



INTERIOR BOARD OF INDIAN APPEALS

Florence E. Adams v. Billings Area Director, Bureau of Indian Affairs

28 IBIA 20 (05/18/1995)



United States Department of the Interior

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

FLORENCE E. ADAMS,	:	Order Dismissing Appeal
Appellant	:	
	:	
v.	:	
	:	Docket No. IBIA 95-2-A
BILLINGS AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	May 18, 1995

Appellant Florence E. Adams seeks review of an August 22, 1994, decision of the Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning the approval of an assignment of Cottage Site Lease No. R-31 (lease) at Lower St. Mary Lake on the Blackfeet Indian Reservation from appellant to her nephew, Galen LaPlante. For the reasons discussed below, the Board of Indian Appeals (Board) dismisses this appeal in deference to tribal jurisdiction over the underlying dispute.

The lease, which covers land held in trust for the Blackfeet Tribe (Tribe), was approved by the Blackfeet Agency Superintendent, BIA (Superintendent), on June 25, 1976. The lease had an initial term of ten years, ending December 31, 1985, with an option to renew for one additional term of ten years. See also 25 CFR 162.8(a) (which authorizes leases of trust or restricted lands to contain provisions allowing "a renewal or an extension for one additional term"). It thus appears that the lease is due to expire on December 31, 1995. Section 4 of the lease states: "Unless otherwise provided herein, a sublease, assignment or amendment of this lease may be made only with the approval of the Secretary and the written consent of all parties to this lease, including the surety or sureties."

On or about May 2, 1994, a preprinted BIA form was prepared assigning appellant's lease to LaPlante. It is unclear whether the form was prepared at the Blackfeet Agency, but it was presented to Agency personnel on May 2, 1994. The form was signed by appellant and LaPlante, although no date is shown for either signature. It appears that BIA sent the form to the Tribe, which returned it the same day, with the signatures of the Chairman and the Secretary of the Blackfeet Tribal Business Council. Again, no date is shown for the signatures. The Superintendent approved the assignment on May 4, 1994.

On May 10, 1994, appellant signed a letter addressed to the Superintendent. The letter was obviously written for appellant by another person who is not identified. The letter states that appellant is 81 years old, and

is appealing to you for the reassignment of her recreational lot at St. Marys Lake. * * * [Appellant] indicated to yourself and to me that she was a little confused at the time she signed the recreational lot over to [LaPlante]. [Appellant] has also indicated that she was aroused about 8:30 a.m., May 2, 1994, when she usually sleeps until 9:00 a.m. We believe that she could have been intimidated into signing the Lease over.

If you could answer the following questions I would appreciate it. How was the assignment so rapidly transpired, when it usually has to be processed through the area office to be legal? Also isn't Joe McKay supposed to be the Chairman of the Land Board and his signature should have been on the lease papers? This is confusing to me?

On May 12, 1994, the Superintendent responded to appellant's letter, describing the process followed in approving assignments of leases of tribal land, and stating that the assignment was signed by the proper tribal officials. The Superintendent also indicated that documents were processed as quickly as possible, but the identity of the individuals involved could affect the processing time.

Appellant appealed to the Area Director, contending that she had assigned the lease to LaPlante based on her understanding that another nephew, Gene DuBray, would not be available to assist her while she was living on the leased property. She stated that she would not have assigned the lease had she known at the time that DuBray would be available to assist her, and requested a hearing.

On August 22, 1994, the Area Director upheld the Superintendent's decision. This appeal followed.

Appellant repeats that she was acting under the mistaken belief that DuBray had moved and that she would be by herself at the lake. For the first time in this appeal, she also contends that LaPlante had promised her a house in Browning, Montana, apparently as compensation for the assignment. She again requests an evidentiary hearing on these issues.

Initially, the Board notes that nothing in appellant's filings with the Superintendent and/or the Area Director even suggests that she expected any form of compensation for the assignment. The Board is not required to consider on appeal issues and/or arguments that were not raised below. See, e.g., Nelson v. Acting Portland Area Director, 26 IBIA 85, 86 (1994); All Materials of Montana, Inc. v. Billings Area Director, 21 IBIA 202, 212 (1992).

Both of these arguments, however, are connected to appellant's further contention that BIA had a trust duty to ascertain that she was acting appropriately in assigning the lease. In this context, appellant also objects to a statement by the Area Realty Specialist that the Realty Specialist was not aware of any problems, disputes, confusion, or misunderstanding on appellant's part when she presented the assignment at the Agency. Appellant

contends that because she is 81 years old, BIA had a trust responsibility to look carefully at the possibility of undue influence, and suggests that the assignment should have been executed in front of the Realty Specialist, who should have questioned appellant concerning her reasons for executing the assignment and should have questioned DuBray and LaPlante as to whether appellant was acting appropriately.

In approving assignments of leased trust property, BIA's trust responsibility is to the landowner. In this case, BIA's responsibility was to the Tribe, even though appellant is a tribal member. See, e.g., Candelaria v. Sacramento Area Director, 27 IBIA 137, 139 (1995), and cases cited therein. The Board rejects appellant's contention that BIA had a trust duty to inquire into the circumstances influencing her to execute the assignment. It therefore also denies her motion for a hearing.

Most of appellant's opening brief concerns the proper procedure to be followed in obtaining the consent of the Tribe to an assignment of a lease of tribal land. In his transmittal memorandum, the Area Director stated:

It is the standard procedure at Blackfeet Agency to route lease documents to the tribal land department. The tribal land department screens the documents and forwards them to the Chairman * * * and the Secretary of the Blackfeet Tribal Business Council for signature. The Blackfeet Tribal Business Council has the authority to take action on such documents and has the authority to sign lease documents. It has been the practice for the Chairman * * * and the Secretary of the Blackfeet Tribal Business Council to sign lease documents. The land committee participates in the review process; however, the chairman of the land committee does not have the authority to sign lease documents.

Appellant submitted a December 12, 1994, letter from Joe J. McKay to DuBray, in which McKay states:

As Chairman of the Tribal Land Board during the period from August of 1992 through June of 1994, it was my understanding and the common practice of the Land Department, that any assignment of a lease of Tribal land had to be approved by the Land Board and then transmitted, through the Land Board minutes to the Tribal Council. Only after the Council had approved the minutes was the assignment properly ready for BIA approval and development of a new lease.

As to your specific question regarding the transfer/assignment of [appellant's] lake shore lease * * *, it is my understanding that said assignment was hand carried to the Chairman and Secretary of the Tribe for their approval and then approved by the BIA Agency Superintendent.

Such a process is not consistent with the accepted process. It is therefore, in my opinion invalid. The appropriate process

would have been for [appellant] to apply to the Land Board for approval of the assignment * * *. After the matter had been reviewed and approved by the Land Board, then the minutes should have been transferred to the Council for approval. Upon approval of the minutes, the Chairman and Secretary of the Tribal Council could properly sign off on the assignment. Since that process was not followed here, then the assignment is in my opinion invalid and should never have been approved.

Based on this letter, appellant contends that the Superintendent should not have approved the assignment.

When it approved the assignment, BIA relied on the fact that the form was signed by the proper tribal officials. It was entitled to do so. Appellant, however, questions the manner in which the Tribe considered the assignment, arguing that established procedures for considering assignments of tribal land were not followed. Her arguments raise issues relating to whether there were, in fact, established procedures for considering assignments of tribal land; if there were, whether those procedures were followed; and, if the procedures were not followed, what legal effect the deviation might have. BIA's approval of the assignment is clearly secondary to appellant's dispute with the Tribe.

This Board has repeatedly and consistently upheld the jurisdiction of tribal courts and other appropriate tribal forums to resolve both intra-tribal disputes and disputes arising from tribal actions, and has deferred to those forums when a BIA decision is secondary to such a dispute. See, e.g., Burlington Northern Railroad v. Acting Billings Area Director, 25 IBIA 79, 80 (1993) ("The Federal policy of respect for tribal courts, and of support for tribal self-government in general, counsels abstention by a Federal forum in a case in which a tribal forum has primary jurisdiction"); Risse v. Acting Aberdeen Area Director, 27 IBIA 304 (1995), and judicial and Board cases cited therein. Such deference is clearly appropriate here.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Billings Area Director's August 22, 1994, decision is dismissed in deference to tribal jurisdiction over the underlying controversy.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

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Anita Vogt
Administrative Judge