



INTERIOR BOARD OF INDIAN APPEALS

Alton K. Brown v. Albuquerque Area Director, Bureau of Indian Affairs

4 IBIA 109 (08/15/1975)



United States Department of the Interior

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

ADMINISTRATIVE APPEAL OF ALTON K. BROWN
v.
AREA DIRECTOR, ALBUQUERQUE AREA OFFICE,
BUREAU OF INDIAN AFFAIRS, ET AL.

IBIA 75-39-A

Decided August 15, 1975

Appeal from the decision of the Area Director affirming the decision of the Superintendent, Southern Ute Agency, canceling two leases.

Reversed.

APPEARANCES: John D. Cain, Esq., for appellant; Office of the Solicitor, Albuquerque Field Office, by Barry K. Berkson, Esq., for appellee.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

This is an appeal from the decision of the Area Director, Albuquerque Area Office, Bureau of Indian Affairs, dated October 31, 1974, affirming the decision of the Superintendent, Southern Ute Agency, Ignacio, Colorado, dated September 13, 1974, canceling lease Nos. SU-8-72 and SU-15-72 covering Southern Ute Tribal land.

Each lease was for a period of five years beginning in 1972 and ending on the last day of February and March 1977 respectively. The leases were approved by the Superintendent on May 22, 1972.

By letter dated May 8, 1974, the Superintendent, Southern Ute Agency, advised the appellant in part as follows:

At the Tribal Council meeting which you attended on April 30, 1974, the delinquencies connected with your Leases SU-15-72 and SU-8-72 were discussed. * * *

LEASE NO. SU-15-72, OXFORD TRACT-During the first year of the lease, (1972) you were to have constructed a sheep fence around the entire tract, which is to remain on the land, and you were to reseed permanent pastures. It has been determined that a sheep fence is to be either woven wire not less than 32" high, with 2 strands of barbed wire over, or 7 strands of barbed wire with 2 stays between posts, posts to be not more than 1 rod apart. During our inspection last October, we could find no evidence of reseeding of permanent pastures. This will also have to be remedied and we will require that you contact us promptly after reseeding so we can again inspect it. These two requirements, the fencing of the entire tract and the reseeding of permanent pastures, must be completed to our satisfaction by not later than September 1, 1974. As you are aware, the Tribal Council has specified that, if they are not satisfactorily completed, your leases (2) will be subject to cancellation. For the second year of Lease No. SU-15-72, (1973) we will allow you to deduct from the rental the cost of \$350.00 worth of grass seed leaving a balance of \$850.00 cash rent for 1973 to be paid by not later than September 1, 1974. There will also be an interest charge of this \$850.00 of 6% effective as of this date until paid in full. The 1974 rental on this lease has been paid in full.

LEASE NO. SU-8-72, HAYSTACK MOUNTAIN-The cash rental for the first year in the amount of \$450.00 has been paid. You are authorized to use the 1973 and 1974 rent, totaling \$900.00 for the construction of a stock water pond on the leased area. Agency personnel will assist you in locating the site for this pond. You will then pay cash for the final two years of this lease, 1975 and 1976.

During the meeting with the Tribal Council, you indicated you could meet these requirements by September 1, 1974. Since it is unlikely that you will be given another extension of time, we suggest you concentrate on complying with these conditions as soon as possible. * * *

The Superintendent wrote to the appellant again on August 22, 1974, wherein he stated in part:

By letter dated May 8, 1974, we notified you of certain delinquencies connected with your Leases SU-15-72 and SU-8-72. You were given an extension of time to September 1, 1974, to correct the delinquencies. Recently, an inspection was made of one of your leases, the one covering the Oxford Tract, Lease No. SU-15-72. It was noted that virtually no effort has been made to comply with the conditions required on your part to keep your leases in force. The reseeding which was to have been performed apparently has not been done; the fences are in much the same condition as they were last May 8, and the \$850.00 delinquent lease rental has not been paid. These things are to be completed by not later than September 1, 1974, as agreed between you and the Tribal Council during the meeting of April 30, 1974. We wish to remind you of the short time left to remedy the situation.

By letter decision dated September 13, 1974, the Superintendent, Southern Ute Agency, advised appellant that the leases in question were canceled because he had not corrected the deficiencies discussed at a meeting with the Tribal Council on April 30, 1974, by September 1, 1974.

On October 31, 1974, the Area Director sustained the Superintendent's decision. The lessee appealed to the Commissioner of Indian Affairs and the matter was referred to this Board for consideration and appropriate action.

A memorandum from the Superintendent to the Area Director dated October 7, 1974, indicates the appellant attempted to effect compliance by September 1, 1974, or as soon thereafter as possible. The fence was completed about a week after September 1, 1974, and the stock pond on the Haystack Mountain lease was satisfactorily completed by September 18, 1974, all at a cost of several thousand dollars.

The appellant contended that the person who drew up the lease contracts misunderstood his bid, especially the part on fencing. The Superintendent in this same memorandum stated that, "It is easy to see why there could have been a misunderstanding since there is some ambiguity in Mr. Brown's bid of March 24, 1972, and his letter of same date addressed to Mr. Brewer. However, as Mr. Brown states in his letter to the Council, he did sign the lease as prepared and stipulated and thereby agreed to its terms."

The Superintendent further indicated in his memorandum to the Area Director, "There are differences of opinion, among the Agency employees involved in this case as to whether Mr. Brown should be allowed to continue his leases."

The Resources Coordinator in his memorandum to the Tribal Council dated September 9, 1974, recommended that the Council give favorable consideration to the continuation of the lease because he questioned if there had been enough time elapsed between when the BIA personnel staked the reservoir site and the deadline for construction of the reservoir, to give Mr. Brown a fair chance to get this job done.

It is also unclear from the record as to when in September the deficiencies were to be corrected. The Tribe and the Superintendent impress September 1, 1974, as the deadline. The appellant indicated that he needed until September to correct the deficiencies. "Until September" is subject to several interpretations, among which, is correction of the deficiencies at any time in September or during September.

The appellant contends among other things that the May 8 and August 22, 1974, letters do not comply with the provisions of 25 CFR 131.14.

Section 11 of each lease provides the following:

It is understood and agreed that violations of this lease shall be acted upon in accordance with the regulations in 25 CFR 131.

The pertinent parts of 25 CFR 131.14 provide the following:

Upon a showing satisfactory to the Secretary that there has been a violation of the lease or the regulations in this part, the lessee shall be served with written notice setting forth in detail the nature of the alleged violation and allowing him ten days from the date of receipt of notice in which to show cause why the lease should not be canceled. * * * If within the ten-day period, it is determined that the breach may be corrected and the lessee agrees to take the necessary corrective measures, he will be given an opportunity to carry out such measures and shall be given a reasonable time within which to take corrective action to cure the breach. If the lessee fails within such reasonable time to correct the breach or

to furnish satisfactory reasons why the lease should not be canceled, the lessee shall forthwith be notified in writing of the cancellation of the lease and demands shall be made for payment of all obligations and for possession of the premises.

* * *

A notice to show cause should comply, with respect to its form and requisites, with the requirements imposed by the rules of practice. Moreover, a notice to show cause ordinarily should be properly entitled.

We are constrained to find that the May 8, 1974, letter from the Superintendent to the appellant generally complies with the requisites of 25 CFR 131.14. However, we do not construe September 1, 1974, to be the deadline for correction of the deficiencies. The Tribe and Superintendent would have us accept September 1, 1974, as the cut-off date. The appellant on the other hand stated that it was his understanding that "by September" meant sometime in September.

We are of the opinion that the resolution of the problem is in the following language of 25 CFR 131.14 which reads as follows:

* * * he will be given an opportunity to carry out such measures and shall be given a reasonable time within which to take corrective action to cure the breach. * * *

Was the appellant given a reasonable time within which to take corrective action to cure the deficiencies before cancellation of his leases?

We think not. We have only to look to the Resources Coordinator's memorandum to the Tribe dated September 9, 1974, wherein he recommended that the Tribe give favorable consideration to the continuation of the lease because he questioned if there had been enough time elapsed between when the BIA personnel staked the reservoir site and the deadline for construction of the reservoir, to give appellant a fair chance to get the job done. Moreover, the differences of opinion that existed among the Agency employees involved in this matter as to whether the appellant should be allowed to continue his leases helps to show that a reasonable time was not given the appellant to correct the deficiencies.

We find that the appellant was not given a reasonable time within which to correct the lease deficiencies. We further find that the lease deficiencies were corrected within a reasonable time.

NOW, THEREFORE, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, the decision of the Superintendent, Southern Ute Agency, dated September 13, 1974, affirmed by the Area Director, Albuquerque Area Office, October 31, 1974, is hereby REVERSED and the cancellation of lease Nos. SU-8-72 and SU-15-72 is hereby revoked and rescinded.

This decision is final for the Department.

Done at Arlington, Virginia.

//original signed
Mitchell J. Sabagh
Administrative Judge

I concur:

//original signed
Alexander H. Wilson
Administrative Judge