



INTERIOR BOARD OF INDIAN APPEALS

Dale Manternach v. Rocky Mountain Regional Director,
Bureau of Indian Affairs

37 IBIA 241 (05/13/2002)



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

DALE MANTERNACH,	:	Order Docketing and Dismissing
Appellant	:	Appeal
	:	
v.	:	
	:	
ROCKY MOUNTAIN REGIONAL	:	Docket No. IBIA 02-98-A
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee	:	May 13, 2002

The Board of Indian Appeals (Board) has received a notice of appeal from Appellant Dale Manternach, through counsel, Steven K. Rabuck, Esq., Sioux Falls, South Dakota. Appellant states that he “appeals from the entire decision of the [Rocky Mountain Regional Director, Bureau of Indian Affairs (Regional Director; BIA)], wherein it is alleged that * * * Appellant trespassed on trust land [i.e., Turtle Mountain Allotment No. 2699] and assessing ‘trespass fees’ in an unknown amount.” Notice of Appeal at 1. For the reasons discussed below, the Board docketed this appeal but dismisses it as premature.

According to the Regional Director’s March 26, 2002, decision in this matter, Appellant leased Allotment 2699 prior to 1980. However, the owner of the allotment indicated that he did not want to continue leasing to Appellant. According to the Regional Director, cattle were observed on the allotment in October 1983, Appellant admitted that the cattle were his, but no further action was taken in regard to the situation. The Regional Director’s decision stated that cattle were again observed on the allotment in 1987, but that the livestock owner was not identified. Starting in 1997, the Superintendent, Fort Peck Agency, BIA (Superintendent), charged Appellant with trespass on the allotment and attempted to collect trespass damages from him. The case reached the Regional Director, who, on April 4, 2001, issued a decision reversing the Superintendent’s finding that Appellant had trespassed on the allotment. The Superintendent provided additional information to the Regional Director, who considered that information before issuing his March 26, 2002, decision. In that decision, the Regional Director stated:

On July 24, 1997, [Appellant] wrote * * * to the * * * Superintendent stating that he had not owned any cattle since 1969, but did run a few sheep on the riverbottom in 1988, 1989, 1990, 1991, and 1992. [Appellant] stated he was willing to pay the lease on the land for those years.

* * * * *

The * * * Superintendent's decision to assess trespass damages in the amount of \$17,389.53 is overturned and remanded to him for further action pursuant to [Appellant's] concession that he ran sheep on the river bottom in 1988, 1989, 1990, 1991, and 1992 and his willingness to pay for that period.

The record does not contain evidence sufficient to assess damages to [Appellant] for 1980 through 1987 and 1993 through 1995. Various inspections indicate that cattle were present on the allotment at various times during those years; however, ownership of those cattle was not identified. There is no solid evidence in the record that disputes [Appellant's] statement in his July 24, 1997, letter that he has not owned cattle since 1969.

Mar. 26, 2002, Decision at 2-4. The Regional Director then notified Appellant of his right to appeal to the Board.

In his statement of reasons, Appellant contends: (1) the Regional Director's decision fails to state a claim on which relief can be granted; (2) Appellant did not trespass on the allotment; (3) Appellant cannot be assessed civil penalties for alleged trespass because of the statute of limitations set out in 28 U.S.C. § 2415; (4) BIA lacks legal authority to pursue this action because no regulations implementing 25 U.S.C. §§ 3701 et seq. have been promulgated and therefore there is no method for determining a fee for grazing privileges or interest; and (5) the administrative record shows that BIA did not properly process this matter under 25 C.F.R. Part 166, and specifically 25 C.F.R. §§ 166.24(c), 166(c) [sic], and 166.24(d).

No trespass damages are assessed against Appellant. The Regional Director overturned the Superintendent's imposition of trespass damages, and concluded that there was insufficient evidence to charge Appellant with trespass for the years 1980 through 1987 and 1993 through 1995. Therefore, on remand the Superintendent lacks authority to assess trespass damages against Appellant for those years.

In regard to 1988 through 1992, the Regional Director's remand instructs the Superintendent to make a determination of the amount owed in accordance with Appellant's "concession that he ran sheep on the river bottom in [those years] and his willingness to pay for that period." Mar. 26, 2002, Decision at 3. This is not an assessment of trespass damages; it is the acceptance of an offer to pay for the use of another's property.

In his notice of appeal, Appellant states that he "did not trespass on" the allotment. This statement may be an attempt to rescind the concession and offer apparently contained in Appellant's July 24, 1997, letter to the Superintendent, or a matter of semantics. The Regional Director's decision does not, however, conclude that Appellant "trespassed" on the allotment but instead merely states that Appellant "conce[ded] that he ran sheep on the river bottom."

Although Appellant might like a decision on the legal points which he raises in his notice of appeal, the Board finds that the Regional Director's March 26, 2002, decision mooted most

of those arguments. The remaining arguments, including whether or not Appellant has admitted running sheep on the allotment at a time when the allotment was apparently not leased to him, can be addressed by the Superintendent on remand.

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 March 26, 2002, decision is docketed but dismissed without prejudice as premature. The matter is before the Superintendent in accordance with the Regional Director's remand.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge