

EASON OIL COMPANY
JOHN W. NICHOLS

IBLA 74-186

Decided June 28, 1974

Appeal from decision of Eastern States Office, Bureau of Land Management, denying petition for reinstatement of oil and gas lease BLMA 079509 (Louisiana).

Reversed.

Oil and Gas Leases: Reinstatement – Oil and Gas Leases: Rentals

Where appellant mailed rental payment for oil and gas lease in sufficient time for it to arrive in proper BLM office on or before due date, considering distance involved and normal delays attendant upon collection, transmittal, and delivery of mail, appellant is within ambit of provisions in 30 U.S.C. § 188(c) (1970) and 43 CFR 3108.2-1(c) for reinstatement of lease when failure to timely pay rental is "not due to a lack of reasonable diligence on the part of the lessee."

Oil and Gas Leases: Reinstatement – Oil and Gas Leases: Rentals

Where appellant mailed oil and gas lease rental payment, due on November 1, from Oklahoma City, Oklahoma, on October 29 to Silver Spring, Maryland, Eastern States Office, late payment was not due to a lack of reasonable diligence on appellant's part.

APPEARANCES: Edel F. Blanks, Jr., Esq., Shotwell, Brown & Sperry, Monroe, Louisiana, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Eason Oil Company and John W. Nichols appeal from a decision of the Eastern States Office, issued November 30, 1973, denying a petition for reinstatement of their oil and gas lease BLMA 079509 (Louisiana).

The lease was terminated by operation of law for failure to pay the annual rental on or before the anniversary date of the lease, November 1, 1973.

Departmental regulation 43 CFR 3108.2-1(c), enacted pursuant to 30 U.S.C. § 188(c) (1970), provides that a lease which has been so terminated may be reinstated if petitioner can show that he complied with the following requirements:

(i) [S]uch rental was paid or tendered within 20 days thereafter [the due date], and (ii) it is shown to the satisfaction of the authorized officer that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, and (iii) a petition for reinstatement, together with the required rental, including any back rental which has accrued from the date of termination of the lease, is filed with the appropriate office within 15 days after receipt of Notice of Termination of Lease due to late payment of rental.

Appellants mailed the rental payment in an envelope postmarked October 29, 1973, although it did not reach the Bureau of Land Management until November 5, 1973, a Monday. Appellants were informed by the Bureau's notice dated November 14, 1973, that their lease had terminated, and they petitioned for reinstatement on November 23, 1973. Therefore, appellants have met two of the three requirements for reinstatement. The only issue remaining for our determination is whether the failure to make timely payment was either (1) justifiable or (2) not due to a lack of reasonable diligence on the part of the lessee.

Appellants contend that the failure to pay the rental on or before the anniversary date was not due to a lack of reasonable diligence on their part. By way of explanation, it is stated:

This appeal from said decision is being filed on the basis that since the payment was mailed three days prior to the due date (which normally is ample time for delivery thereof) the delay in transmitting and delivery of same was not the fault of appellants * * *.

We agree. In Inexco Oil Company, 15 IBLA 422 (1974), the Board held that where a lessee mailed on October 30 from Houston, Texas, a rental payment due on November 1, in Santa Fe, New Mexico, late payment was not due to a lack of reasonable diligence on the lessee's part.

On the basis of that decision and R. G. Price, 8 IBLA 290 (1972) involving a similar factual situation, we conclude that mailing payment from Oklahoma City, Oklahoma, on October 29 to Silver Spring, Maryland, when the payment was due in Silver Spring on November 1, was reasonable diligence on appellants' part. Therefore, appellants' case comes within the ambit of the provisions in 30 U.S.C. § 188(c) (1970) and 43 CFR 3108.2-1(c) for reinstatement of the lease.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the Eastern States Office decision is reversed and the case is remanded to the Bureau of Land Management for appropriate action consistent with this decision.

Joseph W. Goss
Administrative Judge

We concur.

Anne Poindexter Lewis
Administrative Judge

Joan B. Thompson
Administrative Judge

