



INTERIOR BOARD OF INDIAN APPEALS

Oliver Redfield v. Billings Area Director, Bureau of Indian Affairs

13 IBIA 356 (12/27/1985)



United States Department of the Interior

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

OLIVER REDFIELD

v.

AREA DIRECTOR, BILLINGS AREA OFFICE, BUREAU OF INDIAN AFFAIRS

IBIA 85-24-A

Decided December 27, 1985

Appeal of a letter from the Billings Area Director, Bureau of Indian Affairs, in which he informed appellant of certain preconditions to the granting to appellant of leases of Indian trust allotments on the Crow Indian Reservation, Montana, pursuant to advertised preference bidding.

Dismissed in part, remanded in part.

1. Board of Indian Appeals: Jurisdiction--Indians: Tribal Powers: Generally

The Board of Indian Appeals has jurisdiction over decisions issued by Bureau of Indian Affairs officials under Chapter I of 25 CFR. It does not have jurisdiction over decisions made by duly constituted tribal officials or governing bodies.

2. Board of Indian Appeals: Jurisdiction--Indians: Tribal Powers: Generally

The Board of Indian Appeals is not the proper forum in which to challenge an Indian tribe's interpretation of its own tribal resolutions.

3. Bureau of Indian Affairs: Administrative Appeals: Leases--Indians: Leases and Permits: Generally

The Bureau of Indian Affairs has no authority to grant a lease of tribal land when the proper tribal official or governing body has determined not to approve the lease.

4. Board of Indian Appeals: Generally--Bureau of Indian Affairs: Administrative Appeals: Generally

Under the circumstances of this case, when an issue was raised by a party but not addressed by the Bureau of Indian Affairs, the Board of Indian Appeals will remand that issue for initial determination by the Bureau.

APPEARANCES: Douglas Y. Freeman, Esq., Hardin, Montana, for appellant. Counsel to the Board: Kathryn A. Lynn.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

On March 4, 1985, the Board of Indian Appeals (Board) received a motion to assume jurisdiction over an appeal filed by Oliver Redfield (appellant) with the Deputy Assistant Secretary--Indian Affairs (Operations) pursuant to the appeal procedures in 25 CFR Part 2. Appellant sought review of an August 20, 1984, letter signed by the Billings Area Director, Bureau of Indian Affairs (BIA, appellee), in which he informed appellant of certain preconditions to the awarding of leases of Indian trust allotments on the Crow Indian Reservation, Montana, pursuant to advertised leasing preference bidding. By order dated March 6, 1985, the Board made a preliminary determination that it had jurisdiction over the appeal. For the reasons discussed below, the Board decides that this appeal must be dismissed in part and remanded in part.

Background

This appeal raises two issues that are only tangentially related. The first issue regards the leasing of certain Crow tribal allotments. On June 14, 1983, BIA advertised the availability for leasing of tribal allotments 1225-T, 3204-T, 3467-T, 323-T, 3182-T, 3802-T, 1581-T, 836-T, and 913-T. The advertisement specified that bidding would be in accordance with Crow Tribal Resolutions 67-15 and 70-40 and the Tribal Land Use Plan of Operations, approved March 3, 1971.

Several of these allotments, specifically 1225-T, 3204-T, 3182-T, 1581-T, and 836-T, had previously been leased to appellant. BIA canceled the leases on those and other allotments of tribal lands held by appellant because the leases allowed the grazing of cattle owned only by appellant and/or Jack Owens, a non-Indian rancher with whom appellant had an agreement to run cattle in common; whereas, upon inspection of the leaseholds, BIA found that at least some of the cattle grazing on the allotments were not owned by either appellant or Owens. The Superintendent of the Crow Agency (Superintendent) informed appellant of the cancellation decision on March 12, 1982. The decision was affirmed by the Billings Area Director on April 21, 1982, and by the Deputy Assistant Secretary on December 8, 1982. Appellant's subsequent appeal to this Board was dismissed on March 2, 1984, as not being timely filed. See Redfield v. Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 190 (1984).

There is no dispute that appellant was the high bidder on the leases advertised in June 1983. He also paid the required fees, and submitted a plan of operations in accordance with the advertisement. The Superintendent referred the bidding results to the Crow Land Resource Committee (committee) for review. On April 18, 1984, the committee met and agreed to approve the leases, provided appellant pastured only his own cattle, proved ownership of the cattle, and had the brand registered in his name. The committee further stipulated that the acreage leased would have to relate directly to the number of cattle appellant owned. The Superintendent informed appellant of the requirements by letter dated April 25, 1984.

On May 21, 1984, appellant requested deletion of the requirement that he own the cattle pastured. He stated that because of the poor livestock economic conditions, he was unable to purchase cattle at that time.

The Superintendent presented appellant's request to the committee, which responded that it could not waive its grazing ordinance provisions. The committee cited Crow Tribal Resolution 70-36 (Apr. 11, 1970) for the proposition that all livestock grazed by a tribal member under an allocation or competitive bidding must be owned by the tribal member or an immediate family member, and branded with a brand registered in the tribal member's or family member's name. The Superintendent presented this decision to appellant in a letter dated June 4, 1984. No other reason for denying the leases was given to appellant. The committee's determination to abide by this decision was repeated in a letter to appellant from the Superintendent dated June 26, 1984.

Before appellant received the Superintendent's June 4, 1984, letter, allotments 3182-T, 3562-T, 1225-T, 3204-T, 1581-T, and 836-T were readvertised. Since appellant had previously bid upon these allotments, he filed additional protective bids, and was again the high bidder. The committee repeated the requirement that appellant must own the cattle grazed. Because of this requirement, the Superintendent did not award leases to appellant.

Appellant filed an appeal with appellee, who, on August 20, 1984, concurred with the Superintendent's decision. Appellee stated that because the Crow Tribe had experienced difficulties in the past from disregard for its grazing resolutions, it had passed a resolution relating to Crow leasing preference on January 14, 1984. This resolution stated that tribal members were not living up to the spirit and intent of the tribe's provision for leasing preference. Appellee explained that although the tribe had long found appellant's prior lease performance unsatisfactory, it had agreed to grant new leases to him under the specified conditions. Appellee concluded at page 2 of his August 20, 1984, letter, that "[b]ecause the Crow Tribal Land Resource Committee had not approved any new leases to Mr. Redfield, he may have nothing to appeal. We concur in the decision of the Superintendent, Crow Agency, and the Crow Land Resource Committee, and this appeal is denied."

Appellant filed an appeal with the Deputy Assistant Secretary. When the Deputy Assistant Secretary did not issue a decision within 30 days from the time the case was ripe, appellant sought to have the matter transferred to the Board pursuant to 25 CFR 2.19(b). The Board made a preliminary determination that it had jurisdiction to consider the appeal on March 6, 1985. Only appellant filed a brief.

The second issue raised in this appeal involves a problem of physical access to several of the tribal allotments previously leased to appellant. In his April 24, 1984, letter to appellant, the Superintendent stated at pages 3-4:

Mr. Owens has informed this office that he and Mr. Redfield were not able to obtain access to several of the leases for which money had been deposited. As a result, Mr. Owens feels rental monies should be refunded to them. We must emphasize the fact that the Crow Tribe does not guarantee access to tribal leases.

The access to such leases is obtained by the lessee and not the Tribe or the Bureau of Indian Affairs. We will assist the

lessee in any way possible, but we are not required to provide access for any lease that is issued by this office.

Appellant objected to this statement and, in his May 21, 1984, letter to the Superintendent, asked that the lease monies be retained "until it can be established who is responsible for the right-of-ways to the tribal lands. Mr. Redfield takes the position that if tribal leases are granted that there is an inferred right of access to the lands. Prevention from using the lands should in equity not require payment for the possession thereof."

In his June 4, 1984, letter to appellant, the Superintendent replied:

The Bureau's and the Crow Tribe's position has not changed with regard to the rental monies paid by Mr. Oliver Redfield. The Crow Tribe does not guarantee access to leases on Tribal lands. I would refer you to provision (#7) seven of the office lease form BAO-4416 dated May, 1978. The leases in question were bid on an "as is" basis, and Mr. Redfield's use or non-use of those tracts is not nor was not the responsibility of the Crow Tribe or the Bureau of Indian Affairs. Those tracts were available for use as bid, during the terms of the leases. In Reference C.F.R. title 25, Indians, Sub-Chapter O--Rights of Ways--Roads.

It appears that the extent of appellant's reference to this issue on appeal is a paragraph on page 6 of his brief to appellee and on page 8 of his brief to the Board. Both are identical with the previously quoted paragraph in appellant's May 21, 1984, letter:

A collateral issue is the question of the responsibility of the Bureau of Indian Affairs to guarantee access to the Tribal lands leased to the Indian bidder. Redfield takes the position that as to those leases that he was denied access that he should not have to pay the rentals. This inferred right of guaranteed access is denied by the Bureau.

This issue was not addressed in appellee's August 20, 1984, letter.

Discussion and Conclusions

The first issue before the Board relates to the failure to award leases to appellant based upon his high bid on the advertised tribal allotments. Appellant argues that restricting the high Indian bidder to running only his own cattle is contrary to Tribal Resolutions 67-15 and 70-40 and the Tribal Land Use Plan of Operations of March 3, 1971, under which the allotments at issue were advertised; that he is a duly enrolled tribal member pursuing his own bona fide ranching operation with benefit to the tribe; that the tribal resolution of January 14, 1984, was passed after the allotments at issue were advertised and its conditions were not part of the advertisement; and that, in any case, the January 1984 resolution does not prohibit a tribal member from running cattle of others as part of a total ranching operation.

It is readily apparent from the recitation of the facts of this case that BIA made no decision with respect to approving or disapproving the

