

CARL A. KLUG
NEBRASKA GAME AND PARKS COMMISSION

IBLA 71-245

Decided October 11, 1972

Appeal from decision of the Wyoming land office, Bureau of Land Management, by a former grazing lessee who objects to the appraised value of a range fence which the decision required to be paid to him by the State of Nebraska as compensation for the fence in consideration of the proposed sale of the lands to the state under the Recreation and Public Purposes Act.

Affirmed as modified.

Grazing Leases: Generally--Appraisals

A Bureau of Land Management appraisal of the amount of compensation to be paid to the owner of an authorized fence, who was a former grazing lessee on lands approved for sale to a state agency, will be modified to increase the amount where the appraisal is made on a per-rod basis and the fence owner contends on appeal, which contention is uncontroverted by the state, that he measured the fence at a greater length than the length on which the appraisal was based, because much of the fence is constructed over rough terrain which measures out to a greater distance than the surveyed distance.

APPEARANCES: Carl A. Klug, pro se.

OPINION BY MRS. LEWIS

Lots 1 and 4, section 8, lots 1 and 3, section 9, T. 33 N., R. 27 W., 6th P.M., Nebraska, among other lands, have been classified for sale to the State of Nebraska Game and Parks Commission under the Recreation and Public Purposes Act of June 14, 1926, as amended, 43 U.S.C. § 869 et seq. (1970), pursuant to its application, W-10286, filed in the Wyoming land office, Bureau of Land Management.

Carl A. Klug who held a grazing lease on the lands under section 15 of the Act of June 28, 1934, as amended, 43 U.S.C. § 315m et seq. (1970), claims ownership of an authorized fence across said lands lying to the east of a county road running through lots 1 and

4 of section 8. Evidence in the case records shows that a permit authorizing the fence was issued to Klug on April 7, 1967, by the Casper, Wyoming, District Manager, Bureau of Land Management.

Grazing regulation 43 CFR 4125.1-4(a)(8) states in pertinent part:

Ordinarily, before an application for disposal of leased lands under the public land laws is allowed, the applicant must agree to compensate the lessee or other party for any authorized range improvements in which the lessee or other party has a financial investment. If the parties are unable to agree to the amount, manner, and time for compensation for such improvements, such matters shall be determined by the authorized officer. * * *

In accordance with this regulation, the Wyoming land office on July 28, 1970, requested both Klug and the Nebraska Game and Parks Commission to try to reach an agreement as to the amount of compensation to be paid for the fence. Thereafter, nothing was heard from Klug as to the status of the negotiations. However, the Nebraska Game and Parks Commission reported on January 27, 1971, that numerous attempts were made by personnel of that office to get together with Klug but to no avail.

The current value of the fence, reported as being 240 rods (3,960 feet) long and consisting of wood posts and three-strand barbed wire, was appraised at \$420 by a Bureau of Land Management appraiser. By decision of February 23, 1971, the Wyoming land office directed that the Nebraska Game and Parks Commission should pay this amount to Klug before its application can be approved, and stated that, "Tender of payment shall be made within 60 days after this decision becomes final, and evidence of such tender of payment filed in this office."

Klug appealed to this Board objecting to the appraised value. The essence of his appeal is that he measured the fence at 4300 feet because much of the fence is built in canyons which causes it to be longer than the surveyed distance, and labor costs are much higher under these conditions than for fences built on level ground. ^{1/}

^{1/} Klug also asked to be informed about plans of the Game Commission for purchasing lands to the west of the county road formerly leased to him where he claimed to own approximately 1/2 mile of fence, for which he would want compensation. On April 1, 1971, the Wyoming land office wrote Klug that it had no record of a permit

A copy of Klug's appeal was served on the Nebraska Game and Parks Commission on March 22, 1971, but that agency did not file an answer controverting his reasons for appeal.

The only issue to be determined by the Board concerns the amount of compensation to be paid for the fence by the state agency.

The appraisal is technically correct and the appraised value appears to be reasonable. The replacement cost of the fence was determined at \$840 for 240 rods. However, it was estimated to be 50 percent physically deteriorated. Application of the 50 percent depreciation factor reduced the estimated replacement cost or compensation to \$420.

Evidence in the case record indicates that Klug filed an application with the district manager on December 19, 1966, in order to authorize the then existing fence which had been constructed in 1953. The permit authorizing the fence was issued to him on April 7, 1967. In his permit application, dated December 15, 1966, Klug estimated the cost of the fence at \$600 for labor and \$200 for material, or a total of \$800. He estimated the present value at \$700. At no time in the present proceeding has Klug given any indication of what he considers the fence to be worth.

In December 1970, an appraiser for the Nebraska Board of Educational Lands and Funds appraised the reproduction cost of the fence at \$516 for 240 rods. He estimated 50 percent of the fence to be good, thus reducing the market value to \$258. In the light of the available information, we consider the Bureau's appraised value of \$420 to be fair and reasonable for 240 rods of fence.

However, we shall consider Klug's contention, uncontroverted by the Nebraska Game and Parks Commission, that he measured the fence at 4300 feet because much of it is built in canyons causing the fence to be longer than the actual surveyed distance. Substantiation is given to this contention by an employee of the Nebraska Game

fn. 1 (Cont.)

issued to him for this fence and before it could require the Nebraska Game and Parks Commission to compensate him for the fence, he would have to furnish evidence that he has a permit from the Bureau for the improvement. On November 1, 1971, the land office informed this Board that Klug had failed to provide the requested evidence. However, this matter is unrelated to the case at bar and presents no justiciable issue for this Board. If Mr. Klug can produce evidence that he has an authorized fence on the land, he should file a request with the land office for a determination in accordance with established procedures.

and Parks Commission in an interagency letter dated September 4, 1970, in which he states that, "The fence in section 9 would be fairly high priced due to rough terrain." Therefore, we accept the appellant's measurement of 4,300 feet.

The Bureau's appraisal was based on 240 rods, or 3,960 feet, of fencing at a replacement cost of \$3.50 per rod. Klug's measurement of 4,300 feet adds an additional 20 rods which, when multiplied by \$3.50, would increase the replacement cost by \$70. When treated with the 50 percent depreciation factor the amount of the appraised value would be increased by \$35. Accordingly, we hold that \$455 is fair and just compensation for the fence.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is affirmed as herein modified, and the case record is returned to the Wyoming State Director, Bureau of Land Management, for further appropriate action.

Anne Poindexter Lewis, Member

We concur:

Frederick Fishman, Member

Martin Ritvo, Member

