



INTERIOR BOARD OF INDIAN APPEALS

Fort Peck Tribes v. Billings Area Director, Bureau of Indian Affairs

30 IBIA 98 (11/07/1996)

Related Board case:  
29 IBIA 238



# United States Department of the Interior

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

FORT PECK TRIBES, : Order Docketing and Dismissing  
Appellant : Appeal  
: :  
v. : :  
: Docket No. IBIA 97-6-A  
BILLINGS AREA DIRECTOR, : :  
BUREAU OF INDIAN AFFAIRS, : :  
Appellee : November 7, 1996

Appellant Fort Peck Tribes seeks review of the failure of the Billings Area Director, Bureau of Indian Affairs (Area Director), to respond to a June 28, 1996, letter requesting a decision under 25 CFR 2.8, which establishes procedures for appealing from the inaction of a BIA official. The issue on which appellant sought a written decision related to a statement the Area Director allegedly made at a meeting of the Montana-Wyoming Judges Association on January 11, 1996, to the effect that some \$74,857 in funding had been reassigned from the Montana-Wyoming Indian Supreme Court to the Billings Area Office. The Board dismissed an earlier appeal which appellant filed concerning the same alleged statement. 29 IBIA 238.

Because it believed that appellant may have been confused by a statement in its dismissal order, the Board accepted the second appeal. However, the Board requested additional information from the Area Director, stating:

[T]he substance of the matter involved in this appeal may not be appropriate for resolution in this forum. First, it appears that the reallocation of funds may relate to FY 1996, which ends on September 30, 1996. If this is the case, this appeal may be moot. Either in addition to the first issue or alternatively, the reallocation may constitute a discretionary funding decision which should be referred to the Assistant Secretary - Indian Affairs under 43 CFR 4.337(b).

(Sept. 25, 1996, Pre-docketing Notice and Order at 2).

The Area Director responded to the Board's order in a filing which the Board received on October 28, 1996. Because the response did not show service on the parties, the Board ordered the Area Director to serve the parties. The Board received the Area Director's certificate of service on November 4, 1996.

In his response, the Area Director states at pages 1-2:

On October 3, 1995, we received a letter from the Deputy Commissioner of Indian Affairs \* \* \* directing us to reexamine the reduction-in-force (RIF) in Tribal Priority Allocations (TPA) because the FY 1996 Interior Appropriations bill added \$87,158,000 to the Senate mark for the TPA. We were directed

to redistribute and reprioritize the additional funding with tribal consultation. With this opportunity, the Billings Area reprogrammed funds to reduce the effects of the RIF and restore positions in the Billings Area office.

The revised spreadsheet with an explanation of each item for reprogramming was provided to each agency superintendent for consultation and approval from each respective tribal chairman. An approved spreadsheet was returned from the agency with the tribal chairman's signature. \* \* \* The signed copies were forwarded to Central Office Budget, Division of Program Development and Implementation, for entry into the TPA system on December 13, 1995, Conference Mark. \* \* \*

The amount available and reprogrammed was \$62,000 not the \$74,857 as mentioned in the letter from [appellant]. These were Fiscal Year 1996 (annual) funds. As [the Board] stated in [its order] about the reallocation of funds related to FY 1996 which ended on September 30, 1996, this would render the appeal moot.

\* \* \* \* \*

The statement made to the Montana-Wyoming Judges Association on January 11, 1996, was for information only based on the action stated in the first two paragraphs of this letter.

Copies of signed spreadsheets were attached to the Area Director's response. Each spreadsheet showed a reduction for tribal courts. The spreadsheet given to appellant was signed by Chairman Caleb Shields on October 25, 1995. A typed notation at the bottom of the sheet reads: "Tribal approval is conditioned on further consultation if funding is increased from this level."

It is possible that appellant believed the Area Director's January 11, 1996, statement constituted an additional reallocation of funds. However, this was not the case. The Board finds that appellant was aware of this reallocation on October 25, 1995, when its Chairman signed the spreadsheet indicating approval of the reallocation. That was the time for appellant to object to the reallocation.

In any case, the Board holds that because the funding reallocation at issue in this appeal involved FY 1996 funds, and because FY 1996 has ended, this appeal is moot.

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 failure of the Billings Area Director to respond to appellant's request for a decision is docketed and dismissed.

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//original signed  
Kathryn A. Lynn  
Chief Administrative Judge

\_\_\_\_\_  
//original signed  
Anita Vogt  
Administrative Judge