



INTERIOR BOARD OF INDIAN APPEALS

Sandra Maroquin v. Anadarko Area Director, Bureau of Indian Affairs

29 IBIA 45 (01/24/1996)



United States Department of the Interior

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

SANDRA MAROQUIN,
Appellant

v.

ANADARKO AREA DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Vacating Decision in Part
: and Affirming Decision in Part
:
:
: Docket No. IBIA 95-60-A
:
:
: January 24, 1996

This is an appeal from a November 30, 1994, decision of the Anadarko Area Director, Bureau of Indian Affairs (Area Director; BIA), dismissing an appeal filed by Sandra Maroquin (appellant) as not being properly or timely filed. Appellant's appeal to the Area Director Concerned an August 27, 1994, special Tribal Council meeting of the Apache Tribe of Oklahoma (Tribe), at which appellant and two other members of the Tribe's Business Committee were recalled from office. ^{1/}

On appeal to the Board, appellant devotes her arguments to the merits of the underlying dispute and fails to discuss, or even allege error in, the Area Director's dismissal of her appeal. An appellant before the Board bears the burden of proving error in the BIA decision on appeal. E.g., Welco Lumber Co. v. Portland Area Director, 28 IBIA 226 (1995). Under other circumstances, the Board might summarily affirm the Area Director's dismissal of appellant's appeal because of her failure to show error in that dismissal. However, for the reasons discussed below, the Board concludes that this is an instance in which it should invoke its authority "to exercise the inherent authority of the Secretary to correct a manifest injustice or error." 43 CFR 4.318.

^{1/} Both the Tribal Council and the Business Committee are established in the Apache Constitution. Article III provides:

"The supreme governing body of the Apache Tribe of Oklahoma shall be the tribal council. The tribal council shall consist of all members of the Apache Tribe eighteen (18) years or age, or older."

Article V provides:

"There shall be a business committee which shall consist of [the chairman, vice-chairman and secretary-treasurer] and two (2) members. * * * This committee shall have such powers as may be delegated to it by appropriate resolutions of the tribal council, and, within such delegated authority, may transact business and otherwise speak or act on behalf of the tribe in all matters on which the tribe is empowered to act now or in the future."

Appellant wrote to the Superintendent on August 31, 1994, objecting to her recall. The Superintendent responded on September 2, 1994, stating:

[I]t appears the General Council has acted in accordance with the provisions of the Constitution.

Attempts to introduce the Business Committee Resolution of 1985 regarding the recall procedure are invalid as the Business Committee has never been delegated the authority to amend the Constitution; therefore, Article IX - Removal of Officers prevails. Efforts to amend the Constitution must conform to the provisions of Article XI.

Appellant filed a notice of appeal from this letter on September 3, 1994. On September 13, 1994, she filed a statement of reasons. Also on September 13, 1994, the Superintendent returned appellant's notice of appeal to her, stating that the appeal was premature. Evidently, the two September 13, 1994, letters crossed in the mail.

On September 14, 1994, the Superintendent issued a formal decision in the matter. This decision was issued in response to a request by the Tribal Chairman for a determination concerning the validity of the August 27, 1994, special Tribal Council meeting. 2/

On September 23, 1994, appellant wrote to the Superintendent stating that she viewed his September 14, 1994, decision as a "reinforcement" of his September 2, 1994, letter to her.

By letter of September 29, 1994, the superintendent acknowledged receipt of appellant's September 13, 1994, statement of reasons. His letter continued: "Copies of your 'Statement of Reasons' and this letter are being provided to the interested parties. They will have thirty (30) days from the date of receipt to file answers to your appeal, if they so choose."

On October 14, 1994, Paul KillsFirst and Stephanie Saupitty, the other Business Committee members recalled at the August 27, 1994, meeting, filed a notice of appeal from the Superintendent's September 14, 1994, decision. In his November 30, 1994, decision, the Area Director, after dismissing appellant's appeal, addressed the merits of the underlying dispute in connection with this second appeal. He concluded that the August 27, 1994,

2/ It is clear from the record that the Tribe was in an unstable condition during this period. See, e.g., July 1, 1994, BIA Contracting Officer's Letter. The Board assumes that it was owing to this instability that the Tribal Chairman sought an initial decision concerning the validity of the Aug. 27, 1994, meeting from BIA, rather than from a tribal body.

In a case where the results of a tribal election, or recall, have been certified by a properly constituted and authorized tribal body, BIA should recognize the certification, pending the resolution of any disputes in a tribal forum. Gonzales v. Acting Albuquerque Area Director, 28 IBIA 229 (1995).

meeting had been conducted in accordance with the Tribe's Constitution and that the recalls were therefore valid.

In dismissing appellant's appeal, the Area Director stated:

[Appellant's] letter dated September 23, 1994, states she received the September 14, 1994, decision, but fails to invoke her appeal rights as instructed and fails to incorporate and apply her earlier "appeal" to the formal decision.

Since the appeal procedures were not complied with regarding the decision of September 14, 1994, [appellant's] notice of appeal was not properly or timely filed and her complaint is dismissed.

(Area Director's Nov. 30, 1994, Decision at 3).

The Board finds that the Area Director erred in dismissing appellant's appeal. Although the Superintendent initially returned appellant's September 3, 1994, notice of appeal to her as premature, his letter of September 29, 1994, informed her that her statement of reasons was being accepted. Appellant was entitled to rely on this statement as an acknowledgment by BIA that her already-filed appeal was being considered and that she was not required to file a new notice of appeal in order to have her appeal considered.

Further, the Superintendent should not have returned appellant's notice of appeal to her in the first place. Whether or not the Superintendent intended his September 2, 1994, letter to appellant to be a formal decision, the letter had the effect of denying relief to appellant and was therefore appealable under 25 CFR Part 2. Oglala Sioux Tribe v. Aberdeen Area Director, 16 IBIA 201 (1988).

Accordingly, the Area Director's dismissal of appellant's appeal is vacated.

At this point, the Board would ordinarily remand a case to the Area Director for a decision on the merits. However, in this case, the Area Director has already issued a decision on the merits. Therefore, for purposes of the remainder of this decision, the Board construes the Area Director's decision on the merits as having been issued in appellant's appeal as well as the appeal filed by KillsFirst and Saupitty.

Recall of Business Committee members is governed by Article IX of the Constitution, which provides:

Upon the signed petition of fifty (50) members of the Apache Tribal Council, the chairman shall call a special meeting of the Apache Tribal Council to act upon complaints of misconduct in office of members of the business committee providing such complaints are supported by affidavits. The Apache Tribal Council shall have the power, by a majority vote, after giving the accused a hearing, and, if found guilty of charges, to remove him and proceed to elect a successor * * *.

Article VI, section 2, provides:

Special meetings of the Apache Tribal council may be called at the discretion of the chairman, and shall be called by the chairman upon written request of fifty (50) members of the Apache Tribal Council, and shall be called upon the written request of the majority of the business committee, providing, that at least ten (10) days notice shall be given in each instance.

(a) The principal object of a special council meeting must be stated in the notice calling the meeting * * *.

In 1985, the Business committee enacted Resolution 85-19, concerning petitions. The resolution provides:

(a) the life of a petition shall be for thirty (30) days;

(b) there shall be a space for the date, the first signature, the last signature, and Notary Public's certification;

(c) there shall be a roll call at a General Council, calling off the names of petitioners in order for the petition to be acted upon;

(d) there shall be ninety percent (90%) of the petitioners in attendance to answer the roll call; and

(e) in the event the ninety percent (90%) roll call of petitioners is not met, the petition shall be void;

(f) there shall be a time limit of one (1) hour from the hour set for the General Council, if there are not ninety percent (90%) of the petitioners present within that hour the Chairman shall void said petition. [Emphasis in original.]

At the August 27, 1994, meeting, there was an extended discussion of Resolution 85-19, following which the Tribal council voted, 93-0, to waive the resolution for purposes of the meeting. Minutes of Aug. 27, 1994, Meeting at 6. Thus, appellant's recall was conducted without benefit of the provisions of this resolution.

In her appeal to the Board, appellant contends that her recall was invalid because Resolution 85-19 was not followed at the August 27, 1994, meeting. The Area Director addressed Resolution 85-19 in his decision, concluding that the resolution was invalid because it unreasonably exceeded the petitioning requirements in the Apache Constitution.

In accordance with the well-established Federal policy of respect for tribal self-government, which recognizes the right of tribes to interpret their own laws, the Board has cautioned restraint on the part of BIA in undertaking to interpret tribal law. E.g., Decorah v. Minneapolis Area Director, 22 IBIA 98 (1992). In Decorah, the Board stated that "BIA should refrain from interpreting tribal law unless it must do so in order to make a decision which it is required to make in furtherance of its government-government relationship with a tribe." 22 IBIA 102.

In this case, the Board finds that it was not necessary for the Area Director to address the constitutionality of Resolution 85-19. The Tribal Council, which is the "supreme governing body of the Apache Tribe," voted unanimously to waive the resolution for purposes of the August 27, 1994, meeting. There have been no questions raised about the validity of the meeting itself. The Board sees no reason to doubt that the Tribal Council, acting at a properly called meeting, had the power to waive this Business Committee resolution.

Because the resolution was waived, there was no need for the Area Director to consider its validity. Accordingly, the Board vacates that portion of the Area Director's decision in which he concluded that Resolution 85-19 is in conflict with the Apache Constitution.

Appellant had notice of the August 27, 1994, meeting and its purpose. She attended the meeting and spoke in her own defense. Although she was unsuccessful in this regard, nothing in the record indicates, nor has appellant demonstrated, that any of her rights were violated. The Board agrees with the Area Director that the recall of appellant was valid.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's November 30, 1994, decision is vacated insofar as it dismissed appellant's appeal and insofar as it addressed the constitutionality of Resolution 85-19. It is, however, affirmed insofar as it held that appellant's recall was valid. 3/

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge

3/ All arguments not addressed in this decision were considered and rejected.