



INTERIOR BOARD OF INDIAN APPEALS

Bob and Susan Burrell v. Acting Albuquerque Area Director, Bureau of Indian Affairs

35 IBIA 56 (05/17/2000)



United States Department of the Interior

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

BOB AND SUSAN BURRELL, Appellants	:	Order Affirming Decision
	:	
	:	
v.	:	
	:	Docket No. IBIA 99-81-A
ACTING ALBUQUERQUE AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	
	:	
	:	May 17, 2000

This is an appeal from a May 26, 1999, decision of the Acting Albuquerque Area Director, Bureau of Indian Affairs (Area Director; BIA), which cancelled Lease No. 7100018000, an agricultural lease covering 171.54 acres of Santa Ana Pueblo tribal land. Appellant Bob Burrell (Burrell) was the lessee. 1/ For the reasons discussed below, the Board affirms the Area Director's decision.

The lease was entered into on September 1, 1980, for a 10-year term. In 1985, it was extended for another 10 years, so that it had an expiration date of September 1, 2000.

During the summer of 1997, the Governor of the Pueblo ordered Burrell not to cut hay at night. Burrell physically abandoned the lease later in the summer of 1997, although he made a lease payment in September 1997. 2/

On October 6, 1997, after receiving notice from Appellants' bonding company that Burrell's performance bond would be cancelled as of November 3, 1997, the Superintendent, Southern Pueblos Agency, wrote to him, advising him that he must submit a new bond by that date.

1/ It is not clear that Appellant Susan Burrell has standing here, as she has no apparent relation to the lease. However, because Bob Burrell plainly has standing, there is no need to address the issue.

2/ All parties to this appeal agree to these facts. The parties disagree as to a number of other facts, particularly those concerning relations between Burrell and the Pueblo.

In April 1998, Appellants filed suit in Federal court against the Pueblo and Pueblo officials, alleging, *inter alia*, interference with the lease. Burrell v. Armijo et al., Civ. No. 98-0438 (D.N.M. complaint filed Apr. 14, 1998). In their opening brief in this appeal, Appellants state that their Federal lawsuit was dismissed for failure to exhaust tribal remedies and that they refiled their complaint in the Pueblo's tribal court.

On June 2, 1998, the Pueblo's attorney wrote to the Superintendent, advising her that the lease had been abandoned and that conditions on the leased land were rapidly deteriorating. He requested that the Superintendent initiate lease cancellation proceedings under 25 C.F.R. § 162.14.

On June 12, 1998, the Superintendent wrote to Burrell, stating:

Site inspections made by personnel of this Agency, as well as by Pueblo staff, have indicated that you no longer occupy the lease site. All lease sites appear to be abandoned, including your homesite. Your mobile home is no longer on the premises.

We also reminded you by letter dated October 6, 1997, that your Performance Bond is to be kept intact and up to date. You did not respond to our request.

Pursuant to the terms of the lease, we are hereby providing you with ten (10) days notice to show cause why this lease should not be cancelled due to abandonment of the site and failure to provide adequate bond coverage.

On June 22, 1998, Appellants' attorney wrote to the Superintendent, stating that Appellants had filed suit against the Pueblo and demanding that BIA investigate various allegations against the Pueblo and Pueblo officials. Although the bulk of their letter consisted of allegations against the Pueblo, Appellants stated on page 2, in apparent reference to the Superintendent's June 12, 1998, show-cause letter:

[Appellants] did not voluntarily abandon their lease, but instead were illegally driven off their lands which they worked peacefully for 17 years, all because of the prejudice of a few tribal officials.

The imposition of a performance bond under these circumstances is not proper.

On August 24, 1998, the Superintendent wrote to Appellants' attorney, requesting evidence to support Appellants' allegations against the Pueblo and also requesting a copy of the complaint Appellants had filed in Federal court.

On October 26, 1998, Appellants' attorney sent the Superintendent a copy of the complaint. The record does not show that Appellants or their attorney ever furnished the Superintendent with any evidence in support of their allegations against the Pueblo.

On February 11, 1999, the Superintendent cancelled the lease. Appellant appealed the cancellation to the Area Director, who affirmed it on May 26, 1999. 3/

Appellants then appealed to the Board. The Area Director and the Pueblo requested that the Board put the Area Director's decision into immediate effect. They stated that conditions on the abandoned premises had continued to deteriorate and that immediate action was necessary to protect trust resources. Appellants were given an opportunity to respond to the request but did not do so. On July 14, 1999, the Board put the Area Director's decision into effect. 4/

Before the Board, Appellants complain that BIA did not investigate their allegations against the Pueblo and suggest that BIA had a trust responsibility toward Burrell which mandated a BIA investigation of Appellant's allegations.

Both the Area Director and the Pueblo contend that BIA owed no trust duty to Burrell but did have a trust duty to protect the Pueblo's land from deterioration.

The Board has held on several occasions that BIA does not have a trust duty toward a lessee of Indian land, even where the lessee is Indian (which is not the case here). Rather, the Board has recognized the well-established principle that BIA's trust duty is toward the Indian landowner. E.g., Candelaria v. Sacramento Area Director, 27 IBIA 137 (1995); Johnson v. Acting Phoenix Area Director, 25 IBIA 18 (1993).

The Board holds that BIA had no trust duty toward Burrell.

3/ In addition to the two lease violations cited in the Superintendent's June 12, 1998, show-cause letter, two further violations were mentioned in the Superintendent's Feb. 11, 1999, cancellation decision and the Area Director's May 26, 1999, decision. The Superintendent's decision states that Burrell had failed to pay irrigation operation and maintenance charges, as required by ¶ 3 of his lease. The Area Director's decision states that Burrell had failed to make his Sept. 1998 lease payment.

Although either of these violations might have justified lease cancellation had notice been given under 25 C.F.R. § 162.14, Burrell was not given notice concerning them.

The BIA decisions do not appear to rely on these further violations as grounds for lease cancellation. The Board construes the decisions as relying solely on the two violations cited in the Superintendent's June 12, 1998, show-cause letter.

4/ The Board advised Appellants that they were entitled to proceed to court under 43 C.F.R. § 4.314(a) and requested that they inform the Board if they did so. They have not so informed the Board.

The principal thrust of Appellants' argument is that Burrell's lease violations should be excused because of BIA's failure to investigate Appellants' allegations against the Pueblo. Based on the materials in the record, and Appellants' failure to contend otherwise, the Board concludes that Appellants first reported their allegations to BIA on June 22, 1998, ten months after Burrell abandoned the lease ^{5/} and seven months after his performance bond expired. Thus, as the Area Director argues, Burrell had long been in violation of his lease when Appellants first reported their allegations to BIA. The fact that BIA did not investigate those allegations could not in any way have been the cause of Burrell's lease violations.

Moreover, after making their allegations to BIA, Appellants failed to pursue them. The Superintendent requested evidence, and Appellants produced none. In fact, Appellants failed even to produce a copy of the complaint they had filed in Federal court until two months after the Superintendent requested it.

It was Appellants' responsibility, in response to the Superintendent's June 12, 1998, and August 24, 1998, letters, to support the allegations which, they now claim, excused Burrell's lease violations. They did not do so. The Board finds that BIA's cancellation of Burrell's lease was entirely justified.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Area Director's May 26, 1999, decision is affirmed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

^{5/} As to the date of lease abandonment, the Board relies on the statement made in ¶ 33 of Appellants' complaint in Burrell v. Armijo that "Appellants removed their two mobile homes and removed all of their farm equipment" on Aug. 25, 1997.