INTERIOR BOARD OF INDIAN APPEALS

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

5 IBIA 155 (08/09/1976)
ADMINISTRATIVE APPEAL OF
ALTON K. BROWN
v.
AREA DIRECTOR, ALBUQUERQUE AREA OFFICE,
BUREAU OF INDIAN AFFAIRS, ET AL.

IBIA 75-39-A Decided August 9, 1976

Petition for reconsideration of a decision and a hearing.

Affirmed.

APPEARANCES: John D. Cain, Esq., for Alton K. Brown, Appellant; Maynes and Anesi, Attorneys at Law, for the Southern Ute Tribe, Appellee; and M. Sharon Blackwell, Office of the Field Solicitor, Albuquerque, for the Bureau of Indian Affairs.

OPINION BY ADMINISTRATIVE JUDGE WILSON

The Interior Board of Indian Appeals under date of August 15, 1975, reversed the Area Director, Albuquerque Area Office, Bureau of Indian Affairs, who on October 31, 1974, had affirmed the decision of September 13, 1974, of the Superintendent, Southern Ute Agency, Ignacio, Colorado, canceling Appellant’s Leases SU-8-72 and SU-15-72 covering certain Southern Ute tribal lands.

Thereafter, on September 1, 1975, Maynes and Anesi, Attorneys for the Southern Ute Tribe, hereinafter referred to as Appellee, filed with this Board a petition for reconsideration of the Board’s decision of August 15, 1975, and for a hearing to resolve certain alleged factual disputes. The petition was granted and the matter was referred on September 18, 1975, to the Hearings Division, Office of Hearings and Appeals, for a fact-finding hearing and recommended decision.

The matter, after considerable delay, was scheduled and heard by Administrative Law Judge Richard B. Denu at Ignacio, Colorado, on May 25, 1976. From the evidence adduced at this hearing, Judge Denu on June 29, 1976, issued his findings and recommendation. Among other
things, the Judge found that the Appellant was not afforded reasonable time and opportunity to correct the lease delinquencies as provided in 25 CFR 131.14. He further found that the Appellant had corrected the deficiencies on Leases SU-8-72 and SU-15-72 within a reasonable time. Accordingly, it is the Judge's recommendation that the Board's decision of August 15, 1975, stand affirmed.

An examination of the testimony taken at the hearing held on May 25, 1976, clearly indicates the Appellee has failed to come forth with any compelling evidence to justify arriving at a different conclusion from that reached by the Board in its decision of August 15, 1975. We are in agreement with the Judge's findings and recommendation of June 27, 1976, which the Board hereby adopts as its own. A copy of the Judge's findings and recommendation is attached.

NOW, THEREFORE, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1(2), the Board's Stay Order of September 18, 1975, be and the same is hereby VACATED, and the Order of August 15, 1975, is hereby AFFIRMED.

This decision is final for the Department.

Done at Arlington, Virginia.

//original signed
Alexander H. Wilson
Administrative Judge

I concur:

//original signed
Mitchell J. Sabagh
Administrative Judge

Attachment
On appeal, by decision dated August 15, 1975, the Interior Board of Indian Appeals reversed the decision of October 31, 1974 of the Area Director, Albuquerque Area Office, Bureau of Indian Affairs, affirming the decision of the Superintendent, Southern Ute Agency, Ignacio, Colorado, cancelling two leases held by the appellant Alton K. Brown, covering Southern Ute tribal land.

After a considerable time delay the matter was scheduled for hearing and was heard at Ignacio, Colorado, on May 25, 1976, before the undersigned. Appellant was present and represented by his attorney John D. Cain, Farmington, New Mexico. The Southern Ute Tribe was represented by Frank J. Anesi, of the law firm of Maynes & Anesi, Durango, Colorado. The Bureau of Indian Affairs was represented by Sharon Blackwell, Field Solicitor’s Office, Albuquerque, New Mexico.
The two leases, each for five years beginning early in 1972, were cancelled on September 17, 1974, by letter of notification to Mr. Brown, from the Agency Superintendent. The letter set out that the reason for cancellation "is your failure to comply with certain lease stipulations in both leases."

Lease No. SU-15-72 covers the Oxford Tract, and the provisions of the lease allegedly not complied with were failure to construct sheep fencing around the entire tract and failure to reseed permanent pastures.

Lease No. SU-8-72 covers the Haystack Mountain Tract and the alleged failure of responsibility was failure to construct a stock water reservoir on it (in lieu of cash rental for years 1973 and 1974).

Such failures were called to appellant’s attention by letter of May 8, 1974 from the Agency Superintendent, who also set out that the requirements called for were to be met by September 1, 1974.

There was some dissatisfaction on the part of appellant as to the terms of the leases, which were not, as he thought, drawn in accordance with his bids, and he expressed doubt as to his obligations under the leases, particularly as to time allowed in constructing fences. However, he did sign the leases, which speak for themselves, and there is no doubt he had failed some of the requirements, as of April of 1974.
Specifically, he had not paid the agreed cash payment for 1973 and 1974 on the Haystack Mountain pasture. He had not completed all the required fencing, and he had not completed the reseeding on the Oxford tract.

At a meeting of the Tribal Council on April 30, 1974, at which appellant was present, as well as tribal officials and Bureau of Indian Affairs personnel and others, the delinquencies of appellant were discussed with him, and he agreed to correct them, and the tribe allowed additional time to do it. The aforementioned Superintendent’s letter of May 8, 1974 sets out generally the matters agreed upon.

However, there is contention as to whether or not September 1, 1974 was the deadline set at the meeting. Mr. Brown states it was his understanding that the work was to be completed during September. (Page 27 transcript). He also stated, “... I told them we were awfully busy during the summer, and they asked me if we intended to do these improvements, and I said yes we would get them done. So they asked me when we could have them done. I told them we would come off the forest the 15th of September with the sheep, and I said we sometimes ... I am not sure of my exact words ... but my intent was that during September we would get the fence finished ...”

It appears certain that there was discussion on the time subject. Mr. Foreman (page 13 blue cover) said in response to the question of who set the date: “Well, he indicated that he had sheep and would be
busy in the summer and wouldn't be able to do this probably before September and towards the end of the hearing on this subject ... I thought Mrs. Kuebler did in motion ..."

The May 8, 1974 letter and other references to time by Bureau of Indian Affairs and Tribal personnel, pointed up September 1, 1974 as a deadline, but despite efforts to meet the September 1 limit, such deadline was not fully accepted by Mr. Brown.

I am not satisfied that a time certain was agreed upon between the parties and that the September 1, 1974 date may have been decided upon by the Council, without complete acquiescence. I am satisfied that appellant was entitled, under 25 CFR 131.14 to a reasonable time in which to correct the delinquencies brought to attention.

I think and I find that appellant was not afforded reasonable time and opportunity to finish the required work on his leases. He expended great effort and considerable money, to finish by the date set by the Tribe and Bureau of Indian Affairs. On the Oxford tract, the fencing was near completion by the September 3, 1974 inspection date, and was completed shortly afterwards. There were differences of opinion on whether or not reseeding was adequate, and there was some uncertainty as to exactly what was required. But it appears that reseeding was started in the Fall of 1972, and continued in the Spring and Fall of 1973 and in the Spring of 1974. A last effort at reseeding came between August 28, 1974 and September 5, 1974, and it appears that the reseeding requirement was met.
Regarding the Haystack Mountain tract and the requirement of constructing a water reservoir, it appears that delay was in part due to the fact that Bureau of Indian Affairs did not stake the location for it until about September 9, 1974. The construction work was completed about September 15, 1974.

I find that the lease deficiencies called to attention by lessor, were corrected, as to both leases, within a reasonable time.

I recommend that the Decision entered herein on August 15, 1975 by the Interior Board of Indian Appeals stand affirmed.

Respectfully submitted this 29th day of June, 1976.

//original signed
Richard B. Denu
Administrative Law Judge