

R. G. PRICE, ET AL.

IBLA 72-261, etc.

Decided December 6, 1972

Appeal from various Bureau of Land Management State Office decisions refusing to grant reinstatement of oil and gas leases terminated for failure to timely pay the advance rental.

Reversed.

Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

Under the provisions of P.L. 91-245, amending § 31 of the Mineral Leasing Act, 30 U.S.C. § 188, reinstatement is properly granted where the lessee shows that the rental payment was mailed sufficiently in advance of the due date so that in the normal course of events the payment would have arrived prior to or on the anniversary date, even though the payment was not received until after that date.

Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Rentals

Failure to timely pay the advance rental on an oil and gas lease will be deemed "justifiable" where the failure is the result of sufficiently extenuating circumstances which affected the lessee's actions.

APPEARANCES: John S. Gerhardt, Esq., San Jose, California, for appellants Mary Lou Gebhard and Bernard D. Garrett; R. G. Price, pro se; A. G. Andrikopoulos, pro se; Jane M. Coffey and Edwin W. Hall, pro se; Rita M. Bowden, pro se; James W. Austin, pro se.

OPINION BY MR. HENRIQUES

The appeals set out in the Appendix involve adverse determinations by several Bureau of Land Management State Offices to requested reinstatements of oil and gas leases after a termination by operation of law for failure to pay the advance rental on or before the anniversary date. In Louis Samuel, et al., 8 IBLA 268 (1972), this Board discussed at length the genesis and rationale of the 1970 amendment to § 31 of the Mineral Leasing Act, 30 U.S.C. § 188, (1970) providing a mechanism for reinstatement in certain cases. We emphasized there, and we reiterate here, that reinstatement can only be granted after a showing of reasonable diligence or proof that the failure to make

timely payments was justifiable. We believe however that five of the appellants herein have met the reasonable diligence standard and that the other appellant has shown that his failure to timely pay was "justifiable" within the meaning of that term as defined in Louis Samuel, supra.

In five of these cases appellants mailed their payments in sufficient time to arrive on the date due, but for unexplained reasons they were not received until after that date. The other case involves an appellant whose father-in-law suffered a long and eventually fatal illness during a period which is sufficiently proximate so as to come within the confines of "justifiable" cause.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the State Office decisions are reversed and the cases are remanded to the Bureau of Land Management for appropriate action consistent with this decision.

Douglas E. Henriques, Member

We concur:

Frederick Fishman, Member

Newton Frishberg, Chairman.

Appendix

The following appeals, for the reasons stated supra are granted:

R. G. Price; IBLA 72-261; Wyo. 17865-E

Payment was postmarked two days prior to the due date but was received one day late. Sent from Los Angeles, California to Cheyenne, Wyoming.

A. G. Andrikopoulos; IBLA 72-310; ES 3171 (Miss.)

Payment was postmarked either two or three days prior to the due date (the postmark is unclear), but was received two days late. Sent from Cheyenne, Wyoming to Silver Spring, Maryland.

Jane M. Coffey and Edwin W. Hall; IBLA 72-320; NM 10548, 10549

Lessees each held a one-half interest in the lease. Under their agreed arrangement the lessees alternately paid the rent. Hall, whose turn it was to make payment, was out of town at the bedside of his father-in-law, who died January 25, 1972. Payment was due February 1, 1972. It was subsequently received within the required twenty-day period. Considering all the factors in this case, particularly that both parties had present interests in the lease, and the close proximity of the due date to Mr. Hall's father-in-law's death, we find that the failure to timely pay was justifiable.

Mary Lou Gebhard and Bernard D. Garrett; IBLA 72-360 W 11663-C

Payment was postmarked two days prior to the due date, but was received one day late. Sent from San Jose, California to Cheyenne, Wyoming.

Rita M. Bowden; IBLA 72-371; U 7166-H

Payment was received one day late. The State Office, however, did not retain the envelope. Lessee contends that the payment was mailed more than three days prior to the due date. The State Office contends that the fact that the check was dated one day prior to the due date shows that it was not timely mailed. The lessee responds that the check was postdated merely to insure that it would not be prematurely negotiated. Since it was the action of the State Office in destroying the envelope that prevents reference to the critical

postmark date, the absence of such an important proof should not work to the detriment of the lessee. Accordingly, we accept the lessee's explanation of what occurred and grant reinstatement. As the postmarks on envelopes transmitting rentals are of great importance to the granting of reinstatement, State Offices are admonished to retain the same, unaltered, to permit a more accurate assessment of the exercise of due diligence by the lessees.

James W. Austin; IBLA 72-461; M-15273-A

Payment was postmarked two days early and was received one day late. Sent air-mail from Davis, California to Billings, Montana.

