In the case before us, appellee has indicated that the Assistant Secretary's decision to approve some of the leases will not be referred to the Board. See appellee's answer brief at 3-4. Therefore, absent such referral, the Board holds that it does not have jurisdiction to review the Assistant Secretary's January 15, 1981, approval of leases for appellants' interests in allotments 920, 921, and 933. See 43 CFR 4.330.

Appellee and Mobil further argue that the Assistant Secretary's approval of leases for allotments 920, 921, and 933 places the remaining, identical leases beyond the jurisdiction of the Board. They contend that considering leases identical to those approved by the Assistant Secretary is tantamount to considering the leases actually approved by the Assistant Secretary, and potentially places a decision of the Board in conflict with a decision of the Assistant Secretary. Appellants, on the other hand, argue that the Board has and should exercise jurisdiction over the remaining leases.

[2] The Board holds that the remaining lease approvals, given by the Navajo Area Director and the Commissioner of Indian Affairs, are properly before it on appeal. See 25 CFR 2.18 and 2.19; 43 CFR 4.330(a). From the record before us, however, it is clear that the identical issues raised in those lease approvals have been decided by the Assistant Secretary in a

^{14/} The regulations do not preclude the Assistant Secretary from referring so-called "discretionary" matters to the Board for resolution, consistent with the longstanding authority of the Secretary to refer any matter "pertaining to Indians" to the Board. 43 CFR 4.1; 43 CFR 4.330(a) and (b).

^{15/} A recent case in which the Assistant Secretary has rendered a matter appealable to the Board is Juanita Melsheimer v. Assistant Secretary for Indian Affairs, IBIA 82-59-A, docketed Sept. 29, 1982. The Assistant Secretary may, of course, employ rulemaking, in lieu of case-by-case consideration, to render matters before him appealable to the Board. See, e.g., 25 CFR 13.15 which directs that decisions of the Assistant Secretary disapproving petitions for tribal reassumption of jurisdiction over Indian child custody proceedings may be appealed to the Board of Indian Appeals.

related matter involving the same transaction and similarly situated parties. Appellants Willie and Begay, holders of interests in the remaining allotments 901, 905, 916, and 917, have raised no argument that the leases of these allotments are in any way distinguishable from those approved by the Assistant Secretary. Even if the Board were to deny the additional motions for dismissal raised by appellee and Mobil, and so reach the merits of these lease approvals, the Board, as a matter of comity, should defer to the decision of the Assistant Secretary because it represents a decision by a Secretarial official of the Department. Therefore, the approval of leases of appellants' interests in allotments 901, 905, 916, and 917 must be affirmed on the basis of the Assistant Secretary's approval of identical leases for allotments 920, 921, and 933.

In summary, the Board finds that it has no jurisdiction to hear the appeals from the approval of leases of appellants' interests in allotments 920, 921, and 933 because approval was given by the Assistant Secretary for Indian Affairs, and the decision was not referred to the Board for review. Furthermore, the appeals from the approval of leases of appellants' interests in allotments 901, 905, 916, and 917 are denied in deference to the January 15, 1981, decision of the Assistant Secretary. Accordingly, all appeals are dismissed or denied.

All motions not previously ruled upon are denied.

This decision is final for the Department.

//original signed
Wm. Philip Horton
Chief Administrative Judge

We concur:

//original signed
Franklin D. Arness
Administrative Judge

//original signed
Jerry Muskrat
Administrative Judge