INTERIOR BOARD OF INDIAN APPEALS

George Scott and Rosebud Sioux Tribal Land Enterprise
v. Acting Aberdeen Area Director, Bureau of Indian Affairs

25 IBIA 115 (01/11/1994)

United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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GEORGE SCOTT and ROSEBUD SIOUX TRIBAL LAND ENTERPRISE, Appellants	:	Order Vacating Decision and Remanding Case
v.	:	Docket No. IBIA 93-42-A
ACTING ABERDEEN AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	January 11, 1994

Appellants George Scott (Scott) and the Rosebud Sioux Tribal Land Enterprise (TLE) seek review of a November 19, 1992, decision of the Acting Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning a lease of certain Rosebud Sioux Tribal land. For the reasons discussed below, the Board of Indian Appeals (Board) vacates that decision, and remands this case for further consideration by the Area Director.

Scott, a member of the Rosebud Sioux Tribe (Tribe), held Revocable Permit No. 52317, covering approximately 800 acres of tribally owned grassland. The permit ran from March 1, 1989, through March 1, 1992. Scott was apparently experiencing health problem, and spent the summer of 1991 in Arizona. Before leaving, he contacted the Superintendent of the Rosebud Agency, BIA (Superintendent), to inform BIA that he would be away. He states that he was told he should put the information in writing, and that an Agency official wrote a letter for him, which he signed on May 1, 1991.

Apparently on or about August 6, 1991, Derrill Glynn, a non-Indian, proposed to lease the tribal lands then still under permit to Scott. Glynn proposed a 3-year lease, running from March 1, 1992, through February 28, 1995. On August 13, 1991, the proposal was submitted to the TLE for consideration. The minutes of that TLE meeting contain a discussion of the proposed lease. In a "Comment" section on page 9, the minutes state:

> The reason I'm presenting this proposal now is that Mr. George Scott has moved out of the country and hasn't left a forwarding address. Also, ever since Mr. Scott has had these tracts the BIA has found over-stocking with the cattle belonging to Adrian Cattle Co. [1/] These tracts border Mr. Glynn's land and would fit into his operation. [2/]

1/ The administrative record does not contain any information relating to this alleged overstocking by Scott.

2/ The minutes do not identify the person(s) responsible for the comment section.

At that meeting the TLE voted 5 to 0, with 1 member not voting, to award the tracts to Glynn. Glynn and BIA were informed of this decision on August 14, 1991. In contrast to Scott's revocable permit, Glynn was issued a lease. The Superintendent approved the lease on September 27, 1991.

Scott apparently contacted BIA on or about February 7, 1992, concerning a new permit for the property. He was told that a lease had been approved with Glynn. Scott returned from Arizona and attended the February 26, 1992, TLE meeting. The minutes of that meeting state at page 2:

> Fern Reynolds made a motion to have BIA inform Mr. Glynn of error that took place in a negotiation process of this lease with the previous lessee who is claiming Indian preference was not properly informed of the negotiation process, therefore the lease to be brought up for reconsideration to award the lease to George Scott at the minimum rate of $4.00 per acre. With a follow up letter from the TLE lease manager.,

The motion carried by a vote of 6 to 0.

In exchanges following this meeting, the Superintendent indicated that the TLE had negotiated the Glynn lease, and was therefore responsible for notifying Glynn of any change in its position and for negotiating with him if it wished to cancel the lease. The TLE contended that BIA should cancel the lease because BIA had presented Glynn's proposal to it, and had failed to notify Scott that another person was interested in leasing the property. BIA maintained that it had not negotiated the lease with Glynn, but had only approved the lease and prepared the papers after the TLE negotiated the lease. In a July 28, 1992, letter to the TLE, the Superintendent stated:

> The [BIA] cannot interfere in a contract that was properly approved in accordance with the negotiations that took place between the parties. Mr. Glynn has a valid lease and we cannot cancel that lease except for cause. I refer you to 25 CFR 162.14 for information regarding cancellation of a lease.
>
> Our regulations do not allow us to give preference rights in renewing a lease. Please see 25 CFR 162.5(e), which states “No lease shall provide the lessee a preference right to future leases nor shall any lease contain provisions for renewal . . .”. The landowner may, however, decide to whom they want to lease their land and if they want to lease to the previous lessee that is their decision. However, that decision must be made prior to approval of a lease to another party.
>
> If the TLE wants Mr. Scott to have use of the land prior to expiration of Mr. Glynn's lease on February 28, 1995, they should negotiate with [Glynn] for cancellation through mutual consent. Since they are the parties that negotiated the lease, they are also the parties that should negotiate for any modification or cancellation of that lease.

By letter dated September 3, 1992, Scott requested "a formal written decision and action from both the TLE and the BIA to cancel the present lease and to reopen the lease process on this tract of land. Such a formal, written decision, one way or the other, is necessary to either resolve the matter or to begin the administrative appeals process."

On September 29, 1992, the Superintendent repeated the position taken in his July 28, 1992, letter. The Superintendent added that

> [n]othing in our regulations or in the expired lease previously held by Mr. Scott require that we give notice to him of a need to negotiate for renewal of his lease. Mr. Scott held three different lease contracts or permits on this property over the past eight years, each of which he negotiated. He was, therefore, familiar with the process of negotiations. Since he was furnished with a copy of his lease, we must also assume he was familiar with the terms and the expiration date. It was his responsibility to see that a new lease was timely negotiated if he wanted to continue using the land. Even though a new lease could have been negotiated as early as 12 months prior to the expiration of his then existing lease, he apparently did not even consider a need to renew until less than a month before the expiration date.
>
> Mr. Scott's letter of May 1, 1991, did advise us that Bill Adrian would be managing this lease for him and that he would be the person to contact if problems arose or there were any questions about the cattle. It was reasonable to interpret this as only relating to administration of the existing lease. There was no indication in that letter of a desire to renew the lease, even though such renewal could have been negotiated at that time. Instead, the letter advised us that he was going into semi-retirement. This could reasonably be construed that he would have no further need for the land when his current lease expired.
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> * * * * * *
>
> We are not in a position to "resolve" this matter by taking action to cancel the lease held by Mr. Glynn. It is clear that he has a property interest in the nature of a leasehold, whereas as a former lessee, Mr. Scott had neither a right of renewal nor preference right to another lease, under BIA regulations. Mr. Glynn cannot be deprived of his property interest without due process, and the process by which an approved lease can be cancelled requires a violation of a lease term. See 25 CFR 162.14 (1991). Because there is no allegation of a violation, the cancellation process cannot be initiated.

Scott appealed this decision to the Area Director by letter dated October 27, 1992. The Area Director affirmed the Superintendent's decision on November 19, 1992. The Area Director stated:

> The trust, in this case, extends only to the Rosebud Sioux Tribe, which is the landowner. The [BIA] can not and will not interfere with the Rosebud Sioux Tribe's rights and decisions to grant leases on their own lands.
>
> Regulations contained in 25 CFR 162.3(4) provide that tribes or tribal corporations acting through their appropriate officials may grant leases. The [BIA] does not grant leases on Tribally owned lands, but approves leases in accordance with 25 CFR 162.5(a).
>
> Also, as cited in the Superintendent's decision of September 29, 1992, Regulations (25 CFR 162.5(e)) do not provide for preference rights for future leasing of lands on the Rosebud Sioux Reservation.
>
> In view that the [TLE] negotiated an acceptable lease with [Glynn] in accordance with 162.6(a), we hereby sustain the decision of the * * * Superintendent in approving lease to (Glynn). [Emphasis in original.]

Scott filed an appeal with the Board. On December 28, 1992, the Board ordered Scott to show cause why his appeal should not be dismissed for lack of standing to challenge the Glynn lease. Scott's response included an affidavit from the TLE's Executive Director. Among other things, the TLE Director stated that the TLE had relied on BIA representations and recommendations in dealing with Glynn, supported Scott's appeal, and voted on January 22, 1993, to rescind Glynn's lease. Based upon these representations, on February 11, 1993, the Board added the TLE as a co-appellant.

Appellants and the Area Director approach this appeal from very different perspectives. Appellants contend that a BIA employee misled the TLE into believing that Scott's whereabouts were unknown, and that Glynn was the only person interested in leasing the property. They argue that BIA should cancel Glynn's lease because BIA was responsible for the lease being issued, and seek money damages for alleged violations of BIA's trust responsibility and of due process requirements. The Area Director argues that BIA merely approved a lease negotiated by the TLE.

The Area Director issued his decision 23 days after the date of Scott's notice of appeal. That notice contained only a general statement of the grounds for the appeal. Under 25 CFR 2.10(c), a person filing an appeal with an Area Director has 30 days after the filing of a notice of appeal in which to file a statement of reasons in support of the appeal. The Board has previously discussed the problems that can result when an Area Director issues a decision before the expiration of the time for filing a statement of reasons. See, e.g., Meeks v. Aberdeen Area Director, 23 IBIA 200, 201-02 (1993); Jerome v. Acting Aberdeen Area Director, 23 IBIA 137, 138-39 n.1 (1993); Cheyenne River Sioux Tribe v. Aberdeen Area Director, 23 IBIA 103, 107 (1992); Peace Pipe, Inc. v. Acting Muskogee Area Director, 22 IBIA 1, 5-6 (1992).

The Board finds that because the Area Director issued his decision on the basis of Scott's notice of appeal, 3/ the decision did not address relevant factual allegations. In particular, the decision assumes that the TLE negotiated the Glynn lease and that Scott wrote the May 1, 1991, letter to the Superintendent. The Area Director relied on these assumptions in holding that BIA had no authority to interfere with the Tribe's decision as to how to lease tribal property. Because both of these assumptions were challenged before the Superintendent and the Board, the Board believes it to be highly unlikely that they would not have been challenged in a statement of reasons to the Area Director.

Whenever possible, the Board attempts to reach the merits of those cases in which an Area Director issues a decision prior to the expiration of the period for filing a statement of reasons. This practice allows the Area Director's error to be corrected through the appeal to the Board and avoids needless delay in final resolution of the matter. Here, however, the Board concludes that the present record is inadequate for a decision because neither the Superintendent nor the Area Director addressed appellants' factual allegations. Therefore, the Board concludes that the Area Director's decision should be vacated and this matter remanded to him for further consideration.

One aspect of this appeal need not be considered on remand. Appellants seek money damages for violation of due process and/or BIA's trust responsibility. The Board lacks authority to award money damages against BIA. Johnson v. Acting Phoenix Area Director, 25 IBIA 18, 27 n.9 (1993); Welmas v. Sacramento Area Director, 24 IBIA 264, 268 (1993). Accordingly, the Area Director need not address this issue.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Aberdeen Area Director's November 19, 1992, decision is vacated, and this matter is remanded to him for further consideration in accordance with this opinion.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge

3/ Under 25 CFR 2.9, a notice of appeal from a Superintendent's decision is not required to set forth the reasons for the appeal.