

PYRO ENERGY CORP.

IBLA 82-1034

Decided December 28, 1982

Appeal from decision of New Mexico State Office, Bureau of Land Management, dismissing protest against termination of oil and gas lease NM 20394-A.

Affirmed.

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

It is the responsibility of a lessee to see that any payment tendered for annual rental of an oil and gas lease is so identified that the appropriate Bureau of Land Management office can credit the payment to the proper lease account. Where the official assignment creating the lease contains the correct serial number, and where the lessee has previously been given a courtesy notice and receipts bearing the correct identification number, but the lessee does not return the notice with his payment and, instead, includes an incorrect identification number on his payment check, he has not adequately identified his payment, and the lease terminates by operation of law for failure to pay rental on or before the anniversary date of the lease.

APPEARANCES: James P. Cooke, Esq., Dallas, Texas, for appellant; K. W. Bumgarner, pro se; Mariagnes K. Messinger, pro se; Robert J. Uram, Esq., Office of the Solicitor, Department of the Interior, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

When first transmitted to the Board, this case did not contain any notice of appeal. By order of July 23, 1982, the file was returned to the New Mexico State Office, Bureau of Land Management (BLM), with advice that, without a timely notice of appeal, the Board has no jurisdiction. Evidence

of a timely notice of appeal has been submitted. We now consider the appeal on its merits.

Pyro Energy Corporation (formerly R. J. Burns Corp.) (Pyro) ^{1/} appeals BLM's May 27, 1982, decision dismissing a protest against BLM's earlier determination that oil and gas lease NM 20394-A terminated by operation of law for failure to pay the annual rental due April 1, 1979, pursuant to 30 U.S.C. § 188(b) (1976). The decision stated that the information from Pyro did not warrant reinstatement of the lease.

Pyro contends that it made timely and proper payments of rental for its lease, and that BLM erred in finding that the lease had terminated by operation of law for nonpayment of rental, because BLM wrongfully refused tender of its proper and timely payment of rent, due to an internal error of BLM beyond control of and without any fault by Pyro. Pyro also contends that BLM erred in finding that its lease had terminated by operation of law because it relied on the lease identification number given to it by BLM, and because it relied upon BLM's prior acceptance of its payments and application of them to its lease account.

Before discussing the law of the case, it is necessary to outline the convoluted occurrences affecting oil and gas lease NM 20394, which is the base lease from which Pyro's interest was taken. Oil and gas lease NM 20394 issued effective April 1, 1974, to K. W. Bumgarner for 160 acres, the S 1/2 NE 1/4, N 1/2 SE 1/4 sec. 29, T. 16 S., R. 38 E., New Mexico principal meridian, Lea County, New Mexico. On February 2, 1976, Pyro filed with BLM an assignment for 80 acres of this lease, the S 1/2 NE 1/4 sec. 29. The assignment was approved effective July 1, 1976, and the segregated lease was given identification: NM 20394-A, following receipt of information that the person requesting approval of the assignment was authorized to sign for Pyro.

In 1976, prior to the effective date of the partial assignment to Pyro, rental for the single 160-acre lease, NM 20394, was \$80. In March 1976, Pyro paid \$40, and Bumgarner tendered the remaining \$40, but BLM erroneously refunded \$40 to him as an "overpayment." This mistake was never corrected, but does not affect the present dispute.

In the years following the approval of the assignment, there were two separate 80-acre leases, NM 20394 (held by Bumgarner) and NM 20394-A (held by Pyro). The annual rental for each lease was \$40 and was due for each lease on or before April 1, the anniversary date of the leases.

The approved assignment form returned to Pyro by BLM in 1976 after approval of the assignment indicated that the new serial number for the assigned lease was NM 20394-A. The courtesy notice of payment due sent to Pyro by BLM in 1977 also so indicated. Unfortunately, Pyro did not apprehend the importance of the new serial number because it continued to identify its lease as "NM 20394" on each rental payment, as it had done in March 1976 prior to the segregation out of its lease. Each rental check from Pyro

^{1/} We shall refer to appellant as "Pyro" throughout, even though at pertinent times it was known as "R. J. Burns Corp."

correctly identified the land for which the rental was being tendered, namely, S 1/2 NE 1/4 sec. 29, T. 16 S., R. 38 E. However, as discussed below, BLM's cashier does not use land descriptions to determine which lease account is to be credited, but instead refers to the serial number either written on the payment check or shown on the courtesy notice of payment due, if returned with the payment.

In 1977, Pyro did return the courtesy notice of payment due along with its payment so that proper credit was given to the account for lease NM 20394-A, despite the fact that Pyro's check bore the incorrect number NM 20394. The receipt sent to Pyro to acknowledge its payment also showed that the serial number was NM 20394-A. In 1978, Pyro did not send in the courtesy notice along with its payment, but BLM was nevertheless able to avoid miscrediting the payment because, fortuitously, Bumgarner and Pyro's payments both arrived on March 27, 1978. Presented with what appeared as a double payment, the cashier evidently was able to straighten the matter out and credit both lease accounts correctly. Again, the receipt sent to Pyro after its 1978 payment bore the correct serial number.

In 1979, Pyro did not return the courtesy notice, so that its payment was credited to the account of lease NM 20394 since the payment check bore this number. The receipt for Pyro's payment was sent to Bumgarner, since his was the address of record for the lease. No receipt was sent to Pyro. Bumgarner also tendered payment for lease NM 20394 in 1979, but only after Pyro's payment had been credited to his account. Since the records indicated that the account was current, BLM returned Bumgarner's payment to him.

As no rental payment on April 1, 1979, was shown for Pyro's lease NM 20394-A, BLM considered the lease terminated by operation of law under 30 U.S.C. § 188(b) (1976), and thereafter, in September 1979, posted the S 1/2 NE 1/4 sec. 29, T. 16 S., R. 38 E., to the list of available lands for simultaneous oil and gas lease filing. Oil and gas lease NM 38645 was issued August 1, 1980, to Mariagnes K. Messinger, whose drawing entry card was drawn with first priority for the parcel.

Following its established procedures, BLM gave Pyro no notice of the termination of its lease NM 20394-A, and Pyro submitted rental payments annually in 1980 and 1981, continuing its practice of placing "NM 20394" on its payments. BLM continued to credit Pyro's payments to the account of lease NM 20394, and to return Bumgarner's subsequent payments to him. 2/ In 1982, the Bumgarner payment was received first, so that when the later payment from Pyro was received, BLM returned it to Pyro with advice that the rental had previously been paid by the lessee for lease NM 20394. Pyro inquired and learned, for the first time, that its lease NM 20394-A had been considered terminated by operation of law April 1, 1979. It protes- ted, and, when BLM denied its protest, this appeal ensued. Bumgarner and Messinger were invited to respond to Pyro's appeal and each has done so.

2/ In 1980, Bumgarner admits that he did not tender any annual rental payment, explaining that BLM sent him a receipt showing that full payment had been made. BLM sent this receipt, as it had done in 1979, to Bumgarner as addressee of record, to acknowledge Pyro's mistaken payment. His failure to tender rental is discussed, infra.

[1] It is the lessee's responsibility to see that any payment tendered for annual rental for an oil and gas lease is so identified that BLM can credit the payment to the proper lease account. Howard Arndt, A-27895 (Apr. 20, 1959); cf. Pacific Transmission Supply Co., 35 IBLA 297, 299 (1978) (holding that lessee met this responsibility by timely filing a letter specifying the lease account to which payment should be applied, thus overcoming its failure to include an identification number on the payment check). Where the payment is not so identified, and, as a result, the payment is not properly credited on or before the anniversary date of the lease, it terminates by operation of law for failure to pay the rental. Howard Arndt, supra.

It has long been Departmental policy to give a new serial number to an oil and gas lease of lands segregated by an assignment, and to use this new number to account for rental on and production from the new lease. See C. W. Grier, 58 I.D. 712, 714-15 (1944), citing General Land Office Circular 960 (August 19, 1924). The base lease and the segregated lease are completely separate and distinct legal entities (43 CFR 3106.2-6), so that rental payments must be monitored separately.

Accurate management of rental accounts requires that lessees use correct serial numbers. While Pyro's error may appear trivial, BLM's difficulty in administering thousands of active leases allows little margin to accommodate such an error. ^{3/} Placing an incorrect serial number on a payment may result in miscrediting of payments because of the large number of payments BLM handles each day. BLM's answer aptly describes the problem:

Each month the New Mexico State Office receives thousands of pieces of correspondence in the mail. Included in this deluge are hundreds of payments of oil and gas lease annual rentals and other payments for applications fees for new leases, recordation fees for mining claims, rentals for other minerals, fees for assignments and other similar payments. The Bureau receives the mail in Central Files which opens it and directs it to the proper office. Mail containing payments or fees is sent to the Cashier where it is sorted by type of payment. For oil and gas lease rentals, the Cashier examines the remittance to determine for which lease it is being made. They are instructed to do this either by using a copy of the bill, which is sometimes returned with the payment (formally called the "Notice of Payment Due") or by looking for a serial number written on the check. If a serial number is found, further checking is not normally done. The Cashier then goes to a file of rentals due that month, matches the serial number to a bill for that lease and attaches the bill to the payment. The Cashier then notes in a Register that payment has been made, and validates that payment. This validated payment is then sent to Accounts which "earns" the payment and sends all paper work received each day to the Denver Service

^{3/} A much less serious error occurs when a lessee includes no serial number (as opposed to an incorrect number), provided that he also includes a land description. Such error might not be disqualifying. See Sarkeys, Inc., 1 IBLA 123, 127, 77 I.D. 207, 210-11 (1970).

Center which prepares a formal computerized receipt. The Cashier's office has no direct access to the official lease file and would have to place a written order to be sent a file.

Here, BLM's cashier consistently followed these procedures, duly crediting Pyro's payments to the account number reflected either on the courtesy notice or, where none was returned, on the payment itself. Since the cashier was able to associate a serial number with each payment, there was no need to examine the land description. Nor was BLM at fault for not attaching significance to the fact that Pyro's payments were being credited to Bumgarner's lease account. Complicated private arrangements governing ownership of oil and gas leases are very common, and it is not unusual that someone other than the lessee of record should pay annual rental under such an arrangement.

In view of the large volume of accounting material which it must handle each day, it is not unreasonable to require a lessee to bear the responsibility for an error resulting in miscrediting of its annual rental payment.

Pyro, not BLM, is to blame for Pyro's use of the incorrect identification number. Pyro points to BLM's letter of July 17, 1976, in which BLM notified Pyro of the approval of the assignment to it, stressing that the incorrect serial number (NM 20394) appeared under the heading "In Reply Refer to." While this letter was not a model of clarity in that it did not expressly point out that the segregated portion of the lease would bear a new identification number, the approved assignment instrument itself showed on its face "New Serial No. NM 20394-A," thus overcoming any contrary inference in the letter. In any event, Pyro was given ample notice of this fact by BLM's courtesy notices and receipts, all of which bore the correct number. Pyro's continued erroneous use of "NM 20394" cannot be attributed to BLM.

Nor was Pyro entirely without notice that its payments had not been properly credited in 1979, since, unlike in the previous 2 years, it was not sent a receipt for payment in 1979. Pyro's failure to ascertain why no receipt had been issued placed the onus on it to accept what had transpired. Compare Sarkeys, Inc., supra at 127-28, 77 I.D. at 211.

The misapplication of Pyro's payments to Bumgarner's lease resulted directly from Pyro's use of an incorrect identification number on its payment checks. Pyro had ample notice of what the correct number was, and its misapplication was within its control. Therefore, it works no injustice to apply the consequences of the misapplication against it.

Due to Pyro's placing the incorrect number on its 1979 rental payment, this payment was correctly credited by BLM to Bumgarner's lease account. No payment was credited to Pyro's account on or before April 1, 1979, the anniversary date of the lease, or within 20 days thereafter, because Pyro incorrectly identified its lease. Thus, we hold that the lease must be deemed to have terminated on April 1, 1979. Further, a valid lease (NM 38645) affecting the same lands covered by the terminated lease was issued to Mariagnes Messinger prior to Pyro's protest. Therefore, BLM was without authority, as are we, to reinstate Pyro's lease, regardless of its assertions that the failure to pay was justifiable or that it had exercised reasonable diligence. 30 U.S.C. § 188(c) (1976).

As to Bumgarner's failure to tender rental on lease NM 20394 in 1980 (see note 1 supra), we are obliged to recognize Pyro's payment, unintentional though it may have been, as preserving Bumgarner's lease. Unless Bumgarner had expressly relinquished his lease previously, BLM had no basis to look behind Pyro's 1980 payment to Bumgarner's lease account. As noted above, it is not unusual to have private arrangements between parties where one person will pay another's annual rental. The question of whether Bumgarner is liable to refund amounts paid by Pyro into his lease account is a private matter between them.

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

We concur:

Bruce R. Harris
Administrative Judge

James L. Burski
Administrative Judge