

FUEL RESOURCES DEVELOPMENT CO.

IBLA 81-336

Decided August 24, 1981

Appeal from decision of the Colorado State Office, Bureau of Land Management, requiring rental for oil and gas leases for the interval between the date such leases were treated as terminated and the enactment of private legislation providing that the leases should be held not to have terminated.

Affirmed.

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

Where leases have been found by the Department to have terminated automatically by operation of law for lessee's failure to pay the annual rental, but private legislation is subsequently enacted providing that such leases shall be held not to have terminated and for payment by the lessee of "accrued" and "unpaid" rental by the lessee, a BLM decision that such renewal is due for the period from the date when the leases were treated as terminated to the date of the private enactment will be affirmed in the special circumstances obtaining in the case.

APPEARANCES: Fletcher Thomas, Esq., and Marsha K. Wightman, Esq., Denver, Colorado, for appellant; Marla E. Mansfield, Esq., Departmental Counsel, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

This case had its inception when Fuel Resources Development Company (Fuelco), failed to remit timely to the Colorado State Office of the

Bureau of Land Management (BLM), the annual rentals for 21 Federal oil and gas leases, payment of which was due no later than November 1, 1978. The payment arrived at BLM on November 8, 1978, in an envelope bearing a postmark dated November 7, 1978.

BLM then notified Fuelco that it regarded the leases as having terminated automatically by operation of law pursuant to 30 U.S.C. § 188 (1976), but advised Fuelco that the statute also provided that it might petition for reinstatement of the leases. Fuelco filed its petition for reinstatement, alleging due diligence and justification for the tardy payment based upon its assertion that the envelope containing the rental payment had been mishandled by an employee of Fuelco's parent corporation, Public Services Company of Colorado.

BLM, by its decision of December 22, 1978, denied the petition for reinstatement of the leases, holding, in effect, that the reasons advanced by Fuelco for its failure to pay the rentals on or before the anniversary date were inadequate to demonstrate that such failure was either justifiable or not due to a lack of reasonable diligence on the part of Fuelco.

Fuelco appealed from that decision to this Board, which affirmed BLM's decision with certain modifications not relevant to the instant appeal. 1/ Fuel Resources Development Co., 43 IBLA 19 (1979), (Goss, Administrative Judge, dissenting).

Fuelco initiated a suit for judicial review of the administrative action, styled Fuel Resources Development Co. v. Andrus, Civ. No. 79-1639 (D. Colo., filed Dec. 4, 1979), but this action never came to trial.

On December 12, 1980, Private Law 96-71 (H.R. 6258) was signed by the President. Omitting captions, the text of this private law provides:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any decision to the contrary heretofore made by the Secretary of the Interior of the United States or his authorized agents or representatives, United States oil and gas leases numbered C-9496, C-9711, C-11600, C-11621, C-11622, C-11630, C-11631, C-11597, C-11599, C-13774, C-14197, C-17049, C-18262, C-26048, C-13532, C-11581, C-11585, C-11590, C-11591, and C-11595, shall be held not to have terminated by operation of law or otherwise on November 1, 1978, but shall be deemed to be in full

1/ The case was remanded to BLM for a determination of the status of lease C-11590 (allegedly held by participation in a producing unit), and lease C-13533 (with reference to a possible bookkeeping error in the lease account).

force and effect and the terms of said leases extended for a period equal to the unexpired portion of the leases or any extensions thereof remaining on November 13, 1978, or for a period equivalent to the time interval between November 13, 1978, and the date on which the Secretary of the Interior reinstates said leases, whichever is the shorter time period, and so long thereafter as oil or gas is produced in paying quantities:

Provided, That within thirty days after the receipt of written notice from the Secretary of the Interior of the amount of rental then accrued to the United States under said leases and unpaid to the last record holder of said leases, Fuel Resources Development Company, doing business in Denver Colorado, its successors or assigns, said record holder shall tender payment of said amount of rental. Notice shall be given by the Secretary within thirty days after the effective date of this Act.

In purported compliance with the proviso of this private law (hereinafter "the Act"), BLM calculated the amount of rental due on each of the twenty leases affected and prepared a table showing, inter alia, the amount already held by BLM on each lease account and the balance owed by Fuelco to pay fully the lease rentals for the period from November 1, 1978, through October 31, 1981. The cumulative total amount so calculated was \$22,071, of which \$7,820 was on deposit with BLM, leaving a balance due to be paid by Fuelco of \$14,251. This information was transmitted to Fuelco by BLM's decision of January 8, 1981, which explained the basis of the computation, enclosed the table, and demanded payment within 30 days of Fuelco's receipt of the decision.

Fuelco responded by tendering the \$14,251 demanded within the time provided and filing its notice of appeal from the BLM decision demanding the payment. The notice of appeal explained that no review of BLM's decision is sought with reference to leases C-11590 and C-11600, but that by its reckoning Fuelco should have owed a net total amount of \$5,385.09 to prepay the advance rentals on the remaining leases and hold them to October 31, 1981; that in response to BLM's demand it had overpaid by \$15,994.91 and is entitled to a refund of that amount, with interest.

In its statement of reasons for appeal Fuelco asserts that BLM erred in charging rent on the subject leases for the period between November 1, 1978, and February 1, 1981. In support of this assertion Fuelco contends that the common law generally applicable to landlord-tenant relationships is controlling, and recites numerous cases from the state courts of various jurisdictions to show that where a landlord denies his tenant access to, or evicts him from, the leased premises, the tenant's obligation to pay rental is suspended. Fuelco also argues that since it tendered certain rental payments which BLM refused and returned as untimely, it is inconsistent and contrary to law for BLM to now demand payment of such rentals.

BLM, through Departmental counsel, responded that the relationship between the United States and its oil and gas lessees is governed by enacted law and regulations, and that while traditional landlord-tenant relationships may be somewhat analogous, they are not controlling here. Moreover, BLM says, Fuelco continued throughout the period to assert its rights under the leases instead of abandoning them and claiming no benefit thereunder. It points to the fact that, "Fuelco strongly urged the BLM not to issue new leases," and thereby "obtained from BLM its forbearance," in consequence of which the United States was deprived of the lease rentals for the period which would have been earned through leasing the lands to others.

An analysis of the language of the Act, while somewhat useful, is by no means conclusive of what the Congress intended. Neither counsel has provided this Board with any of the legislative history although, presumably, both Fuelco and the Department contributed to the legislative process which culminated in the enactment.

The Act states that the leases "shall be held not to have terminated by operation of law or otherwise on November 1, 1978." If the leases are to be treated as not having terminated, and must be regarded as vital, effective, operative interests during the period from November 1, 1978, then clearly, the holder of those leases has the lawful obligation to pay the rental imposed by statute and regulation for its vested privilege. This view is reinforced by the language of the Act which refers to "the amount of rental then accrued to the United States under said leases and unpaid." If it were the Congressional intent that no rentals had "accrued to the United States" and been left "unpaid" during the interval in question, there would have been no need of this language.

The Act did not create new leases; it gave continuing effect to the specific leases held by Fuelco on November 1, 1978. The effect of the decision of BLM dated December 22, 1978, was suspended by the filing of Fuelco's appeal. 43 CFR 4.21. Upon the filing of Fuelco's timely notice of appeal, BLM lost jurisdiction of the case, and any adjudicative action taken by BLM relating to the subject matter of the appeal would have been a nullity. James T. Brown, 46 IBLA 265, 271 (1980). This Board's decision (affirming the BLM decision) could not become final until after expiration of the 90-day statutory period for the initiation of an action for judicial review. 30 U.S.C. § 226-2 (1976). See Winkler v. Andrus, 614 F.2d 707, 714 (9th Cir. 1980). Because Fuelco filed such a suit within that period, no administrative decision concerning these leases ever became final prior to enactment of the private legislation. Thus, it was not BLM's "forbearance" which precluded re-leasing of these lands but, rather, the continued assertion by Fuelco of a right to have its leases continued, coupled with the absence of any final decision rejecting that asserted right, with the consequent effect that BLM's jurisdiction was never restored until the Act was signed into law.

For the foregoing reasons we conclude that there was no hiatal period in the terms of these leases during which the lessee's obligation to pay rental was suspended.

Finally, we note that had the leases been reinstated, such reinstatement could only have been effected upon condition of payment of " * * * the required rental, including any back rental which has accrued from the date of termination of the lease * * * ." 43 CFR 3108.2-1(c). In petitioning for reinstatement under this regulation Fuelco must have understood that it would be liable for any rental accruing in the interim, notwithstanding that its enjoyment of the leases would have been interrupted during that interval, just as it was here. We must presume that Fuelco was sincere in its application for reinstatement on those terms, and willing to pay the back rental which had accrued since the date of termination. The fact that the Congress has legislated that no termination occurred hardly relieves Fuelco of that obligation. Rather, it makes the obligation even more apparent, since there was no legal hiatus in the effective terms of the leases, such as there would have been in the termination/reinstatement scenario.

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.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Gail M. Frazier
Administrative Judge

