



INTERIOR BOARD OF INDIAN APPEALS

Glenn Wallace v. Aberdeen Area Director, Bureau of Indian Affairs

25 IBIA 153 (01/28/1994)

Related Board case:
22 IBIA 170



United States Department of the Interior

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

GLENN WALLACE,	:	Order Accepting Recommended
Appellant	:	Dismissal of Appeal
	:	
v.	:	
	:	Docket No. IBIA 92-179-A
ABERDEEN AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	January 28, 1994

Appellant Glenn Wallace sought review of a May 20, 1992, decision of the Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), denying an extension of time for removal of fences after the expiration of leases for Devils Lake Sioux Allotments 237 and 874. The leases expired on September 30, 1991. Appellant was given an extension of time until March 31, 1992, to remove the fences. The denied request for an extension of time was apparently appellant's second request.

The Board granted a motion by the Area Director to remand this case to him for additional review and consideration. 22 IBIA 170 (1992). On July 15, 1992, the Area Director vacated his original decision, stating:

Your request for an additional extension of time to remove fences would be only applicable to those lands in which you held valid leases, which have expired the lease period ending 1991. Your request for an extension for prior leases would have been due within 30 days after or prior to the expiration or cancellation of those leases.

Our records show that you have held valid leases, which authorized fence removals, for the Devils Lake Sioux Allotment Nos. 874, 237, 725 and 208 for the lease period ending 1991.

Appellant was authorized to remove the fences from these four allotments.

Following receipt of information from appellant indicating that the Area Director's decision after remand was not acceptable, the Board reinstated the appeal on September 8, 1992. Both the Area Director and appellant filed additional written statements with the Board.

The information presented to the Board by appellant and the Area Director appeared contradictory. The Area Director indicated that the matter had been settled, and new fencing materials had been provided to appellant.

Appellant emphatically stated that the matter was not settled. Based on these contradictory factual positions, the Board determined that the most efficient course of action would be to refer this matter to an Administrative Law Judge for an evidentiary hearing at which both parties could present evidence concerning their positions. Accordingly, the matter was referred for a hearing by order dated January 21, 1993.

The matter was assigned to Administrative Law Judge John R. Rampton, Jr., and was set for hearing. On June 21, 1993, counsel for the Area Director wrote appellant:

I am writing you to find out if a hearing is necessary in this case. My understanding of the situation is that your fencing material was not removed after the expiration of the leases on the Devils Lake Reservation, but that you were compensated with new fencing material. The BIA provided you with new materials to replace the fences which were not removed at the end of the leases in question. If that is the case, I believe that no dispute exists and therefore, no hearing is necessary.

The record does not show whether appellant responded to counsel's letter.

On September 17, 1993, judge Rampton received a motion from the Area Director to either dismiss the appeal or order appellant to show cause why a hearing was required. The Area Director argued:

By letter dated July 15, 1992, * * * the Area Director vacated his prior decision, and authorized the appellant to remove fences from four tracts, DLS-874, DLS-237, DLS-725 and DLS-208. Those four tracts were covered by leases held by the appellant which expired on September 30, 1991. Two of those tracts are at issue in this appeal, 237 and 874.

On December 21, 1992, the Area Director informed the [Board] that the matter had been settled. * * * Although [appellant] had not removed the fences, perhaps in part because of a tribal court restraining order and the confusion caused by that order, the BIA had purchased fencing materials and those materials had been accepted by the appellant. That settlement had allowed the current holders of the leases to use the land without interference since the appellant's leases had expired almost 15 months before the date of the Area Director's letter to the [Board]. Further, the landowners were not deprived of any lease income caused by the disruption of the current lease holders and the appellant received new fencing material instead of retrieving the used fencing material from the leased land.

The BIA has attempted to settle this dispute and cannot now entertain the appellant's request to remove fences from every parcel he has ever leased on the Devils Lake Reservation or to use

this hearing as a forum for years of grievances against the BIA or the Devils Lake Sioux Tribe. This appeal covers the fences on two parcels, 237 and 874. Those were included in the letter from the Area Director on December 21, 1992, and the fencing materials provided to the appellant were in compensation for the fences lost on those two parcels. Therefore, this appeal is moot.

(Motion at 2-3).

On September 29, 1993, Judge Rampton rescheduled the hearing, and ordered appellant to file a statement of the factual issues which he believed still existed and required a hearing. Although appellant responded to the Area Director's motion, he did not indicate any remaining factual issues.

By order dated November 2, 1993, Judge Rampton dismissed the appeal, stating:

The sole issue in this proceeding is the denial of a request for an extension of time for removal of fences by appellant after expiration of his leases in Devils Lake Sioux allotments 237 and 874. As a basis for the motion to dismiss, the [Area Director] has alleged that although the appellant may have been unable to remove the fences involved in the lease arrangements, the BIA has purchased new fencing material which was accepted by the appellant in lieu of retrieval of the used fencing materials. Therefore, he has been justly compensated for the loss of his fences on these parcels.

The response by the appellant does not challenge [the Area Director's] statements and I therefore accept them at face value. A review of the record reveals no other issue to be determined and there is no issue of fact or law remaining to be determined. The motion to dismiss is therefore granted and the hearing is cancelled.

Although Judge Rampton's decision contained incorrect information regarding further procedural matters, appellant contacted the Board and was informed of the proper procedures. He filed a timely objection to the dismissal of his appeal.

Appellant does not dispute the Area Director's statement that he was given new fencing to replace the fencing he was prevented from removing on Allotments 237 and 874. He states that BIA offered to replace his 5'6" and/ or 6' fencing with 7' fencing, but does not argue that the fencing provided by BIA was inferior to the fencing he did not remove.

Appellant also contends that more leases are at issue than those covering Allotments 237 and 874. The decision from which appellant appealed concerned only Allotments 237 and 874. If appellant now asks to remove fences from additional allotments, his time for appealing from any decisions concerning those allotments has long since passed. See 43 CFR 4.332(a).

Most of appellant's response, however, does not deal with the removal of, or compensation for, fences he constructed on Allotments 237 and 874. The additional matters appellant raises are not part of this appeal, and the Board does not address them.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Rampton's recommendation to dismiss this appeal is accepted. The appeal is dismissed as being moot.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge