



INTERIOR BOARD OF INDIAN APPEALS

Cotton Petroleum Corp. v. Assistant Secretary - Indian Affairs

13 IBIA 2 (07/26/1984)

Judicial review of Assistant Secretary's decision:

Summary judgment for Secretary, CIV-84-1769-E (W.D. Okla. Nov. 3, 1986)

Reversed, 870 F.2d 1515 (10th Cir. 1989)



United States Department of the Interior

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

COTTON PETROLEUM CORP., : Order Docketing and Dismissing Appeal
Appellant :
 :
v. :
 :
ASSISTANT SECRETARY FOR : Docket No. IBIA 84-42-A
INDIAN AFFAIRS, :
Appellee : July 26, 1984

On July 17, 1984, the Board of Indian Appeals (Board) received a notice of appeal from Cotton Petroleum Corp. (appellant), through counsel, Kent L. Jones, Esq., Tulsa, Oklahoma. Appellant seeks review of a June 19, 1984, order issued by the Assistant Secretary for Indian Affairs.

The appeal is docketed under the above case name and number which should be cited in all future correspondence or inquiries regarding the matter. The Board finds, however, that the circumstances of this case require that it be dismissed.

The present appeal is a continuation of an earlier proceeding before the Department. On February 11, 1982, the Anadarko Area Office, Bureau of Indian Affairs, approved an oil and gas communitization agreement affecting Indian trust lands held by Newton Rose and other Indian allottees (Rose). The Area Director's decision to approve the communitization agreement was appealed to the Deputy Assistant Secretary--Indian Affairs (Operations). The Deputy Assistant Secretary remanded the case to the Area Director on May 2, 1983, for an analysis of whether the communitization agreement was in the best economic interests of the Indian allottees. On August 17, 1981, Rose sought to bring the appeal to the Board under 25 CFR 2.19 because no decision had yet been issued.

The Board made a preliminary determination that it had jurisdiction over the appeal and requested the administrative record. Before the record was transmitted to the Board, the Secretary of the Interior assumed jurisdiction over the appeal under 43 CFR 4.5(a)(1), and delegated his decisionmaking authority to the Assistant Secretary for Indian Affairs. The Board, accordingly, dismissed the appeal pending before it. Rose v. Anadarko Area Director, 12 IBIA 130 (1984).

On January 13, 1984, the Assistant Secretary issued a decision in the Rose appeal that, among other things, reversed the Area Director's decision and found that the Rose tract was unleased acreage within the communitized area. The Assistant Secretary directed appellant in the present case to submit an accounting of past production and to make certain payments to Rose and other parties. The case was returned to the Anadarko Area Office for enforcement.

On June 19, 1984, the Assistant Secretary issued the order which is the subject of the present appeal. In that order the Assistant Secretary alleged that appellant had failed to make the payments required in the January 13, 1984, order. Appellant argues that under the express terms of that decision, no payment is yet due and owing. Appellant therefore seeks a determination by this Board that the Assistant Secretary's June 19, 1984, order is in conflict with his January 13, 1984, order; is legally incorrect; and is an abuse of discretion.

The Board lacks jurisdiction to hear the present appeal for two reasons. First, this case arises out of the earlier Rose appeal. Jurisdiction over that matter was removed from the Board by the Secretary of the Interior. The Board interprets the Secretary's order assuming jurisdiction as abrogating its authority to hear any matter arising out of that appeal.

Second, the Board does not have general review authority over decisions of the Assistant Secretary for Indian Affairs. The Board has jurisdiction to review decisions of the Assistant Secretary only if those decisions are referred to it either on a case-by-case basis or through rulemaking. See Pueblo of Laguna v. Assistant Secretary for Indian Affairs, 12 IBIA 80, 90 I.D. 521 (1983); Melsheimer v. Assistant Secretary for Indian Affairs, 11 IBIA 155, 90 I.D. 165 (1983); 25 CFR 13.15. In the absence of such a referral or regulation, decisions of the Assistant Secretary are not appealable to this Board. No referral or regulation has given the Board jurisdiction over the present decision.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is dismissed.

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Bernard V. Parrette
Chief Administrative Judge

//original signed
Jerry Muskrat
Administrative Judge

//original signed
Anne Poindexter Lewis
Administrative Judge