



INTERIOR BOARD OF INDIAN APPEALS

Patricia A. Quisno v. Billings Area Director, Bureau of Indian Affairs

17 IBIA 278 (09/13/1989)



United States Department of the Interior

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

PATRICIA A. QUISNO

v.

BILLINGS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-37-A

Decided September 13, 1989

Appeal from a decision of the Billings Area Director, Bureau of Indian Affairs, concerning certain agricultural leases on the Fort Belknap Indian Reservation, Montana.

Affirmed in part, reversed in part.

1. Indians: Leases and Permits: Rental Rates

An agreement reducing the rental rate due on a lease of Indian trust property will be enforced.

APPEARANCES: Patricia A. Quisno, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Patricia A. Quisno seeks review of an April 28, 1988, decision of the Billings Area Director, Bureau of Indian Affairs (BIA; appellee), finding that appellant owed rent of \$10,321.26 plus interest for the 1986 season under Fort Belknap Lease No. 739 and \$6,558.50 plus interest and \$136.17 for the permit fee for the 1987 season under Fort Belknap Revocable Permit No. 87-13. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision in part and reverses it in part.

Background

On September 28, 1984, appellant and the Superintendent, Fort Belknap Agency, BIA (Superintendent), on behalf of individual Indian allottees, entered into Lease No. 739, covering 5,160.62 acres on the Fort Belknap Reservation, Montana. ^{1/} Of this acreage, 3,997.03 acres were to be used

^{1/} The land covered by the lease is described as secs. 16, 17, 18, 20, 21, 28, 29, 32; and E^{1/2} sec. 19; E^{1/2} sec. 30, E^{1/2} sec. 31, and NW^{1/4} NW^{1/4}, SW^{1/4} NW^{1/4}, W^{1/2} E^{1/2} NW^{1/4}, sec. 33; all in T. 29 N., R. 24 E.; SE^{1/4} NW^{1/4}, SE^{1/4} NE^{1/4}, NE^{1/4} SW^{1/4}, NW^{1/4} SW^{1/4}, lots 1 and 8, sec. 5; and lots 3 and 6, NW^{1/4} SW^{1/4}, NE^{1/4} SW^{1/4}, sec. 4, T. 28 N., R. 24 E., Principal Meridian, Montana.

Although the copy of this lease in the administrative record does not bear the Superintendent's signature, there is no dispute concerning execution of the lease.

as pasture and 1,163.59 acres were to be developed for cultivation. The lease, which had a 10-year term, running from January 1, 1985, through December 31, 1994, was a "breakout" lease in that the lessee was required to break certain pasture lands for cultivation. The intent of such a lease is to bring the land from pasture to cultivation quickly. Accordingly, although the rental rate for grazing land was \$2 per acre each of the first 5 years, the rate for farm land increased each year. The rent for farm land was \$2 per acre the first year, \$4 per acre the second year, \$6 per acre the third year, \$8 per acre the fourth year, and \$10 per acre the fifth year. After the fifth year, the rental rates were subject to renegotiation. The rent was subject to adjustment after the second year based upon a review of the amount of "broken" acreage. Rent was due on October 1 of each year.

Appellant began experiencing problems with the lease even before it took effect. These problems are recited in an April 6, 1987, letter signed by the Acting Superintendent: 2/

[Jack and Patty Quisno] attempted to lease roughly 12,000 acres with highly diverse ownership. Our office and the Blaine County SCS [Soil Conservation Service] Office cooperated in developing a Northern Great Plains Contract for development of this land, including small grain production on about 3,000 acres of Class II land, development of roughly 500 acres of sub-irrigated haylands, and establishment of a multi-pasture rotational grazing system capable of supporting 500 head of cattle. They received tentative approval on the Great Plains Contract for FY 1984 from the SCS.

FmHA [Farmers Home Administration] determined that an Environmental Statement was required prior to approval of financing, required that our lease documents be rewritten three times, and required several revisions of the financial farm plan to prove cash flow. These delays continued into late summer [of 1984] and during that period another individual was able to convince the landowners of the 3,000 acres of Class II soils to lease to him, thereby withdrawing the farmland from Quisno's proposed lease. In this case we had to start over in the leasing, financing, and Great Plains Contract with fewer acres and less productive soils. The leases were finally in place in early 1985, the Great Plains Contract fell through because the fiscal year had passed, and to my knowledge FmHA has never come through with the financing.

* * * * *

To aggravate this situation, we received only 6.54 inches of precipitation in 1984 (half of normal) which left critically low soil moisture levels going into the summer of 1985. June and July of 1985 we recorded only .32 inches of precipitation, or only 8%

2/ Although the copy of this letter in the administrative record does not show to whom it was sent, the letter is signed and by its own terms is intended to document the matters related in it.

of normal for the period. The Agency Soil Conservationist determined that there was insufficient soil moisture to provide adhesion to soil particles and that any plowing of native sod during that period would result in the potential for extreme wind erosion. At that point four operators[, including appellant,] had not fully broken the acreages required under lease and this Agency agreed to relieve them of that requirement under the lease due to severe drought conditions.

* * * * *

1986 was a much more normal year in terms of soil moisture and precipitation, however the total crop failures of 1985, the crises in the agricultural financial community, and the implementation of the Food Security Act [3/] continued to cause additional hardships and delays for the three operators[, including appellant,] who were still not fully in compliance with the breakout term of their leases. To avoid additional farm failures this Agency took no action to enforce the lease terms on the three remaining operators not fully in compliance with their lease.

In late 1986 and early 1987 the Fort Belknap Community Council took action through formal resolution to modify the leases for these individuals to reflect existing farm acres and require direct negotiation with the Council prior to converting any additional rangelands to cropland. The Agency Superintendent concurred on behalf of the allotted landowners and the payment schedules and bills were modified accordingly. There was no clause in any of the actions taken to reimburse past payments for lands not broken specifically because that option was voted down by the Council.

* * * * *

* * * This Agency did not enforce the breaking clause in our breakout leases to * * * Patricia Quisno in 1984 due to delays in obtaining lease approval. We did not enforce this clause on * * * Patricia Quisno in 1985 due to severe drought conditions * * *. The breaking clause was again not enforced in 1986 on * * * Patricia Quisno due to the financial crises* * *. We did, however, follow the procedure of billing these leases at face value based on the payment schedule on the face of the lease.

We have no formal letters or written documentation to any of the operators involved in our correspondence files or lease files. * * * [A]ll our interaction on this issue has been verbal.

(Letter at 2-3).

3/ Act of Dec. 23, 1985, P.L. 99-198, 99 Stat. 1354, as amended by Act of Mar. 20, 1986, P.L. 99-260, 100 Stat. 45.

By an October 15, 1986, "Dear Lessee" letter from the Superintendent, appellant was reminded that the lease payment for the 1986 season under Lease No. 739 was due on October 1, with a 30-day grace period after which payment was considered delinquent and interest would be assessed. The Superintendent noted that the extensions granted the previous year due to the drought and delays in receiving crop insurance payments would not be repeated in 1986.

By letter dated November 6, 1986, the Superintendent informed appellant that payment of \$12,648.42 on Lease No. 739 was past due. This figure represented the face amount owed under the lease for the second lease year.

It appears that appellant entered into negotiations with the Superintendent intended to reduce the amount she owed for the 1986 lease year. An April 2, 1987, letter to appellant from the Acting Superintendent provided projections of the rentals on Lease No. 739 should various reductions in the rental amounts be accepted. In addition, a May 20, 1987, memorandum from the Agency Natural Resources Officer to the Soil Conservationist recounted a May 19, 1987, meeting between appellant, the Superintendent, and the Natural Resources Officer. The memorandum stated that:

In that discussion the Quisno's indicated that they were paying over \$11.00 per AUM [animal unit month 4/] on grazing land and would not be financially able to meet their commitments on this lease. It was also pointed out that the Tribe had agreed to an adjustment of lease #802 on Tribal lands in the area in Resolution 70-87.

In order to ensure continued income to the landowners the Superintendent concurred with their request in the following manner:

1. Current Lease #739 is to be dropped through a mutual consent cancellation to be signed by the Quisno's and the Superintendent.
2. A one year revocable permit on these lands is to be issued to the Quisno's at a rate of \$6.50 per AUM [5/].
3. Advance payment on the permit is required.

4/ Although certain other factors entered into the determination of the figure of \$11 per AUM, such as the costs involved in a lease of tribal lands, the figure is approximated by multiplying the acreage leased by the \$2 per acre grazing fee and dividing the figure reached by the authorized AUM.

5/ Neither the mutual consent cancellation nor Revocable Permit No. 87-13, which replaced Lease No. 739 for the 1987 season, appear in the administrative record. Appellant does not dispute, however, the issuance of either document or the amount of rental owed under the permit.

4. The affected lands may be returned to the Range Unit system at the beginning of the next range unit permit period, beginning in 1989.

Your office will prepare the necessary mutual consent cancellation and revocable permit forms for signature.

This memo should be maintained to document the above negotiations between Mrs. Quisno and Superintendent Netterville.

(Memorandum at 1).

By letter dated January 4, 1988, the Superintendent requested payment from appellant of \$12,648.42 on Lease No. 739 for the 1986 lease period, and of \$6,558.50 for the permit and \$136.17 for the permit fee on Revocable Permit No. 87-13 for the 1987 season. The letter gave appellant 20 days to submit payment before the agency would begin debt collection procedures.

By letter dated January 28, 1988, appellant requested appeal information from the Superintendent. The Superintendent gave appellant information on filing appeals and repeated his decision concerning the amounts she owed in a letter dated February 25, 1988.

On March 8, 1988, appellant wrote the Superintendent, stating that she had attempted to negotiate with BIA over the 1986 lease rate. Appellant wrote:

We are of the opinion that since 1985, when we were told by the BIA that we should not break this lease due to drought, this ceased to be a break-out lease. We paid the farm prices in 1985 because we were able to sub-lease the grass; in 1986 this was not the case. The cattle numbers were down and grass was plentiful and the cost of \$11 per AUM was too high for those cattlemen that inquired into our advertisement.

As we previously stated, we are able to pay the \$6.50 AUM rate for both years (1986 & 1987) at this time. If you are not able to reduce the 1986 rate to \$6.50/AUM, either through your authority, or by asking the landowners if they would accept this rate, then please consider this an appeal to the Area Director.

In an undated letter received in the Billings Area Office on March 31, 1988, appellant formally filed an appeal with appellee from the Superintendent's decision. Appellee responded to this appeal by letter dated April 28, 1988, affirming the Superintendent's conclusion as to the amount due and owing under Revocable Permit No. 87-13, but reducing to \$10,321.26 plus interest the amount owed for the 1986 rental under Lease No. 739. This reduced rental amount was based upon the \$2 per acre grazing rental established in the lease.

By letter dated May 31, 1988, appellant appealed this decision to the Washington, D.C., BIA office, where it was still pending on March 31, 1989, the date new appeals regulations for BIA and the Board took effect. See

54 FR 6478 and 6483 (Feb. 10, 1989). The case was transferred to the Board on May 1, 1989, for consideration under the new procedures. Pursuant to the Board's May 2, 1989, notice of docketing, appellant informed the Board that she wished to present additional information. The Board issued an order establishing a briefing schedule on May 23, 1989. Appellant filed a letter from the former Natural Resources Officer at the Fort Belknap Agency in support of her position. Although all parties were given an opportunity to respond to appellant's submission, the Board received no responses.

Discussion and Conclusions

Initially the Board notes that this case demonstrates the reason BIA needs to maintain accurate written records of its operations. The record here has been reconstructed at several points from the memories of the BIA officials involved in the process. Although the Board has no doubt that the statements these individuals made are as accurate and honest as possible, there would have been no need for such reconstruction had written records been prepared at the time events occurred. The preparation of written records may at first appear time consuming, but such records are the essence of administrative practice and the basis for judicial review of administrative actions. In the absence of a written record, the administrative agency is needlessly subjecting itself to possible reversal on the non-substantive ground that it cannot prove its case.

[1] Appellant alleges she understood that BIA had agreed to a payment of \$6.50 per AUM for the 1986 lease season. Nowhere in the administrative record does the Board find a statement by a BIA official directly contradicting this allegation. Instead, the allegation is supported by statements in the record by two BIA officials. First, the April 6, 1987, letter from the Acting Superintendent, quoted *supra*, states that the tribe took action to modify tribal leases and "[t]he Agency Superintendent concurred on behalf of the allotted landowners and the payment schedules and bills were modified accordingly" (Letter at 2). The Acting Superintendent further noted that past payments would not be reimbursed because the tribe specifically voted down that option.

In his May 9, 1989, letter to appellant, the former Natural Resources Officer supports the Acting Superintendent's comments when he states at pages 1-2 that the Superintendent and appellant

negotiated an agreement on the allotted lands under lease similar to agreements contained in the Tribal Resolutions. In this instance, the lease was to be modified from a "farming" lease to a "grazing" lease, and the rental rate changed from the sliding scale per acre basis of a farm lease to the reservation standard for a grazing lease, \$6.50 per Animal Unit Month. Payments previously made were not to be affected by the rate change because

^{6/} In this letter, the individual states that he is "on leave without pay status from the BIA while working for the Intertribal Agriculture Council," Billings, Montana (Letter at 2).

the BIA had already distributed the money to the landowners, and could not therefore issue a refund. All current unpaid balances and potential payments would be made at [the] adjusted rate.

This statement has not been disputed.

It thus appears that the Superintendent agreed to a reduction of the rental rate for Lease No. 739 from that appearing on the face of the lease to an amount equal to \$6.50 per AUM. During the 1986 grazing season, the record indicates that the AUM for the lands covered by this lease was 906. The amount of rent appellant owes under Lease No. 739 for the 1986 grazing season is, therefore, reduced to \$5,889 plus interest.

Because appellant has not challenged the amount appellee determined due and owing on Revocable Permit No. 87-13, the portion of appellee's decision concerning rent under that permit is affirmed.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the April 28, 1988, decision of the Billings Area Director is affirmed in part and reversed in part.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed

Anita Vogt
Administrative Judge