

AARON V. BARSON

IBLA 75-51

Decided December 13, 1974

Appeal from the June 10, 1974, decision of the Utah State Office, Bureau of Land Management, denying reinstatement of oil and gas lease U-0114161.

Affirmed as modified.

1. Oil and Gas Leases: Reinstatement -- Oil and Gas Leases:
Termination

Oil and gas leases terminated for operation of law for failure to pay the annual rentals on or before the due date may not be reinstated where no tender of payment has been made within 20 days of the due date.

APPEARANCES: Robert J. Stansfield, Esq., Salt Lake City, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Aaron V. Barson has appealed from the June 10, 1974, decision of the Utah State Office, Bureau of Land Management (BLM), denying reinstatement of oil and gas lease U-0114161 issued to Mobil Oil Corporation for lands located in T. 5 S., R. 19 E., SLM, Uintah County, Utah. The lease terminated for non-payment of rental pursuant to 30 U.S.C. § 188(b) (1970). Prior to the expiration date of the lease, May 31, 1973, appellant had acquired all of Mobil's working interest in the lease, except for an overriding royalty and a call on oil and gas reserved to Mobil. Appellant was conducting drilling operations on the lease on May 31, 1973, but since no annual rentals had been paid by or on that day, the lease terminated by operation of law. ^{1/} Drilling operations were discontinued a few days later. Nearly one year later, on May 31, 1974, Mobil submitted

^{1/} If the annual rentals had been tendered prior to or on May 31, 1973, the lease would have been extended beyond its primary term due to the drilling. 43 CFR 3107.2-3.

a petition to the Utah State Office praying for reinstatement of the lease, and tendered the past-due rental, which was then precisely one year late. The Utah State Office rejected that petition and Barson appeals from that decision as the holder of an interest in the lease.

Appellant argues that the Secretary of the Interior has the authority under 30 U.S.C. § 188(d) (1970) to reinstate oil and gas leases terminated for failure to pay the annual rental where drilling operations were being diligently conducted on the last day of the primary term of the lease. As the Utah State Office correctly determined, 30 U.S.C. § 188(d) (1970) is applicable only to those leases set forth in 30 U.S.C. § 226-1 (1970), to wit, those leases with a primary term of five years issued prior to September 2, 1960. The provisions of section 226-1 simply do not apply to this lease as is made manifest by the express terms of 30 U.S.C. § 188(d) (1970).

[1] If this lease could be reinstated at all, the authority for such action would have to be found in the general provisions for reinstatement of leases, 30 U.S.C. § 188(c) (1970). That provision requires that the failure to pay rental on time must be either justifiable or not due to a lack of reasonable diligence. The Utah State Office found that the failure of Mobil to pay on time was not only not justifiable, but was also due to a lack of reasonable diligence. Both appellant and Mobil state that the failure to remit the rental was due to a misunderstanding between them as to who was responsible for making the payment.

There is, however, a more basic reason why the lease may not be reinstated. The Secretary of the Interior has no authority under 30 U.S.C. § 188(c) (1970) to consider reinstatement of a lease unless payment has been tendered within 20 days of the due date. As such tender by Mobil was not made until a year later, the petition for reinstatement must be rejected. See also, 43 CFR 3108.2-1(c) and W. R. Murfin d/b/a Murfin Drilling Company, 13 IBLA 97 (1973).

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 as modified.

Edward W. Stuebing
Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Frederick Fishman
Administrative Judge

