



INTERIOR BOARD OF INDIAN APPEALS

Ross Hamlin v. Portland Area Director, Bureau of Indian Affairs

9 IBIA 16 (06/12/1981)



United States Department of the Interior

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

ROSS HAMLIN

v.

AREA DIRECTOR, PORTLAND AREA OFFICE, BUREAU OF INDIAN AFFAIRS

IBIA 80-38-A

Decided June 12, 1981

Appeal from decision of the Acting Assistant Area Director, Portland Area Office, Bureau of Indian Affairs, denying appeal from order to pay increased rental rate on leased Indian trust land.

Affirmed.

1. Bureau of Indian Affairs: Administrative Appeals: Filing: Mandatory Time Limit

Because Departmental regulations setting mandatory time limits for filing appeals notices in administrative matters before the Bureau of Indian Affairs may not be relaxed to permit late filing, where appellant failed to give timely notice of appeal from decision to raise rental rate on leased trust lands, his subsequent attempts to appeal by seeking review of enforcement orders requiring payment of the increased rental were ineffective.

APPEARANCES: Alfred McBee, Esq., for appellant Ross Hamlin; James R. Kuhn, Jr., Esq., Office of the Regional Solicitor, for appellee.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Appellant is the assignee of lease No. 6274 of a waterfront lot usable for recreational and residential purposes located on Puget Sound. The lot is held in trust by the Bureau of Indian Affairs (BIA) for Indians of the Swinomish Reservation in the State of Washington. The lease term of 10 years expires February 28, 1982. The initial rental rate for the land was \$250 annually. Appellant's lease, dated February 24, 1972, permits rental rate adjustments, incorporating by reference 25 CFR Part 131 in a lease clause which provides:

7. RENTAL ADJUSTMENT.--The rental provisions in all leases which are granted for a term of more than five years and which are not based primarily on percentages of income produced by the land shall be subject to review and adjustment by the Secretary at not less than five-year intervals in accordance with the regulations in 25 CFR 131. Such review shall give consideration to the economic conditions at the time, exclusive of improvement or development required by this contract or the contribution value of such improvements.

On April 7, 1978, pursuant to provision 7 of the lease, appellant was notified by the Agency Superintendent that the annual rental rate for the leased land had been increased to \$638 annually, based upon an appraisal by a professional real estate appraiser. 1/ Appellant sought review of the superintendent's action by the Portland Area Director, who on June 5, 1978, affirmed the rental rate increase. On August 1, 1978, appellant sought review of the Area Director's decision from the Secretary of the Interior. That appeal was denied by the Acting Assistant Secretary--Indian Affairs on September 25, 1978, for failure of appellant to file a notice of appeal within the 30-day appeal period mandated by 25 CFR 2.10(a) and (b), 2/ which provides in pertinent part:

1/ See 25 CFR 131.8, requiring inclusion of this rental adjustment provision in leases of trust lands and providing for administration of the lease provisions by the BIA.

2/ The decision noted that, even had the appeal been timely, it was not well founded. Appellant's arguments on appeal were and are first directed to rental value. Thus, appellant contends, without showing any reasoning for the position taken, that the rent should not have been reasonably increased more than \$100 annually. He then, in subsequent briefs, attacks the Departmental regulations, generally characterizing the regulations and their administration by the BIA to be arbitrary. Examination of the entire record indicates the regulations, which are designed to implement the leasing statutes affecting trust lands, were properly administered in this case. (See Fort Berthold Land and Livestock Association v. Area Director, Aberdeen Area Office, Bureau of Indian Affairs, 8 IBIA 90, 87 I.D. 201 (1980), for a parallel discussion of the rationale of the leasing regulations as applied in a case involving grazing lands.)

The only statement in the Acting Assistant Secretary's decision of Sept. 25, 1978, with which the Board must take exception is the finding that the matter at issue involved the "discretionary authority" of the Bureau and that the agency's action was therefore final for the Department. A party aggrieved by a rental rate adjustment of Indian trust lands has a sufficient property interest at stake that appeals to the Board of Indian Appeals may not be circumvented by characterizing rental increases as nonreviewable, discretionary actions.

(a) * * * The notice of appeal must be received in the office of the official who made the decision within 30 days after the date notice of the decision complained of is received by the appellant* * *. * * *

(b) No extension of time will be granted for filing of the notice of appeal. Notices of appeal which are not timely filed will not be considered, and the case will be closed.

Appellant failed to pay the increased rental rate. On January 31, 1979, the superintendent of the agency concerned notified him pursuant to 25 CFR 131.14 to show cause why his lease should not be canceled for nonpayment of rent. Thereafter, appellant paid the increased rental rate, but also appealed to the Portland Area Director from the January 31, 1979, order requiring him to do so. The Area Director, on May 2, 1979, affirmed the superintendent's action. Appellant then sought review of the Area Director's action from the Secretary in the appeal now before this Board for decision. Appellant has paid the rental rate in the increased amount set by the superintendent through March 1, 1981, according to the record.

[1] The appeal urged by appellant attempts to avoid the provisions of Departmental regulation which provide for finality in administrative proceedings before the Department. When appellant failed to make a timely appeal from the Area Director's decision of June 5, 1978, upholding the increased rental rate, that decision, by operation of law, became final for the Department. See 25 CFR 2.10. 3/ The attempt to characterize the enforcement order made to compel payment of the rent so as to make that order appealable as though it were itself the decision to raise the rent is too transparent to admit of further discussion. The time for filing notices of appeal in administrative matters pending before the BIA may not be extended, neither by this Board (43 CFR 4.352) nor by the BIA (25 CFR 2.10(b)). 4/ The decision of the Area Director must be affirmed.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Area

3/ Regulations of the Board of Indian Appeals also preclude jurisdiction over untimely filed appeals. See 43 CFR 4.352 (1980), as amended at 46 FR 7335 (Jan. 23, 1981). The prohibition against extension of filing time for notices of appeal is retained in the amended regulation.

4/ Benson-Montin-Greer Drilling Corporation v. Acting Area Director, Albuquerque Area Office, Bureau of Indian Affairs, 7 IBIA 67 (1978).

