



INTERIOR BOARD OF INDIAN APPEALS

Northwest Pipeline Corp. v. Acting Northwest Regional Director,
Bureau of Indian Affairs

36 IBIA 91 (03/23/2001)



United States Department of the Interior

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

NORTHWEST PIPELINE CORPORATION,	:	Order Docketing Appeal and Affirming
Appellant	:	Decision
	:	
v.	:	
	:	Docket No. IBIA 01-79-A
ACTING NORTHWEST REGIONAL	:	
DIRECTOR, BUREAU OF INDIAN	:	
AFFAIRS,	:	
Appellee	:	March 23, 2001

This is an appeal from a January 4, 2001, decision of the Acting Northwest Regional Director, Bureau of Indian Affairs (Regional Director; BIA), dismissing as untimely Appellant's appeal from a May 23, 2000, decision of the Superintendent, Fort Hall Agency, BIA. The Superintendent's decision required Appellant to remove its pipeline from trust land within the Fort Hall Reservation. For the reasons discussed below, the Board affirms the Regional Director's decision.

Appellant's notice of appeal to the Board was accompanied by a statement of reasons in which Appellant not only challenged the Regional Director's finding of untimeliness but also attempted to ensure review of the Superintendent's decision on the merits by seeking waiver of the timely filing requirement in 25 C.F.R. § 2.9(a). Specifically, Appellant requested that the Assistant Secretary - Indian Affairs assume jurisdiction over this appeal and exercise the waiver authority in 25 C.F.R. § 1.2 to waive the provisions of 25 C.F.R. § 2.9(a).

Appellant's request to the Assistant Secretary was rather inconspicuous in that it did not appear until page 14 of its statement of reasons. In order to bring Appellant's request to the attention of the Assistant Secretary, the Board issued a special notice to him when it issued the pre-docketing notice in this appeal. The notice stated:

The Board lacks authority to waive regulations under 25 C.F.R. § 1.2 and must decide the timely filing issue based solely on the law. Therefore, if the Assistant Secretary believes that the Superintendent's decision should be reviewed on the merits, he should consider assuming jurisdiction over this appeal under 25 C.F.R. § 2.20(c) and 43 C.F.R. § 4.332(b), and waiving the timely filing requirement in 25 C.F.R. § 2.9(a). Should he do so, he may then decide the appeal on the merits, remand the matter to the Regional Director

for a decision on the merits, or refer the matter to the Board under 43 C.F.R. § 4.330(a)(2).

The Assistant Secretary did not assume jurisdiction over this appeal. Therefore, the appeal is now before the Board on the issue of timeliness.

Appellant has made extensive arguments on this issue in its statement of reasons. The Board finds it unnecessary to call for further briefing on the issue.

The Regional Director's decision stated that Appellant's notice of appeal was filed on June 28, 2000, and that, although Appellant claimed to have received the Superintendent's decision on June 1, 2000, the certified mail return receipt for Appellant's copy of the decision was date-stamped May 26, 2000. Based upon the date shown on the return receipt, the Regional Director found Appellant's notice of appeal untimely under 25 C.F.R. § 2.9(a), which provides:

An appellant must file a written notice of appeal in the office of the official whose decision is being appealed. * * * The notice of appeal must be filed in the office of the official whose decision is being appealed within 30 days of receipt by the appellant of the notice of administrative action described in § 2.7. A notice of appeal that is filed by mail is considered filed on the date that it is postmarked. The burden of proof of timely filing is on the appellant. No extension of time shall be granted for filing a notice of appeal. Notices of appeal not filed in the specified time shall not be considered, and the decision involved shall be considered final for the Department and effective in accordance with § 2.6(b).

Appellant does not dispute the Regional Director's statement that its notice of appeal was filed on June 28, 2000. However, it disagrees with the Regional Director's statement concerning the date it received the Superintendent's decision. It argues that it did not receive the Superintendent's decision until the decision reached Scott Patterson, Appellant's Land Resources Specialist, on May 31 or June 1, 2000. This is true, Appellant contends, because the envelope containing the decision was addressed to "Northwest Pipeline Company c/o Scott Patterson" and included Mr. Patterson's mail stop number as well as Appellant's mailing address. Appellant states that the decision reached Mr. Patterson's mail stop on May 30, 2000, but that Mr. Patterson was ill that day and did not return to work until May 31 or June 1, 2000. Appellant further states that Mr. Patterson delivered the decision to Appellant's legal department on June 1, 2000, stating that he had received it that day.

Appellant acknowledges that the return receipt was signed by an employee of Appellant on May 26, 2000. It states that the employee was a mailroom employee whose duties included picking up Appellant's mail at the post office. It implies, although it does not specifically state,

that the employee was not authorized to sign for certified mail on behalf of Appellant or on behalf of Scott Patterson. ^{1/} Appellant seems to fault the post office for allowing the employee to sign for certified mail. Appellant does not develop any argument in this regard, however, but simply makes a vague reference to “required forms.”

Even if the post office was somehow at fault here, Appellant must bear responsibility for failing to instruct its employee, whose job it was to pick up mail at the post office, that he was not permitted to sign for certified mail. The Board rejects Appellant’s implied argument that it should be relieved of the requirement for filing a timely notice of appeal because of an unauthorized act of its mailroom employee.

Appellant’s employee signed the return receipt in a space labeled “Signature: (*Addressee or Agent*).” He thus represented himself to be the agent of the addressee. As Appellant recognizes, the addressee in this case was “Northwest Pipeline Company c/o Scott Patterson.” Thus the employee signed as agent, not only for Appellant, but also for Scott Patterson in his capacity as an employee of Appellant. The Board rejects Appellant’s contention that it did not receive the Superintendent’s decision until the decision reached Scott Patterson personally.

The Board holds that Appellant received the Superintendent’s decision for purposes of 25 C.F.R. § 2.9(a) on May 26, 2000, the date the return receipt was signed by Appellant’s employee. *Cf. Plains Marketing & Transportation, Inc. v. Acting Muskogee Area Director*, 34 IBIA 133 (1999) (BIA decision deemed received when the return receipt was signed by the appellant’s employee); *Pacific Enterprises Oil Co. (USA) v. Muskogee Area Director*, 26 IBIA 275 (1994) (BIA decision deemed received when the return receipt was signed by someone at the appellant’s address of record); *Phillips Petroleum Co.*, 147 IBLA 363 (1999) (Minerals Management Service decision deemed received when the return receipt was signature-stamped by the appellant’s courier, despite a later date of receipt stamped on the decision in the appellant’s mailroom).

Appellant next argues that BIA’s appeal regulations violate the due process and equal protection rights of corporations because they do not make any specific provision for service of BIA decisions on corporations. The Board has no authority to declare a duly promulgated regulation invalid. *E.g., Shoshone-Bannock Tribes v. Portland Area Director*, 35 IBIA 242, 247

^{1/} Specifically, Appellant states:

“[The employee] was not * * * at that time or any other time a managing or general agent or officer of [Appellant] and was not authorized to receive service of process on [Appellant’s] behalf. * * * In fact, the USPS Foothills office has no record on its required forms that would authorize [the employee] to pick up such restricted delivery mail on behalf of [Appellant] at all, much less on behalf of Mr. Scott Patterson, the individual to whose care the Letter Decision was sent.”

Statement of Reasons at 4-5.

(2000); Van Mechelen v. Portland Area Director, 35 IBIA 122, 125 (2000). Therefore, the Board lacks jurisdiction to address this argument.

Appellant repeatedly suggests that the timely filing requirement in BIA's appeal regulations is a "technical" requirement which the Regional Director could have disregarded had he been so inclined. Contrary to Appellant's suggestion, however, BIA's regulations clearly prohibit a BIA official from considering an untimely appeal. In addition to 25 C.F.R. § 2.9(a), quoted above, see 25 C.F.R. § 2.16: "[N]o extension of time will be granted for filing a notice of appeal under § 2.9." These provisions make the timely filing of notice of appeals a jurisdictional matter. Because Appellant's notice of appeal was untimely, the Regional Director lacked jurisdiction over the appeal and was required to dismiss it.

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 the Regional Director's January 4, 2001, decision is affirmed.

//original signed

Anita Vogt
Administrative Judge

//original signed

Kathryn A. Lynn
Chief Administrative Judge