



INTERIOR BOARD OF INDIAN APPEALS

Robert Seabury v. Commissioner of Indian Affairs

11 IBIA 6 (12/06/1982)



# United States Department of the Interior

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

ROBERT SEABURY

v.

COMMISSIONER OF INDIAN AFFAIRS

IBIA 81-12-A

Decided December 6, 1982

Appeal from decision of the Acting Deputy Commissioner of Indian Affairs approving a lease rental increase more than 25 percent greater than prior rental rate.

Reversed.

1. Indian Lands: Leases and Permits: Long-Term Business/  
Agriculture: Rentals

Court's decision in Byrd v. Andrus, No. C-79-229 (E.D. Wash. 1981), rev'g Byrd v. Commissioner, 7 IBIA 142 (1979), held controlling where contested leases at issue in pending case and Byrd were prepared by the same persons and are identical in pertinent provisions except for the stated percentage of limitation upon increase or decrease. Under the circumstances of this case, a 25 percent limitation upon future rental adjustments was imposed under the terms of the lease agreement negotiated with the agency.

APPEARANCES: Philip A. Lamb, Esq., for appellant; James R. Kuhn, Jr., Esq., Office of the Solicitor, Pacific Northwest Region, for appellee.

## OPINION BY ADMINISTRATIVE JUDGE ARNESS

On August 4, 1980, Acting Deputy Commissioner of Indian Affairs M. W. Babby approved rental rate increases imposed upon lease No. 4815 of allotment No. 1083 by the Yakima Agency Superintendent, Bureau of Indian Affairs (BIA). The Superintendent's action, subsequently approved by the BIA's Portland Area Director, increased the annual rental on the leased lands, which are used as an orchard, by approximately 136 percent from \$1,441 to \$3,400 annually. Appellant Robert Seabury has taken timely appeals from each successive decision approving the increase in his rental rate.

Appellant's 25-year lease was executed in 1968 and provides, at paragraph 3, for rental rate review at 5-year intervals. There is no limitation stated in this paragraph upon the amount of increase or decrease which may be

imposed as a result of the agency review of the rental rate. The adjustment shall, however, “give consideration to the economic conditions at the time.”

Paragraph 4 of the 1968 lease provides:

#### 4. ARBITRATION

If there is disagreement concerning the rental adjustment figure, the questions will be submitted to a board of three appraisers, one selected by the Superintendent, Yakima Agency, one selected by the lessee and the third selected by the other two. In no event shall the increase or decrease exceed 25 percent. It is further understood and agreed that the Secretary shall be expected to accept decisions reached by said arbitration board, but he shall not be bound by any decision which might be in conflict with the interests of the Indians or the United States Government.

Appellant contends upon appeal, as he did before BIA, that the 25 percent limitation imposed upon the arbitrators by paragraph 4 is also a limitation upon the BIA's review authority conferred by paragraph 3, and is intended by the parties to confine increases or decreases to 25 percent of the preceding 5 year's annual rental rate. Since this identical issue was on appeal to the United States District Court for the Eastern District of Washington from the Board's decision in Byrd v. Commissioner, 7 IBIA 142 (1979), a case also rising from an order by the Yakima superintendent construing a similar orchard lease negotiated by the same attorney and BIA officers as in the present case, the Board stayed further proceedings in this case on December 3, 1981, pending a decision on appeal in Byrd. That decision, reported as Byrd v. Andrus, No. C-79-229 (E.D. Wash. 1981), is now final and is dispositive of this case.

The court in Byrd, supra, held as a matter of law, that "the [arbitration provision of the] lease must be construed as creating an absolute floor and ceiling which confine even the Secretary \* \* \*" (Memorandum Opinion at 5). The opinion observed the conclusion reached is consistent with Departmental regulations governing leasing, since the Department's rules do not require that periodic adjustments of rental rates, unlike the initial leasing, be for actual market value (Memorandum Opinion at 5). Finally, the court concluded that the “equities” require the result reached, since the lessee would lose the benefit of the bargain implicit in his 25-year lease if, at 5-year intervals, he were required to renegotiate the lease without limitation (Memorandum Opinion at 5-6).

The Byrd holding and logic are controlling here, where the same lease provisions for similar orchard land were negotiated by the same persons. 1/

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1/ Appellee seeks to distinguish Byrd on the ground that a 25 percent limitation is unconscionable, citing dicta in Byrd which discussed the actual value of the rental property as established by the testimony of appraisers. In this digression, the court concludes that the fair rental rate for the leased property should not have exceeded a 28 percent increase as a matter of

Appellant has offered to pay an amount equal to a 25 percent increase over his previous annual rent. Since BIA may require no more than an increase of 25 percent under the lease provisions as interpreted in Byrd v. Andrus, the amount offered must be accepted.

Accordingly, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed. The Yakima Agency Superintendent must accept the payment offered by appellant amounting to an increase of 25 percent over the previous 5-year annual lease rental. Future lease adjustments may not exceed 25 percent in amount, whether they increase or decrease the amount of appellant's rent in accordance with prevailing market conditions.

This decision is final for the Department.

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Franklin D. Arness  
Administrative Judge

We concur:

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//original signed  
Wm. Philip Horton  
Chief Administrative Judge

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Jerry Muskrat  
Administrative Judge

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fn. 1 (continued)  
fact. This approach by appellee to the court's opinion ignores the holding in Byrd that the arbitration clause established a ceiling which the Department could not exceed, as a matter of law. It also overlooks the fact that in Byrd, as in this case, the agency had sought an increase in excess of 100 percent over the prior rental rate, and it ignores inconsistencies between the single appraisal upon which the rental increase is sought to be based in this case and the amount claimed by BIA. Even if the Board were to adopt the reasoning that a negotiated limitation on percentage adjustment could be struck under appropriate circumstances as unconscionable, the agency has not shown facts to support a finding that a 25 percent increase in rate is an unconscionable result in this case. If it is to escape from the holding in Byrd, that there is a ceiling imposed here as a matter of law, it must bear the burden of offering proof to show the actual disproportion in values claimed is so great as to be unconscionable. The record fails to show such a condition exists in this case.