



INTERIOR BOARD OF INDIAN APPEALS

Lemual T. Small v. Rocky Mountain Regional Director, Bureau of Indian Affairs

35 IBIA 50 (04/28/2000)



United States Department of the Interior

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

LEMUAL T. SMALL, : Order Dismissing Appeal as Moot
Appellant :
 :
v. :
 :
 : Docket No. IBIA 00-44-A
ROCKY MOUNTAIN REGIONAL :
DIRECTOR, BUREAU OF INDIAN :
AFFAIRS, :
Appellee : April 28, 2000

Appellant Lemual T. Small sought review of a December 23, 1999, decision issued by the Rocky Mountain Regional Director, Bureau of Indian Affairs (Regional Director; BIA), cancelling a blanket grazing permit on the Northern Cheyenne Reservation. Appellant was a sublessee under the blanket permit, which was held by the Northern Cheyenne Livestock Association. The Board received Appellant's notice of appeal on February 14, 2000. Information provided to the Board indicated that the blanket permit was due to expire by its own terms on February 28, 2000. Based on this information, the Board ordered Appellant to show cause why his appeal should not be dismissed as moot.

The Board interpreted Appellant's response to be that the cancellation of the blanket permit was based, at least in part, on allegations that Appellant had committed livestock trespass while he was a sublessee; and that, even though the blanket permit had expired, the allegation of livestock trespass was personal to him and could result in his losing tribal preference rights to new grazing permits. The Board concluded that the appeal should be permitted to proceed, and requested that the Regional Director transmit the administrative record.

The Regional Director instead submitted evidence tending to show that the Northern Cheyenne Grazing Board had awarded Appellant 3807 AUMs for the next 5-year grazing period. BIA stated that this represented an increase of 220.8 AUMs over what Appellant had subleased under the blanket permit. In response to this information, the Board issued another order to show cause, again asking whether this case was moot.

Appellant responded:

The BIA indicated that this number of AUM's [3807] constituted an increase of 220.78 AUM's over what Appellant had previously subleased under the blanket lease held by the Northern Cheyenne Livestock Association.

The BIA is incorrect. The Appellant during 1999 grazing season obtained grass in Range Unit 14B that was turned back by [another individual].

Attached are totals of AUM's billed to the appellant from the BIA with total AUM's of 3806.9.

Apr. 24, 2000, Response to Order to Show Cause at 1-2.

Appellant's attachments include an "Operator's Management Plan." Although this form is not further identified, it appears to be a form for requesting allocation of grazing rights. The form shows that Appellant's management plan required 3806.9 AUMs. Other attachments include BIA Bills for Collection for the grazing fees associated with the range units listed on Appellant's management plan. Information which BIA submitted after the issuance of the second order to show cause included copies of the same Bills for Collection, showing that Appellant had paid the grazing fees.

Although BIA may have been mistaken in stating that the AUMs awarded to Appellant constituted an increase over what he held under the blanket lease, the fact remains that Appellant's management plan shows an intention to use 3806.9 AUMs and that Appellant was in fact awarded and has paid for those 3806.9 AUMs. Appellant has failed to show that he was in any way harmed by the allegation that he had committed livestock trespass under the blanket lease.

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 from the Regional Director's December 23, 1999, decision is dismissed as moot.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge