



INTERIOR BOARD OF INDIAN APPEALS

Richard Mednansky v. Great Plains Regional Director, Bureau of Indian Affairs

37 IBIA 164 (03/08/2002)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

RICHARD MEDNANSKY,  
Appellant

v.

GREAT PLAINS REGIONAL DIRECTOR,  
BUREAU OF INDIAN AFFAIRS,  
Appellee

: Order Docketing Appeal and  
: Affirming Decision  
:  
:  
: Docket No. IBIA 02-34-A  
:  
:  
: March 8, 2002

This is an appeal from a November 5, 2001, decision of the Great Plains Regional Director, Bureau of Indian Affairs, affirming the removal of Tract T-11233 from Range Unit 205 and Tract T-11138 from Range Unit 212 on the Rosebud Reservation. Appellant Richard Mednansky holds grazing permits for both range units. The tracts are owned by the Rosebud Sioux Tribe, which requested their removal from the range units.

The Regional Director's decision noted that Appellant had "signed modifications to both permits signifying his agreement to the modification." Regional Director's Decision at 1. Upon receipt of the administrative record, the Board reviewed the permit modifications mentioned by the Regional Director. The modifications both stated that they were for the purpose of removing the tracts at issue in this appeal from their respective range units. Appellant signed both modifications and, in both cases, his signature was witnessed.

On January 10, 2002, the Board ordered Appellant to show why the Regional Director's November 5, 2001, decision should not be summarily affirmed on the basis of Appellant's signature on the modifications.

In response, Appellant alleges that he signed the modification under duress. He continues: "The only way that I could have grazed livestock on any of the land covered by this grazing permit was to sign the modification prepared and required by the BIA office." Response to Order to Show Cause at 1. Appellant did not make this allegation in his appeal to the Regional Director. Before the Board, he fails to support his bare allegation with any evidence. For the reasons discussed below, the Board concludes that, even if Appellant could prove he did not agree to the modifications, it would not matter at this point.

Under 25 C.F.R. § 166.228(b), where land is removed from a grazing permit at the request of the landowner, the permit modification becomes effective immediately if all parties agree. Otherwise, it becomes effective upon the next anniversary date of the permit, or in 180 days if notice is given within 180 days of the anniversary date. Appellant was given notice of

the modifications on May 31, 2001. The anniversary dates for both permits is November 1. Because November 1, 2001, was less than 180 days after May 31, 2001, the modifications would have become effective at the end of November 2001 absent Appellant's agreement.

Despite Appellant's argument to the contrary, it is clear that the Superintendent, Rosebud Agency, had the authority to remove the tracts from Appellant's range units, with or without Appellant's agreement. 25 C.F.R. §§ 166.227, 166.228. Appellant's grazing permits, both of which he signed, describe the Superintendent's authority in this regard. Further, as specified in Special Permit Provision No. 6 in both permits, Appellant agreed, by accepting the permits, to abide by the regulations in 25 C.F.R. Part 166.

Were the Board to find that Appellant did not agree to the removal of the two tracts from his range units, the only significance of that finding would be that the removals would have become effective in late November 2001, rather than at the time Appellant received notice. 1/ In either case, the removals would be in effect now. Thus, Appellant's consent to the removals is now a moot point.

Appellant also argues that he should be allowed to continue this appeal until the United States Court of Appeals for the Eighth Circuit issues a decision in a lawsuit involving National Environmental Policy Act (NEPA) issues relating to the Tribe's plans for the two removed tracts. 2/ He also attempts to raise the same NEPA issues in this appeal. The Regional Director found those issues irrelevant to the permit modification decision Appellant was appealing to her. The Board finds them equally irrelevant here.

Appellant has raised no issues that would warrant maintaining this appeal on the Board's docket and delaying final resolution of this matter.

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 and the Regional Director's November 5, 2001, decision is affirmed.

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//original signed  
Anita Vogt  
Administrative Judge

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

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1/ Conceivably, Appellant would be responsible for repaying some or all of the rental refund he received from the Tribe with respect to the removed tracts.

2/ Appellant does not offer a citation for this case. The Board presumes it is an appeal from the decision of the United States District Court for District of South Dakota in Rosebud Sioux Tribe v. Gover, 104 F. Supp. 2d 1194 (D.S.D. 2000).