



INTERIOR BOARD OF INDIAN APPEALS

Gilbert Gonzalez v. Acting Northwest Regional Director, Bureau of Indian Affairs

38 IBIA 86 (08/28/2002)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

GILBERT GONZALEZ,  
Appellant

v.

ACTING NORTHWEST REGIONAL  
DIRECTOR, BUREAU OF INDIAN  
AFFAIRS,  
Appellee

: Order Affirming Decision  
: but Remanding Issues to  
: the Regional Director  
:  
:  
: Docket No. IBIA 02-39-A  
:  
:  
: August 28, 2002

This is an appeal from a November 15, 2001, decision of the Acting Northwest Regional Director, Bureau of Indian Affairs (Acting Regional Director; BIA), affirming the cancellation of Lease 1-2-0374-0004 for Yakama Allotments 1870 and 1871. For the reasons discussed below, the Board affirms the Acting Regional Director's lease cancellation decision but remands this matter for a decision on related issues.

Appellant indicated in his notice of appeal that he did not object to cancellation of the lease but wished to appeal BIA's assessment of rent and irrigation operation and maintenance (O&M) charges against him. On February 1, 2002, after giving the parties an opportunity to comment, the Board placed the lease cancellation into immediate effect so that BIA could proceed to approve new leases for the two allotments.

Lease 1-2-0374-0004 authorized farming, grazing, and aftermath grazing for a period of five years, beginning January 1, 2000, and ending December 31, 2004. The lease was signed by Appellant on August 29, 2000, and approved by the Acting Superintendent, Yakama Agency, BIA, on September 1, 2000. Appellant alleges that he was never sent a copy of the approved lease and was never informed that the lease had been approved. BIA has not refuted Appellant's allegation, and there is no evidence in the record that Appellant was informed that the lease had been approved. Nor is there any evidence that BIA billed Appellant for 2000 rent, which was due upon approval of the lease. <sup>1/</sup>

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<sup>1/</sup> The lease stated that rent for 2000 was due upon approval of the lease and rent for each subsequent year was due on Dec. 1 of the preceding year.

In November 2000, BIA sent Appellant a bill for 2001 rent, stating that payment was due December 1, 2000. In January 2001, BIA sent Appellant two bills (one for each allotment subject to the lease) for O&M charges assessed by the Wapato Irrigation Project, apparently for 2000. 2/ The bills assessed charges totalling \$3106.

Appellant sought clarification from BIA, stating that he had not farmed the allotments in 2000 because he believed he did not have an approved lease. BIA inspected the allotments and concluded that they had been farmed in 2000, apparently by someone other than Appellant. 3/

On March 8, 2001, the Superintendent sent Appellant a ten-day show cause letter under 25 C.F.R. § 162.14 (2000), 4/ stating that Appellant was in violation of his lease for failure to pay rent for 2001 and failure to pay O&M charges in the amount of \$3106. On April 23, 2001, the Superintendent issued a decision cancelling the lease and stating that Appellant remained liable for 2001 rent and O&M charges in the amount of \$3106.

Appellant appealed to the Regional Director. The Acting Regional Director issued a decision on November 15, 2001, in which she affirmed the lease cancellation.

As indicated above, Appellant does not object to cancellation of the lease. However, he faults the Acting Regional Director's decision for, among other things, failing to address the question of Appellant's liability for rent and O&M charges.

The Acting Regional Director acknowledged that Appellant disputed his liability for O&M charges. Yet she made no decision as to Appellant's liability for either the O&M charges or the 2001 rent. Her failure to do so results in the necessity for further proceedings. Therefore, even though the Board affirms the Acting Regional Director's decision to cancel the lease,

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2/ Both bills have billing dates of Apr. 1, 2000, alternate billing dates of Mar. 1, 2001, and past due dates of Mar. 31, 2001. A handwritten note on one of the bills indicates that both bills were for 2000.

Provision 3 of the lease required that O&M charges be paid "annually in advance on the due date preceding each irrigation season." There is nothing in the record which shows that Appellant was billed for O&M charges prior to the 2000 irrigation season. Presumably this was because no lease for 2000 had been approved prior to the 2000 irrigation season.

3/ There are suggestions in the record that BIA believed Appellant had authorized this individual to farm the allotments.

4/ The present version of 25 C.F.R. Part 162 went into effect on Mar. 23, 2001, and thus was in effect during all further proceedings in this matter.

it must remand this matter to the Regional Director so that he may issue a decision on the question of Appellant's liability for O&M charges and rent.

It is apparent that there were irregularities in the way this lease was handled at the Yakama Agency. There are also seeming inconsistencies in BIA's treatment of the lease with respect to the year 2000—that is, it did not charge Appellant rent for 2000, suggesting it may not have considered the lease effective for 2000, 5/ yet it assessed O&M charges against Appellant for that year. Further, the record suggests that BIA may have approved a lease for 2001, with another individual as lessee. 6/ In light of these complicating factors, the Board recommends that the Regional Director request the assistance of the Solicitor's Office before issuing a decision as to Appellant's liability for rent and O&M charges.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Acting Regional Director's decision cancelling Lease 1-2-0374-0004 is affirmed but this matter is remanded to the Regional Director for a decision as to Appellant's liability for rent and O&M charges.

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//original signed

Anita Vogt  
Administrative Judge

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//original signed

Kathryn A. Lynn  
Chief Administrative Judge

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5/ A handwritten note in the record indicates that BIA understood that, by the time the lease was approved, it was too late in the year to plant crops.

6/ This should not have been done unless the Regional Director placed the Superintendent's decision into immediate effect, see 25 C.F.R. § 162.254, and there is no indication that the Regional Director did so. Nevertheless, if rent for 2001 was received from another lessee, it must be considered in mitigation of Appellant's liability for 2001 rent.