



INTERIOR BOARD OF INDIAN APPEALS

Drechsel Brothers Inc. v. Assistant Secretary - Indian Affairs;
Northwest Regional Director, Bureau of Indian Affairs; and
Acting Coeur D'Alene Agency Superintendent, Bureau of Indian Affairs

48 IBIA 276 (02/13/2009)

Related Board case:
48 IBIA 279



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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DRECHSEL BROTHERS INC.,)	Order Dismissing Appeal
Appellant,)	
)	
v.)	
)	
ASSISTANT SECRETARY - INDIAN)	
AFFAIRS; NORTHWEST)	Docket No. IBIA 09-6-A
REGIONAL DIRECTOR, BUREAU)	
OF INDIAN AFFAIRS; AND)	
ACTING COEUR D'ALENE)	
AGENCY SUPERINTENDENT,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellees.)	February 13, 2009

On September 9, 2008, Drechsel Brothers, Inc. (Drechsel), appealed to the Board of Indian Appeals (Board), pursuant to 25 C.F.R. § 2.8 (appeal from inaction of official), seeking review of the alleged failure of the Assistant Secretary - Indian Affairs (Assistant Secretary), the Northwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA), and the Acting Superintendent of the Coeur d'Alene Agency, BIA (Superintendent; Agency), to respond to a July 28, 2008, "Demand for Damages Pursuant to 25 CFR § 2.8." In that demand, Drechsel claimed that BIA must pay it \$41,673.06, as its share of damages from compensation for a right-of-way acquired by the Idaho Department of Transportation over 29.97 acres of Coeur d'Alene Allotment No. 485, in which Drechsel holds a leasehold interest.

Upon receipt of Drechsel's appeal, the Board summarily concluded that it lacked jurisdiction to even consider Drechsel's claims against the Assistant Secretary and the Superintendent. *See* Order, Sept. 25, 2008. Because it is clear that the initial responsibility within BIA for deciding the merits of Drechsel's claim was with the Superintendent, and not the Regional Director, it is also clear that Drechsel's demand for action by the Regional Director — and necessarily its appeal against him for inaction — was premature. Therefore, we dismiss this appeal in its entirety.

After receiving Drechsel's appeal in September of 2008, the Board ordered a status report from the Regional Director, who reported that the matter was pending before the Superintendent, that the Superintendent was expected to take action on Drechsel's claim for payment no later than November 14, 2008, and that the Superintendent's decision would include appeal rights as required by 25 C.F.R. Part 2. Subsequently, the Regional Director reported to the Board that the Superintendent had indeed issued a decision on November 14, 2008, which denied Drechsel's claim, and that Drechsel had appealed the Superintendent's decision to the Regional Director. Drechsel did not file responses to either of the Regional Director's status reports.

Although Drechsel submitted its July 28, 2008, section 2.8 demand for action to both the Superintendent and the Regional Director, it is now clear that the responsibility at that time for making a decision lay with the Superintendent.¹ The Board has held that it is premature for a party to demand that a Regional Director issue a decision on a matter when it is still pending before the Superintendent. *See Paiute Tribe of Utah v. Western Regional Director*, 40 IBIA 163, 164 (2004). Thus, this appeal, which is based on Drechsel's July 28, 2008, section 2.8 demand, is premature with respect to the Regional Director, and must be dismissed.² Dismissal is also consistent with the Board's practice of dismissing section 2.8 appeals when the evidence indicates that BIA is acting or has acted on an appellant's request. *See id.*, and cases cited therein. And to the extent that Drechsel has, in this appeal, requested relief from the Board that addresses the merits of the underlying dispute, its requested relief is outside the scope of a section 2.8 appeal. *See Forest County Potawatomi Community v. Deputy Assistant Secretary - Indian Affairs*, 48 IBIA 259, 264-66 (2009); *Midthun v. Rocky Mountain Regional Director*, 43 IBIA 258, 264 n.7 (2006); *Tuttle v. Western Regional Director*, 41 IBIA 74 (2005).

¹ We note that in a letter dated September 13, 2007, the Office of the Regional Solicitor expressly directed Drechsel to work with the individual landowners and, if necessary, present any disputed issues to the Superintendent for decision. Instead of directing a section 2.8 demand for a decision solely to the Superintendent (which would have been appealable to the Regional Director if the Superintendent failed to act within the required timeframe), Drechsel chose a scattershot approach of sending its demand for a decision to three different levels of authority within the Department.

² Drechsel's appeal to the Regional Director from the Superintendent's November 14, 2008, decision post-dated and is not within the scope of this appeal.

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 Board dismisses this appeal.³

I concur:

// original signed
Steven K. Linscheid
Chief Administrative Judge

// original signed
Debra G. Luther
Administrative Judge

³ Our dismissal of this appeal should not be construed as sanctioning the Regional Director's failure to respond to Drechsel's July 28, 2008, section 2.8 demand. It may be that Drechsel's scattershot approach, *see supra* note 1, created some confusion, but as the Board has noted previously, a simple response from the Regional Director could have removed Drechsel's basis for filing this section 2.8 appeal or, at the least, obviated the need for the Regional Director to prepare status reports to the Board. *See Paiute Indian Tribe*, 40 IBIA at 164.