

Editor's note: Appealed – reversed, sub nom. Ram Petroleum v. Andrus, Civ.No. 79-0005 (D. Nev. Oct. 24, 1979), 478 F.Supp. 1165, rev'd, No. 79-4886 (9th Cir. Oct. 13, 1981) 658 F.2d 1349 – also Appealed – aff'd, sub nom. Ramoco Inc. v. Andrus, Civ. No. 79-0007 (D.Utah Nov. 14, 1979); aff'd No. 80-1100 (10th Cir. May 27, 1981) 649 F.2d 814; cert denied 454 US 1032, 102 S.Ct. 569 (Nov. 9, 1981)

RAM PETROLEUMS, INC., & RAMOCO, INC.

IBLA 77-551

77-553

Decided October 11, 1978

Appeals from decisions of the Nevada and Utah State Offices, Bureau of Land Management (BLM), denying reinstatement of oil and gas leases (N-12775 et al. and U-32798 et al.), which had terminated automatically for failure to make timely payment.

Affirmed.

1. Oil and Gas Leases: Reinstatement

An oil and gas lease, terminated for failure to pay annual rental on or before the anniversary date of the lease, can be reinstated only if the petitioner shows that the failure was either justifiable or not due to a lack of reasonable diligence. Mailing the rental payment either on the day before it is due, or after it is due, does not meet the reasonable diligence requirement.

2. Oil and Gas Leases: Reinstatement

To constitute a justifiable excuse for delay in making an oil and gas lease rental payment sufficient to warrant reinstatement of a lease terminated for late payment of rental, a lessee must show that the delay was caused by factors outside his control which were the proximate cause of his failure to pay the rental timely. Negligence of an employee in making timely rental payments and subsequent false statements to her employer that timely payments were made does not relieve the employer from responsibility to verify the employee's action and to make timely payment.

APPEARANCES: James W. McDade, Esq., of McDade and Lee, Washington, D.C., for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Ram Petroleum, Inc., and Ramoco, Inc., have appealed from separate decisions of the Nevada State Office (BLM) dated August 8, 1977 (N-12775 et al.), and of the Utah State Office (BLM) dated August 16, 1978 (U-32798 et al.). These decisions denied petitions for reinstatement of 30 oil and gas leases which had terminated by operation of law when payments of the annual rentals were not received on or before the anniversary dates of the leases. 1/

For all the Nevada leases the anniversary date was July 1, 1977, and the rental payments were not mailed from Toronto, Ontario, Canada, until June 30, 1977, and received by the BLM Nevada office on July 6, 1977. For all the Utah leases the anniversary date was also July 1, 1977. The rental payment for lease U-33482 was postmarked afternoon on June 30, 1977, at Toronto, Ontario, Canada, and not received until well after the due date. The rental payments for the remainder of the Utah leases were not postmarked until after the anniversary date and not received until July 19, 1977.

Appellants petitioned the BLM for reinstatement of these leases contending the payments were filed late due to circumstances beyond their control, i.e., the sudden failure of an employee to perform her duties to mail timely the rentals, coupled with her subsequent false assurances to a corporate executive that the duties had been performed and the rentals had been timely mailed. The State Offices did not find either that appellant had exercised reasonable diligence or that the failure to pay timely was justifiable, so as to qualify the leases for reinstatement.

[1] An oil and gas lease terminated for failure to pay annual rental on or before the anniversary date may be reinstated only if

1/ The leases involved in these appeals are:

Ram Petroleum, Inc.:

N-12775 N-12781 N-12786 N-12791
N-12776 N-12782 N-12787 N-12792
N-12777 N-12783 N-12788 N-12793
N-12778 N-12784 N-12789 N-12871
N-12780 N-12785 N-12790

Ramoco, Inc.:

U-32798 U-33475 U-33482
U-32936 U-33476 U-33483
U-33473 U-33477 U-33485
U-33474 U-33481

the failure to pay timely was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1970). Reasonable diligence requires mailing the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). We note that for part of the leases at hand mailing a rental payment 1 day before its due date does not constitute reasonable diligence. David R. and Darla L. Smith, 33 IBLA 63 (1977); Edward Malz, 33 IBLA 22 (1977); Adolph Muratori, 31 IBLA 39 (1977); Nevada Western Oil Co., 30 IBLA 379 (1977); Louis Samuel, 8 IBLA 268 (1972), aff'd, Samuel v. Morton, Civ. No. CV-74-112-EC (August 12, 1974), aff'd, Maisano v. Morton, Civ. No. 39720 (E.D. Mich., October 12, 1973). Nor for the remaining leases does mailing the payment after it is due constitute reasonable diligence. Apostolos Paliombeis, 30 IBLA 153 (1977); Bobbie Arnold, 24 IBLA 352 (1976). Thus, appellants cannot show that failure to make timely payment was not due to a lack of reasonable diligence on their part. We then turn to whether appellants have demonstrated justifiable delay.

[2] Failure to pay rental timely is justifiable only when it is caused by factors outside the lessee's control, which were the proximate cause of the failure. Adolph F. Muratori, supra; Constitution Petroleum Co., Inc., 25 IBLA 319 (1976). Appellants expound at length on appeal as to the extenuating circumstances which they assert justify reinstatement. A particular employee who was responsible for mailing rental checks on their leases in this area and who had satisfactorily performed the required procedures in the past, in this instance failed, for whatever reason, to take the required measures to send in the rental payments in good time. The employee's supervisor specifically inquired whether the payments had been made and she responded they had been paid, when in fact they had not. Later, a similar inquiry by the corporations' president evoked the same untrue response. Appellants allege that this inquiry was made of the employee sufficiently in advance of the rental due dates so that timely payment could still have been made if the employee had responded truthfully that she had not performed her duties. Appellants point out that they have no control over the veracity of their employees. Appellants argue, in essence, that they had done all they could under the circumstances to comply with the regulations, and that they had acted in a way that satisfies one or both of the criteria for reinstatement.

We find no merit in this argument. Although appellants claim they did all they could to assure timely payment, we do not find that their reliance on the employee's statement is sufficient action to classify the subsequent failure to pay as justifiable. Appellants hired and supervised this employee and established the company procedures by which rental payments were to be made. It is axiomatic that appellants bear the responsibility and the consequences for the

action or inaction of their employees. They could easily have gone one step further and actually verified if rental payments had been sent rather than merely accepting the assurances of this employee. A simple checking of the account records to substantiate that the payments were made would have been a more prudent course of action. We find no basis to stray from our earlier rulings that the inadvertence or negligence of a lessee's employee does not justify reinstatement of a lease terminated for failure to make a timely rental payment. Shell Oil Company, 30 IBLA 290 (1977); Phillips Petroleum Company, 29 IBLA 114 (1977); Samuel J. Testagrossa, 25 IBLA 64 (1976); Monturah Co., 10 IBLA 347 (1973).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the State Offices are affirmed.

Edward W. Stuebing
Administrative Judge

I concur:

Douglas E. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE GOSS DISSENTING:

While a corporation is ordinarily responsible for the acts of its employees, appellant has alleged that (1) a supervising attorney, (2) the president of the corporation, and (3) Robert Opekar all checked to determine whether the rentals had been paid. Each of these inquiries would have disclosed the facts in time for timely payment, if the employee had not lied. I feel that reasonable diligence has been shown under Elwyn C. Hale, Las Cruces 06310 (August 27, 1968). That case, which involved a secretarial error, was a basis for enactment of 30 U.S.C. § 188(c). Lone Star Producing Company, 28 IBLA 132, 144-46 (1976) (dissent). The payments here were made well within the 20-day period for reinstatement. I would reinstate the leases.

Joseph W. Goss
Administrative Judge

37 IBLA 188

