

Editor's note: Appealed – aff'd, sub nom. Mendenhall v. Andrus, Civ. No. R-80-146 ECR (D. Nev. Dec. 30, 1982), 556 F.Supp. 444, aff'd, No. 83-1751 (9th Cir. May 1, 1984) 735 F.2d 1371 (table), cert. denied, S.Ct. No. 84-718 (Feb. 19, 1985), 105 S.Ct. 1175, 469 US 1209

UNITED STATES
v.
FRANK R. SULLIVAN

IBLA 72-273

Decided February 6, 1973

Appeal from a decision by Administrative Law Judge 1/ Dean F. Ratzman declaring mining claims null and void (Contest Nos. N-065732 and N-065733).

Affirmed.

Administrative Procedure: Hearings—Constitutional Law

In an administrative proceeding to determine the validity of a mining claim, there is no denial of due process for lack of representation by a member of the bar. Due process in such cases envisages notice and an opportunity for a hearing.

APPEARANCES: Keith C. Hayes, Esq., of Las Vegas, Nevada, for the appellant; Otto Aho, Esq., Field Solicitor, United States Department of the Interior, Reno, Nevada, for the appellee.

OPINION BY MR. FISHMAN

Frank R. Sullivan has appealed to the Board of Land Appeals from a decision by an Administrative Law Judge dated December 28, 1971, which declared appellant's mining claims to be null and void.

The mining claims in issue were the Charleston No. 24 (also known as the Charleston No. 39 and Extension 39 of the Charleston) and the Charleston Spur No. 1. The claims are situated approximately 12 miles from Las Vegas, Nevada and were located for sand and gravel in February of 1955.

1/ The change of title of the hearing officer from "Hearing Examiner" to "Administrative Law Judge" was effectuated pursuant to order of the Civil Service Commission, 37 F.R. 16787 (August 19, 1972).

Appellant does not challenge the findings of fact or conclusion of law reached by the Judge. Instead, counsel for appellant argues that principles of due process require the decision of December 28, 1971, to be set aside and appellant to be given another opportunity to present his case. In support of this position, counsel for appellant states that appellant was represented by Robert J. McNutt at the hearing, that McNutt was not a lawyer, and that neither the appellant nor McNutt was aware of appellant's burden of proof at the hearing.

In United States v. Charles D. and Jeanne D. Haas, A-30654 (February 16, 1967), the appellants therein, whose mining claim was declared invalid, similarly argued on appeal that due process required their case to be remanded for a new hearing. The Department stated:

The appellants contend that it was an "abuse" of due process to allow them to present their case without aid of legal counsel. They suggest generally that their case could have been presented at the hearing in a more effective manner had they had benefit of legal counsel. This may be true. However, there was nothing that prevented the appellants from being represented by proper legal counsel. Departmental regulations permit a party to be represented at a hearing by proper legal counsel (see 43 CFR Part 1 [now codified as 43 CFR 1.3] and 43 CFR 1850.0-6(3)(4)), but there is nothing to require such representation.

In an administrative proceeding to determine the validity of a mining claim, there is no denial of due process for lack of representation by proper legal counsel. Due process in such case implies notice and a hearing. Orchard v. Alexander, 157 U.S. 372, 383 (1895); Cameron v. United States, 252 U.S. 450, 460 (1920); Best v. Humboldt Placer Mining Co., 371 U.S. 334, 338 (1963). * * *

For similar results, see United States v. Raymond Bass, Betty Yeck, et al., 6 IBLA 113, 117 (1972) and United States v. William A. McCall and R. J. Kaltenborn, 1 IBLA 115, 121 (1970).

In the case at bar, appellant was properly notified of the contest proceedings which were initiated to challenge the validity of his mining claims. Appellant was also afforded a fair hearing. It was he who chose not to engage the services of a lawyer at the time of the hearing when his rights were at stake. He may not now be heard to complain.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Frederick Fishman, Member

We concur.

Newton Frishberg, Chairman

Edward W. Stuebing, Member

