



INTERIOR BOARD OF INDIAN APPEALS

Guy Madison, et al. v. Acting Portland Area Director, Bureau of Indian Affairs

33 IBIA 278 (05/03/1999)



United States Department of the Interior

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

GUY MADISON and CLIFFORD JONES, : Order Docketing and Dismissing Appeal
Appellants :
 :
v. :
 : Docket No. IBIA 99-45-A
ACTING PORTLAND AREA :
DIRECTOR, BUREAU OF :
INDIAN AFFAIRS, :
Appellee : May 3, 1999

This is an appeal from a January 11, 1999, decision of the Acting Area Director, Bureau of Indian Affairs (Area Director; BIA), affirming the approval given by the Acting Superintendent, Puget Sound Agency, BIA, to three resolutions enacted by the Board of Directors of the Tulalip Tribes of Washington (Tribe).

At the Board's request, the Area Director furnished a copy of the Tribe's Constitution, under which the Superintendent approved the resolutions. Article VI, sec. 2, of the Constitution provides:

Manner of Review. Any resolution or ordinance, which by the terms of this constitution is subject to review by the Secretary of the Interior shall be presented to the Superintendent of the reservation no later than 10 days from its enactment. Within 10 days from receipt thereof, the Superintendent shall approve or disapprove the same.

If the Superintendent shall approve any ordinance or resolution, it shall thereupon become effective, but the Superintendent shall transmit a copy of the same, bearing his endorsement, to the Secretary of the Interior, who may, within ninety (90) days from the date of its receipt by him rescind the said ordinance or resolution for any cause by notifying the board of directors of such decision.

In light of this provision, the Board ordered Appellants to show why this appeal should not be dismissed under Zinke & Trumbo, Ltd. v. Phoenix Area Director, 27 IBIA 105 (1995), and Pawnee Tribe of Oklahoma v. Anadarko Area Director, 26 IBIA 284 (1994). These Board decisions hold that BIA lacks authority to revoke the approval of a tribal enactment once the constitutional review period has expired.

In their response, Appellants contend that the 90-day review period specified in the Constitution has not yet begun to run because the Superintendent never transmitted copies of the tribal resolutions to the Secretary. In a reply to Appellants' response, the Tribe furnishes copies of the Superintendent's memoranda, dated July 31, 1998, which transmitted the resolutions to the Area Director (who exercises the authority of the Secretary to review tribal resolutions and ordinances).

Even without this evidence, it would have been clear that the Area Director had received the resolutions by January 11, 1999, the date that he issued the decision on appeal here. More than 90 days have passed since January 11, 1999.

The Board finds that the 90-day review period has expired.

Appellants also contend that the Board should review the Area Director's decision because "[t]his is a dispute between the Tulalip Tribes General Council and the Tulalip Tribes Board of Directors." Appellants' Response at 3. According to Appellants, "[t]he Tulalip Tribal Court acts under the Tulalip Board of Directors" and therefore "Appellants should have an unbiased, unrelated body to hear and decide on this appeal." Id. Further, Appellants contend that "there is no clear avenue into Tribal Court for challenging this particular issue." Id.

The Tribe states that the Tulalip Tribal Courts do not act under the Tribe's Board of Directors but are operated by the Northwest Intertribal Court System, a consortium of eleven Northwest tribes, which is separate from the Tribe in organization, funding, and administration. Moreover, the Tribe states, Appellant Jones has already filed suit in that court system in a case where he makes the same arguments he makes in this appeal.

Intra-tribal disputes concerning the validity of tribal council actions are properly resolved in tribal courts or other tribal forums. E.g., Adams v. Billings Area Director, 28 IBIA 20 (1995), and cases cited therein. Appellants who seek to challenge tribal actions before this Board must first exhaust their remedies in tribal court. E.g., Wanatee v. Acting Minneapolis Area Director, 31 IBIA 93 (1997), and cases cited therein. An appellant is not relieved of his responsibility in this regard by alleging (or implying) bias on the part of the tribal court. Gonzales v. Acting Albuquerque Area Director, 28 IBIA 229 (1995). Finally, the Board will not presume to determine whether a tribal court has jurisdiction over a particular cause of action. Rather, the tribal court must determine its own jurisdiction. Mosay v. Minneapolis Area Director, 27 IBIA 126 (1995).

For all these reasons, and as further discussed in Zinke & Trumbo, Ltd., the Board finds that it should abstain from exercising whatever limited review authority it may have in this case.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal is docketed and dismissed.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge