



INTERIOR BOARD OF INDIAN APPEALS

Chris C. White v. Acting Muskogee Area Director, Bureau of Indian Affairs

29 IBIA 39 (01/18/1996)



United States Department of the Interior

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

CHRIS C. WHITE,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	Docket No. IBIA 96-27-A
ACTING MUSKOGEE AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	January 18, 1996

This is an appeal from a November 9, 1995, decision of the Acting Muskogee Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning the validity of Osage National Council Resolution No. 95-04-15, which relates to the appointment of a grievance committee. The Area Director's decision, issued in an appeal filed by the Speaker of the Osage National Council, concluded that the resolution was "legally invalid to the extent that it specifically applied to the Underground Injection Program that is being administered by the Osage Tribal Council" (Area Director's Decision at 1). 1/

In his notice of appeal to the Board, appellant stated that he was an Indian but did not specifically state that he was a member of the Osage Nation. 2/ He also stated: "My name and personnel matters were utilized as a basis for the BIA officials' decisions. Also, as an individual residing within the jurisdiction of the Osage Nation and on trust property, I am affected in that said decision could affect the public health of the Osage Reservation" (Notice of Appeal at 1).

1/ The Area Director's decision, and the original decision issued by the Superintendent, Osage Agency, BIA, were evidently issued under Article II, section 2, of the Osage Nation Constitution, which provides:

"[A]ll resolutions, laws, and ordinances of the Osage National Council that adversely impacts [sic] the mineral estate [of the Osage Indian Reservation] shall be reviewed by the Osage Tribal Council and the Secretary of the Interior, and shall require Secretarial approval for legal validity. Any resolution, law, or ordinance of the Osage National Council which adversely impacts the mineral estate, as determined by the Secretary of the Interior through his disapproval, shall be invalid as a matter of law."

2/ In his response to the Board's order to show cause, appellant states that he is "of Shawnee and Delaware blood with membership in the Cherokee Nation of Oklahoma" (Appellant's Response at 2).

Because it appeared that, under the Board's decisions concerning standing to challenge BIA's approval or disapproval of tribal legislation, e.g., Hunt v. Aberdeen Area Director, 27 IBIA 173 (1995); Feezor v. Acting Minneapolis Area Director, 25 IBIA 296 (1994), appellant might lack standing in this matter, the Board ordered him to show why his appeal should not be dismissed for lack of standing.

The Board's order stated in part:

It appears from the materials submitted by appellant that he has filed a personnel grievance against the Osage Tribal Council and that proceedings concerning the matter are, or were, pending in several forums. It also appears that the Osage National Council may have enacted Resolution No. 95-04-15 after appellant sought relief from that body.

The resolution itself, however, is a general resolution and does not refer specifically to appellant. Moreover, although the history of appellant's grievance is discussed in the Area Director's decision, the issue addressed therein is not appellant's grievance but rather, as noted above, the issue of the validity of the Osage National Council Resolution No. 95-04-15 as it applies to the Underground Injection Program administered by the Osage Tribal Council.

In his response to the Board's order, appellant contends that this appeal differs from Hunt and Feezor in that the appellants in those cases were appealing tribal actions, rather than BIA decisions. This is clearly incorrect. In both Hunt and Feezor, the appellants were attempting to appeal BIA's approval or disapproval of tribal ordinances.

Appellant also contends that no tribal forum is available to him. He concedes that he has filed a complaint in the Osage Nation Court, apparently concerning his personnel grievance, but contends that resolution of his appeal has been delayed by administrative appeals concerning the validity of the court. Appellant acknowledges that proceedings concerning his grievance are also pending in the Osage Court of Indian Offenses, although he states that he is not a party to those proceedings.

To the extent that this appeal may concern appellant's personnel grievance, it is apparent that appellant has not yet exhausted his tribal remedies. The fact that proceedings in his tribal court suit have not progressed as swiftly as he would like does not relieve him of his obligation to exhaust his remedies before the tribe. The Board consistently declines to consider appeals where the appellant has failed to exhaust his tribal remedies. E.g., Gonzales v. Acting Albuquerque Area Director, 28 IBIA 229 (1995); Mosay v. Minneapolis Area Director, 27 IBIA 126 (1995). ^{3/}

^{3/} Oddly, appellant appears to concede that his appeal does not belong before the Board. He states that he "believe[s] the instant controversy to be an intra-tribal dispute and should be properly resolved in the Osage Court" (Appellant's Response at 3).

Although appellant does not specifically argue the point, this case differs from Hunt and Feezor in that appellant, as he makes clear in his response, is not a member of the tribe whose legislation is at issue. Thus the matter at issue here is not truly intra-tribal as were the disputes in Hunt and Feezor. The Board has, however, declined to consider challenges to BIA approval of tribal legislation when those challenges were brought by non-members of the tribe. E.g., Zinke & Trumbo, Ltd. v. Phoenix Area Director, 27 IBIA 105 (1995); Burlington Northern Railroad v. Acting Billings Area Director, 25 IBIA 79 (1993). Although the Board's decisions in these cases are based upon abstention rather than standing grounds, the policy underlying them is the same as that in the standing cases--i.e., the Federal policy of respect for tribal self-government.

As applied to the present case, this policy requires that the Board recognize the prerogative of a tribe to decide whether or not a BIA dis approval of tribal legislation should be appealed to the Board. If this prerogative rests with the tribe, then the Board clearly ought not to entertain appeals from individuals--whether they be members or non-members of the tribe--challenging the disapproval of tribal legislation.

As it happens, after appellant filed this appeal, the Osage National Council filed an appeal from the same Area Director's decision. The Council clearly has standing in this matter, and the Area Director's decision will be reviewed in the context of the council's appeal. If this appeal is dismissed, appellant will still have an opportunity to make his views known by participating as an interested party in the Council's appeal.

Under these circumstances, the Board finds that this appeal should be dismissed.

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 docketed and dismissed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge