



INTERIOR BOARD OF INDIAN APPEALS

OK Tank Trucks, Inc. v. Muskogee Area Director, Bureau of Indian Affairs

31 IBIA 1 (05/01/1997)



United States Department of the Interior

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

OK TANK TRUCKS, INC., : Order Docketing Appeal, Vacating
Appellant : Decision, and Remanding Case
 :
v. :
 :
 : Docket No. IBIA 97-117-A
MUSKOGEE AREA DIRECTOR, :
BUREAU OF INDIAN AFFAIRS, :
Appellee : May 1, 1997

On April 8, 1997, the Board of Indian Appeals received a notice of appeal from OK Tank Trucks, Inc., through counsel, Kenneth M. Smith, Esq., Tulsa, Oklahoma. Appellant seeks review of a March 14, 1997, decision of the Muskogee Area Director, Bureau of Indian Affairs (Area Director; BIA), dismissing an appeal for failure to perfect the appeal within 30 days. The appeal to the Area Director was from a decision of the Superintendent, Osage Agency, BIA, terminating a saltwater disposal easement.

The Board received the administrative record on April 28, 1997. The record includes Appellant's October 31, 1996, notice of appeal to the Director, which states:

The Appellant feels that the Decision was arbitrary and capricious, not in accordance with the course of dealing with the parties, and not preceded by adequate notice of the contemplated action of the superintendent.

The Appellant will not be represented by an attorney and, thus, desires assistance from the office in preparation of the appeal, and further requests that it be notified of any hearing that may be set on said appeal. 1/

Apparently, neither Appellant nor the Agency took any further steps concerning Appellant's request for assistance in preparing its appeal. On January 28, 1997, Appellant filed a statement of reasons.

In a March 14, 1997, decision addressed to Appellant's attorney, the Area Director stated:

The decision letter of the Superintendent advised your client of the appeal procedures as well as provided him a copy of 25 CFR Part 2 - Appeals from Administrative Actions. We recognize that

1/ The Superintendent's decision had stated: "If you are not represented by an attorney, you may request assistance from this office in the preparation of your appeal."

the Superintendent's offer of assistance in preparation of the appeal was not in accordance with the regulations; however, the record as presented does not indicate your client followed up on his request for assistance, nor did he request an extension of time in which to file his statement of reasons as permitted in accordance with 25 C.F.R. § 2.16. The statement of reasons filed on behalf of your client sets forth the basis of the appeal as the fact that the lessee was never informed that if payments were late that the subject easement would be lost. The appeal was not, however, perfected during the required 30-day period as provided by 25 C.F.R. § 2.10(c). See e.g., Benson-Montin-Greer Drilling Corporation v. Acting Area Director, Albuquerque Area Office, 7 IBIA 67 (1978). The decision of the Superintendent is therefore affirmed and the appeal is dismissed.

Area Director's Decision at 2.

Under prior BIA appeal regulations, an appeal could be summarily dismissed for failure to file a statement of reasons. However, the regulations promulgated in 1989 provide, at 25 C.F.R. § 2.17, Summary Dismissal:

(b) An appeal under this part may be subject to summary dismissal for the following causes:

(1) If after the appellant is given an opportunity to amend them, the appeal documents do not state the reasons why the appellant believes the decision being appealed is in error, or the reasons for the appeal are not otherwise evident in the documents.

This provision was discussed in the preamble to the Federal Register publication of the final regulations:

Two commenters recommended revisions concerning the provision in proposed § 2.17 that permitted summary dismissal for failure to file a statement of reasons. In response to these comments, this section has been revised to allow summary dismissal only where the reasons for the appeal cannot be determined from the appeal documents taken as a whole and only after the appellant has been given an opportunity to amend his/her appeal documents.

54 Fed. Reg. 6478, 6479 (Feb. 10, 1989). Thus, it is clear that, under the present regulations, an appeal cannot be summarily dismissed for failure to file a statement of reasons.

Appellant's statement of reasons was clearly untimely. However, its notice of appeal, while cursory, stated grounds for appeal. Appellant's allegation concerning "course of dealing" might be difficult to understand, and therefore difficult to address, absent further elaboration of the contention by Appellant. However, its allegation concerning lack of adequate notice is one which can be addressed on the merits.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed, the Area Director's March 14, 1997, decision is vacated, and this matter is remanded to him for a decision on the merits.2/

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

2/ Although he is not required to consider Appellant's untimely statement of reasons, the Area Director may wish to do so, because he may thereby better understand the "adequate notice" contention made in Appellant's notice of appeal.