

O'BRIEN RESOURCES CORP.

THERMAL POWER CO.

IBLA 79-46

Decided July 23, 1979

Appeal from a decision of the Utah State Office, Bureau of Land Management, denying petition for reinstatement of geothermal resources leases U-25301 and U-25307.

Affirmed.

1. Geothermal Leases: Reinstatement

To constitute a justifiable excuse for delay in making a 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. The negligence of an employee in failing to convey essential information to his employer regarding the necessity of making a timely payment does not constitute justification.

APPEARANCES: Kay M. Lewis, Esq., Jensen & Lewis, P.C., Salt Lake City, Utah, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

O'Brien Resources Corp. (O'Brien) and Thermal Power Co. (Thermal) have appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated September 27, 1978, denying reinstatement of geothermal resources leases U 25301 and U 25307. These leases terminated on their anniversary date, July 1, 1978, for failure of appellants to pay annual rentals on or before the anniversary date. 43 CFR 3244.2-1.

The subject leases were issued noncompetitively on July 1, 1976, and following mesne assignments, record title was vested in O'Brien and Thermal, each holding an undivided 50 percent interest. In its

petition for reinstatement of August 28, 1978, O'Brien informed BLM that it had recently accepted an assignment from Thermal of its 50 percent interest.

The appeal recites that O'Brien had entered into a working agreement with AMAX Exploration, Inc. (AMAX), under which AMAX would make timely payment of rentals, unless O'Brien had earlier been notified to the contrary. Having not received notice from AMAX that it would not pay the rentals due July 1, 1978, the notice from BLM that rentals were due July 1, 1978, sent to Thermal, was forwarded by it to O'Brien, which in turn forwarded the notice to AMAX in accordance with their working agreement. Thereafter, AMAX advised O'Brien that it had earlier notified O'Brien it would not pay the rentals due July 1, 1978. O'Brien alleges that the employee who received this earlier communication from AMAX did not communicate its contents to O'Brien prior to his resignation in June 1978. When O'Brien learned of the nonpayment, it immediately submitted the required rental. That payment was received by the State Office on August 21, 1978, 52 days after it was due.

This remittance was returned to O'Brien with a notice that the leases had terminated in the absence of timely rental payment. A petition for reinstatement of the leases was filed September 1, 1978, together with tender of the rentals due. The petition was thereafter denied and this appeal followed.

The statute, 30 U.S.C. § 1004(c) (1976), provides that if there is no well on the leased lands capable of producing geothermal resources in commercial quantities, the failure to pay rental on or before the anniversary date shall terminate the lease by operation of law. The statute further provides that a lease terminated by operation of law for failure to pay rental may be reinstated if

- (1) it is shown to the satisfaction of the Secretary of the Interior that failure to pay timely the lease rental was justifiable or not due to a lack of reasonable diligence;
- (2) a petition for reinstatement is filed together with the required rental payment; and
- (3) no valid lease has been issued for any of the lands in the terminated lease.

The statute does not impose any time limit for receipt of payment or filing a petition for reinstatement.

The Geothermal Steam Act, 30 U.S.C. § 1001 *et seq.* (1976), tracks many of the provisions of the Mineral Leasing Act, 30 U.S.C. § 181

et seq. (1976), relating to oil and gas, including the automatic termination of leases for the untimely payment of rental and the possibility of reinstatement where failure to pay timely was justified or not due to a lack of reasonable diligence. Cf. 30 U.S.C. § 188(c) and 30 U.S.C. § 1004(c) (1976). Similarly, the geothermal regulations were patterned after the oil and gas regulations generally. Accordingly, this Board has consistently held that the principles established in oil and gas reinstatement cases shall govern geothermal reinstatement cases. See e.g., Page T. Jenkins, 33 IBLA 135 (1977); California Geothermal, Inc., 19 IBLA 268 (1975); Hydrothermal Energy and Minerals, Inc., 18 IBLA 393, 82 I.D. 60 (1975).

In Ram Petroleums, Inc., 37 IBLA 184 (1978), 1/ an employee allegedly reported payment of rentals due on some 40 leases when in fact no payment had been made on any of the leases. The employee thereafter voluntarily resigned. Presented with these facts the Board denied reinstatement and held:

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.

In Lynn Schusterman, 29 IBLA 182 (1977), it was held:

A late payment of rental due for an oil and gas lease results in termination of the lease, and the lease will not be reinstated, where the lessee relied upon a third party to pay the rental, but no acceptable justification is shown for the delay.

[1] It is well settled that the lessees of a Federal mineral lease are responsible for compliance with all the terms of the lease, including timely payment of the rental. Where the late payment was apparently caused by the action of an employee, it cannot be found that the late payment was justifiable, nor that the lessee acted with reasonable diligence in ascertaining that payment was made.

1/ Sub judice in Ramoco, Inc. v. Andrus (Civ. No. C 79-0007 D. Utah) and Ram Petroleums, Inc. v. Andrus, (Civ. No. R 79-0005 D. Nev.).

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.

Douglas E. Henriques
Administrative Judge

I concur:

Anne Poindexter Lewis
Administrative Judge

41 IBLA 370

ADMINISTRATIVE JUDGE GOSS CONCURRING:

I concur in the result. Appellant alleges that after June 1, 1978, it sent payment notices to AMAX for payment, but does not state how close to the July 1 deadline this occurred. The Board therefore does not have the facts on which to base a finding of reasonable diligence.

Joseph W. Goss
Administrative Judge

41 IBLA 371

