



INTERIOR BOARD OF INDIAN APPEALS

Myron Simmons v. Northwest Regional Director, Bureau of Indian Affairs

38 IBIA 252 (12/19/2002)



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

MYRON SIMMONS,
Appellant

v.

NORTHWEST REGIONAL DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Affirming Decision
:
:
: Docket No. IBIA 01-128-A
:
:
: December 19, 2002

Appellant Myron Simmons seeks review of a May 9, 2001, decision issued by the Northwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA), in which the Regional Director concluded that the initiation of a trespass action for the logging of timber on Appellant's trust allotment was time-barred under 28 U.S.C. § 2415. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Appellant is the beneficial owner of Allotment 2208 on the Quinault Indian Reservation. In preparation for seeking a BIA timber cutting permit in 1997, Appellant contracted with a private surveyor to determine the boundaries of Allotment 2208. The private survey showed for the first time that the boundaries of Allotment 2208 had been incorrectly marked. Apparently, an October 1998 survey by the Bureau of Land Management (BLM) confirmed the findings of the private survey. No copy of the BLM survey is in the materials before the Board.

The Quinault Indian Nation, pursuant to its duties as a Self-Governance compact tribe, conducted an investigation which revealed that timber had been cut from Allotment 2208 as it is now surveyed. The Nation concluded that the trespass occurred between 1973 and 1975, when a fee parcel adjacent to Allotment 2208 was logged; that the trespass was committed by a logging company which had gone out of business in or around 1976; that the fee owner of the land adjoining the allotment had sold the property after it was logged; and that efforts to locate the former fee owner were unsuccessful.

At some point after the new surveys and the investigation were completed, Appellant began making inquiries about the timber trespass. The Acting Trust Officer, Taholah Field Station, BIA (Trust Officer), responded to a December 14, 2000, letter which Appellant wrote to the Honorable Royce C. Lamberth. The Trust Officer interpreted Appellant's letter to ask for the initiation of litigation against the timber trespasser. Basing his January 10, 2001,

response on the report of the Nation's investigation, which indicated that Appellant had requested the investigation on June 20, 1997, the Trust Officer stated that no action would be taken because the period of time between the trespass and the investigation exceeded the statute of limitations established in 28 U.S.C. § 2415. 1/

Appellant appealed the Trust Officer's decision to the Regional Director, who affirmed that decision on May 9, 2001. Appellant then appealed to the Board. Appellant and the Regional Director filed briefs on appeal.

Appellant bears the burden of proving the error in the Regional Director's decision. See, e.g., Carrywater v. Rocky Mountain Regional Director, 38 IBIA 116, 188 (2002), and cases cited there. Appellant does not directly challenge BIA's decision not to file suit against the timber trespasser because of the statute of limitations in 28 U.S.C. § 2415. Instead, he argues that the statute should not apply to him because of improprieties he contends BIA committed. In apparent support of this argument, Appellant asserts that BIA should have discovered the timber trespass in or around 1977 when it investigated his complaint that a logging road had been improperly constructed across his allotment. 2/

1/ 28 U.S.C. § 2415(b) establishes several time limitations for actions filed by the United States for money damages based upon tort. In pertinent part, the subsection provides that an action "for or on behalf of a recognized tribe, band or group of American Indians, including actions relating to allotted trust or restricted Indian lands, may be brought within six years and ninety days after the right of action accrues."

Subsection 2415(b) is subject to the provisions of 28 U.S.C. § 2416, which provides in pertinent part: "For the purpose of computing the limitations periods established in section 2415, there shall be excluded all periods during which-- * * * (c) facts material to the right of action are not known and reasonably could not be known by an official of the United States charged with the responsibility to act in the circumstances."

2/ Although Appellant suggests that he never received any information concerning the 1977 investigation of the right-of-way trespass, the administrative record contains several memoranda and letters regarding the matter and documents several telephone conversations and meetings with Appellant. Specifically, the record shows that, on Sept. 23, 1981, Appellant accepted a settlement offer made by one of the two individuals found to have trespassed on his allotment, and that, by letter dated Oct. 21, 1981, BIA forwarded a cashiers check to him as payment of the settlement. The record also contains an Aug. 24, 1989, letter from BIA to Appellant stating that his request for litigation in regard to the right-of-way trespass by the second individual was being rejected based on the statute of limitations set out in 28 U.S.C. § 2415.

Although several of Appellant's letters in regard to the right-of-way trespass request a further investigation to determine if any timber had been illegally removed from his allotment, Appellant appears to have dropped those assertions in favor of pursuing the right-of-way trespass. In this appeal, Appellant has not attempted to show that the statute of limitations established in 28 U.S.C. § 2415 can be avoided based on an assertion that a government agency should have discovered the grounds for litigation earlier. ^{3/} Neither has Appellant even attempted to show that the Regional Director misinterpreted the statute.

The Board finds that Appellant has failed to carry his burden of proving error in the Regional Director's decision not to file suit against the timber trespasser.

Furthermore, even if Appellant had carried his burden of showing error in the Regional Director's interpretation of 28 U.S.C. § 2415, such a showing would have resulted, at most, in a remand to the Regional Director. The Board is not a court of general jurisdiction. It has only the authority delegated to it by the Secretary of the Interior. It does not have authority to order the Department to file suit against any person. Johnson v. Acting Billings Area Director, 27 IBIA 241 (1995).

It appears, however, that Appellant is actually more interested in obtaining money damages from BIA than in seeking litigation against the timber trespasser. ^{4/} In this appeal, Appellant asks for money damages from BIA for all costs he has incurred and the "hardships" he has endured. He also appears to seek damages for breach of trust. The Board has previously held that it has not been delegated authority to award money damages against BIA. See Dailey v. Billings Area Director, 34 IBIA 128, 129 (1999), and cases cited there.

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 Regional Director's May 9, 2001, decision is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge

^{3/} In fact, it appears that such an argument undermines any possible application of 28 U.S.C. § 2416(c).

^{4/} In this regard, the Board notes that the timber trespasser went out of business prior to any timber trespass allegation from Appellant.