

MINNTEX OIL COMPANY

IBLA 74-184

Decided August 29, 1974

Appeal from decision of the New Mexico State Office, Bureau of Land Management, denying a petition to reinstate terminated oil and gas lease NM 0555566.

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

An oil and gas lease terminated by operation of law for failure to pay the advance rentals on time can only be reinstated when the lessee shows that his failure to pay the rental on or prior to the anniversary date was justifiable or not due to a lack of reasonable diligence.

APPEARANCES: F. W. Holloway, Jr., Vice-President, Minntex Oil Company, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Minntex Office, Bureau of Land Management, dated December 5, 1973, which refused to reinstate its oil and gas lease NM 0555566.

The Act of July 29, 1954, 68 Stat. 585, amending section 31 of the Mineral Leasing Act of 1920, 30 U.S.C. § 188(b) (1970), provides that an oil and gas lease will terminate by operation of law if the annual rental is not paid on or before the anniversary date of the lease. Section 31 of the Mineral Leasing Act was further amended by the Act of May 12, 1970, 84 Stat. 206, 30 U.S.C. § 188(c) (1970), to allow reinstatement of a terminated lease upon a lessee's timely petition. The lessee, however, must show that the failure to pay on time "was either justifiable or not due to a lack of reasonable diligence on the part of the lessee." Id. The State Office, in denying the lessee's petition

to reinstate the lease, found that it had not satisfied the requirements for reinstatement because the payment was not mailed in time to reach the State Office on or before the anniversary date.

The rental payment due date was November 1, 1973. Appellant's envelope containing the payment was sent by airmail, and postmarked in Minneapolis, Minnesota, on October 31, "PM" and received in the Bureau's Office in Santa Fe, New Mexico, on November 2, 1973. The letter was allegedly deposited in the mail on October 30, 1973.

Appellant asserts that:

On October 30, 1973, check #2574 in the amount of \$ 121.00 was mailed along with a notice of payment due of annual rental. This payment and notice was deposited in the United States postal box that is normally used by this office and under other circumstances could be depended on to deliver mail to Santa Fe within one day and no later than two days. It was therefore anticipated that similar delivery would have been made to your office either on October 31, 1973, or no later than November 1, 1973, the due date of the payment. Any delay in the delivery of this check to your office we believe was not due to lack of reasonable diligence on the part of the lessee.

The burden is upon a lessee to prove that he was reasonably diligent or that the delay was due to "justifiable" reasons. 43 CFR 3108.2-1(c)(2). Appellant did not originally submit anything to support his contention that a letter mailed from Minneapolis would normally be received in Santa Fe within one and no later than two days.

The regulation defining "reasonable diligence" states that it "normally requires sending or delivery payments sufficiently in advance of the anniversary date to account for normal delays * * *." 43 CFR 3108.2-1(c)(2). It is very difficult to establish a standard for what constitutes a "normal delay" when a payment must be sent by the United States mail. It is common knowledge that the experience of different people or businesses to anticipate delays may vary from locale to locale because of differences in the volume of mail and efficiency in the postal service at different locales. This Board in circumstances where the appellant offered no other explanations or reasons to substantiate "reasonable diligence" has held that the mailing of the rental payment one day earlier than the due date was not sufficient to account for normal delays, Louis Samuel, 8 IBLA 268 (1972); R. G. Price, 8 IBLA 290 (1972).

To assist us in determining whether the appellant here was reasonably diligent we asked the Minneapolis Postmaster what the normal delivery time would be for a letter sent airmail from Minneapolis, Minnesota, to Santa Fe, New Mexico. The Postmaster stated:

All mail for New Mexico would be sacked and labeled to the AMF Albuquerque, New Mexico.

Flights from Minneapolis are as follows:

Leave Minneapolis AMF	Arrive Albuquerque
0800	1059
1230	1456
1700	2028
2255	0848

There is a collection box in the Pentagon Park Tower building. The last collection is at 5:00 p.m. If the letter was deposited after this time it would be collected and postmarked the following day.

The Board then informed appellant that we intended to use the Postmaster's response in making our decision. We gave appellant 30 days to supply additional information. Appellant's response reiterated its prior correspondence to the effect that the letter was mailed on October 30, 1973, and that based on their prior experience it should have been received in Santa Fe prior to or on the anniversary date.

Appellant did not provide the Board with the specific time the letter was mailed on October 30, 1973. Based on the Postmaster's statement that a letter deposited after 5:00 p.m. would be collected and postmarked the next day and the postmark on the letter of October 31, 1973, and without satisfactory evidence to the contrary, we conclude that the letter was probably deposited in the mail after 5 p.m. on October 30, 1973, but before 5 p.m. on October 31, 1973.

Appellant admits that its mail to Santa Fe normally takes "not later than two days." Having considered this admission, the distance involved, the mail schedules supplied to us by the Minneapolis Postmaster and the normal delays attendant upon collection, transmittal and delivery of the mail, the Board finds that appellant was not reasonably diligent in dispatching its payment. Alfred B. Taylor, 13 IBLA 316 (1973); R. G. Price, 8 IBLA 290 (1972).

Nothing that appellant has offered constitutes a "justifiable" excuse for failure to make the payment timely. Louis Samuel, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the New Mexico State Office denying the petition for reinstatement is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

