



INTERIOR BOARD OF INDIAN APPEALS

Bonnie Page Risse v. Acting Aberdeen Area Director, Bureau of Indian Affairs

27 IBIA 304 (04/26/1995)



United States Department of the Interior

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

BONNIE PAGE RISSE, : Order Docketing Appeal and
Appellant : Affirming Decision
: :
v. : :
: Docket No. IBIA 95-97-A
ACTING ABERDEEN AREA DIRECTOR, :
BUREAU OF INDIAN AFFAIRS, :
Appellee : April 26, 1995

Appellant Bonnie Page Risse seeks review of a March 29, 1995, decision issued by the Acting Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), concerning Resolution No. 94-140XB, which was adopted by the Oglala Sioux Tribal Council on October 21, 1994. The Area Director affirmed the March 8, 1995, decision of the Superintendent, Pine Ridge Agency, BIA (Superintendent), that appellant's appeal should be taken to the Tribal Council, not the BIA.

Citing problems arising over leases and permits to appellant and other named individuals, Resolution No. 94-140XB states the Tribal Council's decision to "demand cancellation of all Farm and Pasture Leases and Grazing Permits currently under contract to [those individuals]," and to bar them "from being awarded any Farm and Pasture Leases or Grazing Permits until further action of the Oglala Sioux Tribal Council."

Appellant's notice of appeal to the Board, like that to the Area Director, demands a "due process hearing" in regard to the resolution. She contends that BIA's implementation of the resolution violates the Fifth Amendment to the United States Constitution and the Indian Civil Rights Act. See 25 U.S.C. § 1302(8) (1988). Appellant also contends that BIA influenced the Tribal Council's decision to adopt the resolution.

Any actions BIA may have taken in regard to Resolution No. 94-140XB are secondary to appellant's real dispute, which is with the Tribal Council for adopting the resolution. This Board has repeatedly and consistently upheld the jurisdiction of tribal courts and other appropriate tribal forums, and has deferred to those forums when a BIA decision is secondary to a dispute with the tribe. See Simpson v. Acting Billings Area Director, 27 IBIA 300 (1995); Zinke & Trumbo Ltd. v. Phoenix Area Director, 27 IBIA 105 (1995); Burlington Northern Railroad v. Acting Billings Area Director, 25 IBIA 79 (1993). See also Middlemist v. Secretary of the Interior, 824 F. Supp. 940, 946-47 (D. Mont. 1993) ("[T]he authority of the Tribal Council to promulgate and enforce [a specific tribal ordinance] * * * is determinative of all of Plaintiff's claims, including the correctness of the BIA's approval and subsequent funding of the Ordinance"), aff'd, 19 F. 3d 1318 (9th Cir.), cert. denied, 115 S.Ct. 420 (1994). The Board has specifically held

that controversies concerning the validity of tribal council actions, including the adoption of resolutions, are properly resolved in tribal courts or other tribal forums. Wells v. Acting Aberdeen Area Director, 24 IBIA 142 (1993).

The Tribal Court or Tribal Council, whichever may have jurisdiction over this particular matter, is the proper forum to consider appellant's arguments, including her allegation that adoption of the resolution violates the Indian Civil Rights Act. See Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978); United States v. Plainbull, 957 F.2d 724 (9th Cir. 1992). The Board sees no reason for retaining this case on its docket, when an expeditious decision will allow appellant to proceed to the tribal forum in which she belongs.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the Acting Aberdeen Area Director's March 29, 1995, decision is docketed, and the decision is affirmed.

//original signed

Kathryn A. Lynn
Chief Administrative Judge

//original signed

Anita Vogt
Administrative Judge