



INTERIOR BOARD OF INDIAN APPEALS

Kurt Netterville v. Great Plains Regional Director, Bureau of Indian Affairs

37 IBIA 128 (01/31/2002)



United States Department of the Interior

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

KURT NETTERVILLE,
Appellant

v.

GREAT PLAINS REGIONAL DIRECTOR,
BUREAU OF INDIAN AFFAIRS,
Appellee

: Order Affirming Decision
:
:
:
: Docket No. IBIA 01-46-A
:
:
: January 31, 2002

Appellant Kurt Netterville seeks review of a November 6, 2000, decision of the Great Plains Regional Director, Bureau of Indian Affairs (Regional Director; BIA), concerning the payment of seasonal pasturing fees for Range Unit 726 on the Standing Rock Reservation. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

In December 1999, settlement was reached by the parties to Claymore v. Babbitt, Civil No. A1-99-131 (D.N.D.), a case concerning grazing rates for the Standing Rock Reservation. On January 3, 2000, the United States District Court for the District of North Dakota adopted the settlement agreement as an order of the court. Among other things, the agreement authorized a rate of \$8.50 per Animal Unit Month (AUM) on allocated units for the permittee's own cattle and a rate of \$14.10 per AUM for cattle not owned by the permittee and subject to a pasturing authorization. Further, it required that all permittees on the reservation were to receive the benefits of the agreement, whether or not they were parties to Claymore.

On January 19, 2000, BIA issued Bill for Collection No. A 00025738 to Appellant. The bill, which was in the amount of \$1,900.01, with an administrative fee of \$43.02, for a total of \$1,943.03, stated that it was for "1999-2000 Supplemental billing on Range Unit 00726, for the difference in grazing rate as part of the settlement agreement of the United States District Court #A1-99-131 order, signed by United States District Judge on January 03, 2000." This bill related to the increase in grazing rates to \$8.50 per AUM which was approved by the court under the settlement agreement. The copy of the bill in the administrative record indicates that Appellant paid the full amount on February 29, 2000.

On May 5, 2000, BIA issued Bill for Collection No. A 00025867 to Appellant. The bill stated that Appellant owed \$9,688 for the 2000 seasonal pasturing fee of livestock owned by

Bob Odde. Four days later, on May 9, 2000, the Acting Superintendent, Standing Rock Agency, issued Appellant a pasturing authorization allowing the seasonal grazing of 346 head of cattle owned by Odde. The pasturing authorization showed a "Total Seasonal Allotted Grazing Fee" of \$9,688. It was signed by both Appellant and Odde. 1/

Bill for Collection No. A 00025867 was paid by Odde. 2/ Payment was received at the Agency on June 26, 2000. On the same day, Appellant appealed the bill to the Regional Director, arguing that he had not received any advance notice of the additional charges for pasture livestock.

The Regional Director affirmed the bill upon finding that Appellant had received adequate advance notice.

In his notice of appeal to the Board, Appellant again contends that he did not receive advance notice of the charge for livestock subject to a pasturing authorization. He also argues that BIA should be penalized for taking so long to decide his appeal.

Appellant did not file an opening brief. The Regional Director filed an answer brief, contending that Appellant was given notice on several occasions that cattle subject to a pasturing authorization were not included in the basic permit rates and would be subject to an additional charge. She provides examples of documents in which that notice was given.

Appellant did not file a reply brief and so has not refuted the Regional Director's argument.

The Board finds that Appellant has failed to establish that he did not receive advance notice that he would have to pay additional fees for cattle subject to a pasturing authorization.

It is not clear how Appellant wishes the Board to penalize BIA for delay in deciding his appeal. The Board declines to do so. An appellant's remedy when BIA fails to issue a timely decision is to follow the procedures in 25 C.F.R. § 2.8. Appellant did not do this.

1/ Neither the bill nor the pasturing authorization states the rate at which the charge was calculated. In this appeal, the Regional Director states that BIA used the \$14.10/AUM rate authorized by the settlement agreement in Claymore.

2/ However, the check was for \$9,663, rather than \$9,688.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Regional Director's November 6, 2000, decision is affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge