

DECK OIL CO.

IBLA 83-135

Decided January 11, 1983

Appeal from decision of New Mexico State Office, Bureau of Land Management, denying petition for reinstatement of competitive oil and gas leases NM 40776 (OK) and NM 40788 (OK).

Affirmed.

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

An oil and gas lease on which there is no well capable of producing oil or gas in paying quantities automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date of the lease. Congress has authorized reinstatement of a terminated lease only if, among other requirements, the failure to pay the rental was either justifiable or not due to lack of reasonable diligence on the part of the lessee.

2. Oil and Gas Leases: Reinstatement

Reasonable diligence normally requires sending the rental payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the payment. Mailing a rental payment after it is due does not constitute reasonable diligence.

3. Oil and Gas Leases: Reinstatement

For delay in submission of an oil and gas lease rental payment to be justifiable, factors outside the control of the lessee must have arisen which prevented the

lessee from meeting the objective reasonable diligence test. Late payment is not justified where an employee of lessee did not understand the time constraints governing the time for payment.

APPEARANCES: H. Ward Camp III, Esq., Tulsa, Oklahoma, for appellant;
Robert Uram, Office of the Field Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

On May 20, 1980, the New Mexico State Office, Bureau of Land Management (BLM), conducted a competitive sale of oil and gas leases on lands in Oklahoma. Deck Oil Company (Deck) submitted the high bid of \$6,000 for parcel 1, 40 acres described as SW 1/4 NW 1/4 sec. 29, T. 4 N., R. 21 E., Cimarron meridian, Dobby Field, Beaver County, Oklahoma, and the high bid of \$108,435 for parcel 14, 144.58 acres described as lot 4 (5.25 acres), lot 5 (33.90 acres), and lot 6 (4.55 acres), sec. 26, T. 10 N., R. 25 W., Indian meridian, plus accretion and riparian rights on lots 4, 5, and 6, described by metes and bounds as follows:

Beginning at the meander corner of sections 26 and 27 on the 1873 left bank of the North Fork of the Red River, identical with the southwest corner of lot 6;

Thence, along the 1873 meander line of the left bank of the North Fork of the Red River, N. 43 degrees 45' E., 29.00 chains;

Thence, N. 54 degrees 30' E., 13.693 chains to the northeast corner of lot 4;

Thence, S. 30 degrees 00' E., 19.50 chains to a proportionate point on the 1979 left bank of the North Fork of the Red River;

Thence, S. 45 degrees 00' E., perpendicular to the medial line of the North Fork of the Red River, 1.125 chains, to the medial line;

Thence, along the medial line, S. 45 degrees 00' W., 6.80 chains;

Thence, S. 51 degrees 00' W., 4.50 chains;

Thence, S. 45 degrees 00' W., 11.45 chains;

Thence, S. 41 degrees 23' W., 11.53 chains;

Thence, S. 40 degrees 00' W., 7.85 chains;

Thence, S. 63 degrees 00' W., 4.40 chains;

Thence, S. 70 degrees 00' W., 4.00 chains, to a point;

Thence, N. 20 degrees 00' W., perpendicular to the medial line of the North Fork of the Red River, 1.00 chain, to a proportionate point on the 1979 left bank;

Thence, N. 12 degrees 09' W., 22.106 chains, to the point of beginning, containing 100.88 acres, more or less, in T. 10 N., R. 25 W., Indian meridian, Southwest New Liberty Field, Beckham County, Oklahoma.

Thereafter, effective August 1, 1980, BLM issued oil and gas lease NM 40776 (OK) to Deck for parcel 1, and lease NM 40788 (OK) to Deck for parcel 14. Inadvertently, the land description in lease NM 40788 (OK) cited the 11th call of the metes and bounds description as "S. 70 degrees 00' W., 40.00 chains" instead of "S. 70 degrees 00' W., 4.00 chains." The acreage of the metes and bounds area was listed as 144.58 acres, instead of 100.88 acres, as shown in the sale notice. The lease set forth correctly the total acreage as 144.58 in the appropriate place.

By decision of August 1, 1980, BLM corrected the erroneous description in the lease, changing the distance from "40.00 chains" to "4.00 chains," and correcting the area of the metes and bounds description to read "100.58 acres." A corrected description was included with the decision, which further stated that all other conditions within the leasehold remained unchanged.

Each competitive lease was subject to payment of annual rental at the rate of \$2 for each acre or fraction thereof. 43 CFR 3103.3-2(b)(3). Thus, the annual rental for lease NM 40776 (OK) was \$80, and for lease NM 40788 (OK) was \$290.

Under the terms of the leases, set out in article 2(e), payment of rentals shall be made to the proper office of BLM unless otherwise directed by the Secretary of the Interior. Further, if there is no well on the leased land capable of producing oil or gas in paying quantities, the failure to pay rental on or before the anniversary date of the lease shall automatically terminate the lease by operation of law. 30 U.S.C. § 188(b) (1976).

Effective September 1, 1980, BLM approved assignment of 25 percent of each lease, NM 40776 (OK) and NM 40788 (OK), to Home Stake Oil and Gas Company, and 25 percent of each lease to Home Stake Royalty Corporation.

Rental for each lease was due on or before August 1, 1981. Payment of the \$80 for the rental for NM 40776 (OK) was received by BLM August 10, 1981; payment of \$289.16 for lease NM 40778 (OK) was received August 12, 1981. As these payments were late, BLM considered the leases terminated under 30 U.S.C. § 188(b) (1976), and directed refund of the tendered payments by United States Treasury checks. Check No. 67699594 was issued November 19, 1981, for \$289.16, for lease NM 40788 (OK), and check No. 17977553 was issued December 17, 1981, for \$80, for lease NM 40776 (OK).

A "Notice of Termination" was issued for lease NM 40776 (OK), but no such notice was issued for lease NM 40788 (OK). Deck did not respond to the

Notice for NM 40776 (OK), nor did it inquire as to the reason for issuance of the Treasury checks for refund of the rental payment.

On July 21, 1982, Deck submitted payments of \$80 for NM 40776 (OK), and \$290 for NM 40788 (OK). Each check was returned to Deck, with advice that each lease had terminated August 1, 1981, pursuant to P.L. 555 (30 U.S.C. § 188(b) (1976)).

Thereafter, Deck petitioned for reinstatement of each lease. BLM, by decision of October 8, 1982, denied both petitions for reinstatement, whereupon Deck appealed.

Deck submitted the following in its statement of reasons for appeal:

Statement of Facts

At the competitive oil and gas lease sale held on May 20, 1980, in the New Mexico office of the Bureau of Land Management (BLM), Deck Oil Company (Deck) was declared the high bidder for Parcel No. 1, Dobby Field NM 40776 (Okla.) and Parcel No. 14, Southwest New Liberty Field. The bonus bids received were \$6,000.00 for Parcel No. 1 and \$108,435.00 for Parcel No. 14, NM 40788 (Okla.)

Both leases were issued effective August 1, 1980, for a period of five (5) years and so long thereafter as oil or gas is produced in paying quantities; one-fifth (1/5) of the bonus having been deposited with the BLM at the time of the bid. The balance and advance rental of \$2.00 per acre (\$290.00) was paid for lease NM 40788 in the amounts of \$87,038.00 which was an overpayment of the balance and the advance rental by \$14.86.

On August 1, 1980, the effective date of the leases, Deck was informed that the BLM had misdescribed the amount of land in Parcel No. 14, NM 40788 by approximately 40 acres which changed the amount of land Deck had leased from 144.58 acres to 100.88 acres.

On August 10, 1981, the BLM received Deck's rental payment check on NM 40776 and on August 12, 1981, received Deck's check for rentals on NM 40788. The due date for these rentals was August 1st. Subsequently, the BLM terminated both leases and refused Deck's request for reinstatement.

Proposition I It is manifestly unjust for the BLM to terminate NM 40788 under the theory of late payment.

Deck made a bid on lease NM 40788 under the assumption the lease contained 144.58 acres. It figured its bid on the basis of \$750.00 per acre. This is clear by its submittal of \$290.00 for payment of rentals (at \$2.00 per acre) which was incorporated in the payment of the balance of the bonus.

Therefore, Deck overpaid the rental by \$90.00 alone. Further, since no refund by the BLM was made on the misdescribed land; Deck overpaid \$33,600 for this lease. While it is conceded that the nature of land lease requires a certain amount of inexactitude to take care of accretion and other natural changes on tracts of land, this error in the description of the land was due completely to the negligence of the BLM.

It is manifestly unjust on one hand to say that Deck has no right to recover the overpayment of the \$33,600.00 and at the same time terminate the lease for late payment of \$201.76 (100.88 acres at \$2.00 per acre)[.]

In addition even if the \$33,600 is not credited to the payment of rentals, since Deck overpaid the advance rentals originally by \$90.00 and an additional \$14.86 was also overpaid at the time of the payment for the bonus balance, Deck should have been credited \$104.86 for advance rentals.

The BLM should not therefore have automatically terminated the lease, but instead given Deck Notice of Deficiency as required by 30 U.S.C. 188(b).

Proposition II The late payment of rentals was within twenty days and justifiable and therefore leases NM 40776 and 40788 should be reinstated.

The late payments were received within 12 days of the due date and were late for the reason that the lease analyst for Deck read Form 9-614-A wherein it referenced "last day of the month" as due date for royalty payment. It was discovered that this was not a BLM form but a U.S. Geological Survey form. Therefore, the payment was justified as due to clerical error.

Proposition III "Notice of Termination" was not issued for Lease NM 40788 until September 15, 1982 to the prejudice of Deck.

The failure to send "Notice of Termination" as required by 43 CFR 3108.2-1(c)(1) severely prejudiced Deck's ability to either recover the overpayment for the lease or to show that the overpayment should have been credited to rentals for subsequent years.

SUMMARY

Deck desires that both leases be reinstated for the reasons that it paid \$33,600.00 too much for lease NM 40788 due to BLM's misdescribing the land; it overpaid the first year's rental by \$104.86 which was not credited as advance payment of rentals; Deck's check for subsequent rentals (if in fact owed) were received by the BLM within twelve (12) days of the due date and were not due to lack of due diligence and were justified.

If the above contentions are not well taken, Deck makes demand for the \$108,435.00 it paid under the belief that it was to receive 144.58 acres which the BLM material misrepresented as existing in Parcel 14, NM 40788.

BLM, through counsel, submitted this reply:

ARGUMENT

DECK'S LEASES ARE NOT ENTITLED TO REINSTATEMENT SINCE ITS FAILURE TO PAY THE RENTAL ON TIME WAS NOT JUSTIFIABLE OR EXCUSED BY A REASONABLY DILIGENT EFFORT TO PAY.

Discussion

The Board has said many times that:

An oil and gas lease on which there is no well capable of producing oil and gas in paying quantities automatically terminates if the lessee fails to pay the annual rental on or before the anniversary date of the lease. 30 U.S.C. § 188(b) (1976); 43 CFR 3108.2-1(a). A terminated lease can be reinstated only if, among other requirements, the lessee shows that the failure to pay on time was either justifiable or not due to lack of reasonable diligence. 30 U.S.C. § 188(c) (1976); 43 CFR 3108.2-1(c).

E.g., Jeannette L. Fenwick, 52 IBLA 250, 252 (1981).

As the Bureau's decision states, these leases terminated by operation of law because the rent was not paid on time. Since the correct lease payment was made within 20 days from the anniversary date, the leases are eligible for reinstatement if the other requirements are met; i.e., either the lessee exercised "reasonable" diligence in making the payment, or if the failure to do so was "justifiable." This lease does not qualify for reinstatement on either ground.

"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 mail. 43 CFR 3108.2-1(c)(2). E.g., Jeannette L. Fenwick, supra, 52 IBLA at 252. There is no allegation in this case that the payment was made before the lease was to expire. For this reason, the lease may not be reinstated under the reasonable diligence standard.

The statement of reasons does raise the issue whether the failure to pay the rental on time was justifiable. A lessee's failure to pay the annual rental on time is justifiable if it is caused by circumstances outside the control of the lessee and occurs in close proximity to the rental payment. E.g., Hubert W. Scudder, 35 IBLA 58, 59 (1978). Negligence, forgetfulness, or inadvertence do not justify failure to pay on time, since they

are events within the lessee's control, Jan R. Christensen, 15 IBLA 72, 75 (1974). ^{1/} The Board has held that companies "cannot hide behind the bulk and complexity of their organizations so as to make 'justifiable' for them actions which would not be held to be justifiable for individual lessees." Monturah Co., 10 IBLA 347, 348 (1973), dismissed without prejudice, sub nom. Pashayan v. Morton, Civ. No. F-74-5-Civ. (E.D. Cal. 1974).

Here, Deck admits in its statement of reasons that the failure to pay the rental on time was caused by a clerical error caused by an employee looking at the wrong payment form. Since the error was caused by the lessee's employee and was caused by events solely within the lessee's control, the failure to pay the rental on time is not justifiable. *E.g.*, David E. Cooley, Jr., 62 IBLA 87, 89 (1982); Nevada Western Oil Co., 30 IBLA 379 (1977).

The lessee also claims as one basis for reinstatement of NM 40788 (OK), that it overpaid the bonus bid on that lease by \$33,600. The overpayment, the lessee alleges, resulted from the Bureau incorrectly stating the total acreage in the lease. The lessee is, however, wrong in this claim. The acreage in NM 40788 (OK) is and always has been 144.58 acres. The lease issued to Deck contained an error in the acreage description of the metes and bounds portion of the lease. Despite this error, the lease did show the correct total lease acreage which corresponds to the acreage shown in the notice of lease sale. The error in this description played no role whatsoever in the late rental payment and has no relevance to the question of reinstatement either from a legal or equitable viewpoint.

Summary

For the reasons explained in this reply, the appeal should be dismissed.

^{1/} The value of a lease or the amount of money expended upon the lease has no bearing on the issue of reinstatement. Overthrust Oil and Gas Corp., 52 IBLA 119, 123 n.1 (1981).

At the outset, we must emphasize that the error in the metes and bounds description in lease NM 40788 (OK) did not change the acreage in the lease. As the notice of sale indicated, parcel 14 consisted of three surveyed lots containing 43.70 acres, and an unsurveyed tract containing 100.88 acres, for a total of 144.58 acres. That is the area Deck bid for and that is the area included in the lease. The error in the 11th call and the inadvertent indication that the tract described by metes and bounds contained 144.58 acres as shown on the lease were corrected by the decision of August 1, 1980. That decision corrected only the two errors and did not reduce the leased area to 100.88 acres. Deck did not overpay its bid per acre by \$33,600, as it states. Deck bid \$750 per acre for 144.58 acres, or a total of \$108,435, which is

exactly the amount paid by Deck in this case. Similarly, Deck did not overpay the first year's rental as the 144.58 acres require an annual rental payment of \$290, being computed at the rate of \$2 per acre or fraction thereof. 43 CFR 3103.3-2(b)(3).

[1] Deck misconstrues the operation of 30 U.S.C. § 188(b) (1976). BLM does not terminate the lease for nonpayment of rental. The statute provides that if there is no well on the leasehold capable of producing oil or gas in paying quantities, and the annual rental is not paid on or before the anniversary date of the lease, the lease terminates automatically. Tesoro Petroleum Corp., 65 IBLA 99 (1982); Liberty Oil & Gas Corp., 64 IBLA 277 (1982); Alminex, U.S.A., Inc., 64 IBLA 274 (1982); I. W. Lovelady, 64 IBLA 123 (1982); Sun Oil Co., 63 IBLA 26 (1982); Grace Petroleum Corp., 62 IBLA 180 (1982); Southern Union Co., 60 IBLA 181 (1981); Petrolero Corp., 60 IBLA 21 (1981); Dome Petroleum Corp., 59 IBLA 370, 88 I.D. 1012 (1981); International Resource Enterprises, Inc., 55 IBLA 386 (1981); Overthrust Oil and Gas Corp., *supra*.

Deck's argument that the late rental payments were justifiable because they were within 20 days of the due date and inadvertently because of a clerical error they were filed with Geological Survey Form 9-614-A, which called for payment by the "last day of the month" for a royalty payment cannot be sustained. Eligibility for reinstatement of an oil and gas lease terminated for failure to pay the annual rental on or before the anniversary date of the lease is contingent upon payment of the full amount of the rental within 20 days of the due date. 30 U.S.C. § 188(c) (1976); 43 CFR 3108.2-1(c). Since lease NM-40788 (OK) required an annual rental payment of \$290 and appellant only submitted \$289.16, the lease was not eligible for reinstatement. Deck's contention that failure to send the "Notice of Termination" impeded its opportunity to recover the overpayment for the lease or to show that the overpayment should have been credited to rental for subsequent years has no merit. As discussed above, Deck did not make any overpayment of the bonus payment for the lease or of the first year's rental.

[2] The Board has consistently held that failure to mail a rental payment for an oil and gas lease sufficiently before the anniversary date to account for normal delays in collection, transmittal, and delivery of the mail does not constitute reasonable diligence. Elizabeth A. Hanson, 65 IBLA 204 (1982); Trend Resources, Ltd., 64 IBLA 383 (1982); Liberty Oil & Gas Corp., *supra*; Apostolos Paliombeis, 64 IBLA 119 (1982); Thomas H. Wilson, 61 IBLA 287 (1982); Helen T. Ayres, 61 IBLA 71 (1981); Ruth Eloise Brown, 60 IBLA 328 (1981); Max W. Young, 60 IBLA 224 (1981); Andrew H. Nelson, 58 IBLA 220 (1981); Russell D. Brown, 56 IBLA 345 (1981); Jeannette L. Fenwick, *supra*; Elizabeth A. Christensen, 52 IBLA 113 (1981).

[3] Appellant's argument that a clerical error induced by misreading a Geological Survey form as a BLM form cannot be sustained as justification for the late payments. The Board has held that for a failure to pay rental timely to be justifiable, the late payment must be caused by factors outside of the lessee's control, which were the proximate cause of the failure. Breakdowns in lessee's procedures for handling rental payments resulting from internal changes in lessee's operations do not establish a justification for

late rental payment. Southern Union Co., *supra*. The fact that the employee responsible for submitting rental payments is overburdened with work will not justify reinstatement of a lease. International Resource Enterprises, Inc., *supra*. Instances of inadvertence, ignorance of regulations, and similar occurrences do not excuse a failure to exercise due diligence and justify reinstatement. Martin Mattler, 53 IBLA 323, 88 I.D. 420 (1981). A number of factors including appellant's inadvertence, negligence, or lack of awareness of lease requirements which combined to cause the late payment of rental do not justify failure to make timely payment of the rental. Placid Oil Co., 38 IBLA 115 (1978). Negligence of an employee to make timely payments of rental does not relieve the employer from his responsibility to make timely payment. Ram Petroleums, Inc., 37 IBLA 184 (1978), *aff'd*, 658 F.2d 1349 (9th Cir. 1981); Ramoco, Inc. v. Andrus, 649 F.2d 814 (10th Cir. 1981). Inexperience or lack of knowledge of an employee is not a justifiable reason for a late payment. Nevada Western Oil Co., *supra*. A number of factors caused by inadvertence or negligence of appellant's employees which combined to cause late payment of rental do not justify the failure to make timely payment. Phillips Petroleum Co., 29 IBLA 114 (1977); Mono Power Co., 28 IBLA 289 (1976).

It has not been shown by appellant that the failure to make the annual rental payments due August 1, 1981, for competitive oil and gas leases NM 40776 (OK) and NM 40788 (OK) was either justifiable or not due to lack of reasonable diligence. BLM correctly denied the petitions for reinstatement.

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:

C. Randall Grant, Jr.
Administrative Judge

Will A. Irwin
Administrative Judge

