



INTERIOR BOARD OF INDIAN APPEALS

Ned T. Benally v. Navajo Area Director, Bureau of Indian Affairs

15 IBIA 130 (03/09/1987)



# United States Department of the Interior

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

NED T. BENALLY, : Order Denying Request to Assume  
Appellant : Jurisdiction and Docketing and  
 : Dismissing Appeal  
v. :  
 :  
 :  
AREA DIRECTOR, NAVAJO AREA OFFICE, : Docket No. IBIA 87-25-A  
BUREAU OF INDIAN AFFAIRS, :  
Appellee : March 9, 1987

On March 3, 1987, the Board of Indian Appeals (Board) received a motion from the Navajo Nation asking it to assume jurisdiction over the above appeal under the provisions of 25 CFR 2.19(b). The appeal involves cancellation of Lease No. CH-78-61 on the Navajo Reservation.

This case has been assigned docket number IBIA 87-25-A. Please refer to this docket number in all future correspondence or inquiries concerning the appeal.

Section 2.19 states:

- (a) Within 30 days after all time for pleadings (including extension granted) has expired, the Commissioner of Indian Affairs [1/] shall:
- (1) Render a written decision on the appeal, or
  - (2) Refer the appeal to the Board of Indian Appeals for decision.
- (b) If no action is taken by the Commissioner within the 30-day time limit, the Board of Indian Appeals shall review and render the final decision.

Because the motion did not contain sufficient information upon which to base a determination that the appeal had been pending before BIA for more

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1/ The position of Deputy Assistant Secretary--Indian Affairs (Operations) was established in 1981. The Deputy Assistant Secretary assumed the responsibilities formerly performed by the Commissioner of Indian Affairs as operational head of the Bureau of Indian Affairs (BIA), including the administrative review functions assigned to the Commissioner in 25 CFR Part 2. See 109 DM 8.2; 209 DM 8.3; Memorandum of Assistant Secretary--Indian Affairs, May 15, 1981. The position of Deputy Assistant Secretary--Indian Affairs (Operations) was abolished by Secretarial Order No. 3112, Mar. 18, 1986. The Board has not been informed what BIA official currently has authority to fulfill the administrative review functions assigned by regulation to the Commissioner.

than 30 days without decision, the Board requested additional information. In a March 4, 1987 telephone conversation with counsel for the Nation, the Board was informed that appellant Benally filed his notice of appeal on October 21, 1986, and his brief on November 18, 1986, and that the Nation filed a reply brief on December 18, 1986.

On March 6, 1987, the Board spoke with BIA personnel handling this appeal and was informed that by letter dated February 5, 1987, and received by BIA on February 18, 1987, Peter MacDonald, Chairman of the Navajo Nation, requested a 60-day stay of proceedings in this matter pending the outcome of settlement negotiations. BIA indicated Mr. MacDonald's request had not yet been answered. 2/

Thus on February 23, 1987, when the Nation's motion to assume jurisdiction was mailed, a motion for stay was pending before BIA. Because of this motion, the appeal was not yet ripe for decision. Accordingly, the motion to assume jurisdiction is premature.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Navajo Nation's motion to assume jurisdiction over this appeal is denied and this case is dismissed without prejudice.

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//original signed  
Kathryn A. Lynn  
Administrative Judge

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//original signed  
Anita Vogt  
Acting Chief Administrative Judge

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2/ The Board was also informed that by letter dated February 24, 1987, the Deputy to the Assistant Secretary--Indian Affairs (Trust and Economic Development) remanded this appeal to the Navajo Area Director for clarification of certain issues raised.