

KAISER STEEL CORP.

IBLA 82-962

Decided October 27, 1983

Appeal from decision of the Utah State Office, Bureau of Land Management, overruling objections in part and readjusting coal lease Utah-039706.

Reversed and remanded.

1. Coal Leases and Permits: Leases -- Mineral Leasing Act: Generally

Where a notice of intent to readjust a coal lease is given to a lessee prior to expiration of the period allowed for readjustment, such notice satisfies the statutory requirements, and BLM may subsequently provide the specific terms or conditions for readjustment.

2. Coal Leases and Permits: Leases -- Mineral Leasing Act: Generally

Coal leases issued prior to enactment of the Federal Coal Leasing Amendments Act of 1976 are, at the time of readjustment, subject to the requirements of that Act and regulations promulgated pursuant to that Act.

3. Coal Leases and Permits: Leases -- Mineral Leasing Act: Generally

When notice of intent to readjust a coal lease is given to a lessee prior to expiration of the period allowed for readjustment, and such notice prescribes a specific date when readjusted lease terms shall be transmitted to the lessee, BLM's subsequent failure to transmit the readjusted lease terms within the time specified in the notice constitutes a waiver of the right to readjust the lease.

APPEARANCES: M. William Tilden, Esq., San Bernardino, California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Kaiser Steel Corporation has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated May 11, 1982, which readjusted certain terms and conditions of its coal lease Utah-039706 and overruled its objections in part to the lease readjustment.

The record shows that coal lease Utah-039706 was originally issued July 1, 1960, to the predecessors in interest of the present lessee, Kaiser Steel Corporation (Kaiser). 1/ The lease was issued under the authority of the Mineral Leasing Act of 1920, 41 Stat. 437, as amended, 30 U.S.C. § 207 (1976). 2/ Pursuant to the statute and the express terms of section 3(d) of the lease, BLM retained the right to readjust and fix royalties and other

1/ The original lessee for this lease was Heiner Coal Company of Salt Lake City, Utah, who assigned its interest in the lease to Pacific States Steel Corporation of Union City, California, effective Dec. 1, 1960. Kaiser later acquired the lease from Pacific States effective May 1, 1965.

2/ When this lease was issued, section 7 of the Mineral Leasing Act provided:

"Leases shall be for indeterminate periods upon condition * * * that at the end of each twenty-year period succeeding the date of the lease such readjustment of terms and conditions may be made as the Secretary of the Interior may determine, unless otherwise provided by law at the time of the expiration of such periods."

Section 7 of the Mineral Leasing Act of 1920 was amended by section 6 of the Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. § 207(a) (1976), to read in pertinent part as follows: "Such rentals and royalties and other terms and conditions of the lease will be subject to readjustment at the end of its primary term of twenty years and at the end of each ten-year period thereafter if the lease is extended."

terms of the lease at the end of 20 years from the date of issuance, i.e., as of July 1, 1980.

On February 22, 1980, over 4 months prior to the end of the 20-year period, Kaiser received a notice from BLM of the proposed readjustment of lease terms and conditions under 43 CFR 3451. The notice specifically stated: "A notice containing the readjusted terms and conditions will be forwarded to you on or before September 1, 1980. The readjustment will become effective 60 days after your receipt of that notice."

On June 11, 1980, BLM issued a second notice of readjustment stating: "In accordance with the regulations under 43 CFR 3451.1(d)(2), a notice containing the readjusted terms and conditions will be forwarded to you no later than July 1, 1981."

BLM did not issue the notice of the proposed readjusted lease terms until September 22, 1981. The notice provided a 60-day period for the lessee to file objections to the proposed readjustment terms. Kaiser timely filed its objections contending that the Government had no authority to readjust the lease at that time and filed specific comments and objections to various lease provisions. BLM subsequently issued its decision of May 11, 1982, readjusting the lease effective December 1, 1981, and overruling many of Kaiser's objections.

Kaiser has appealed to this Board contending that 30 U.S.C. § 207 (1976) permits readjustment of the lease only at the end of each 20-year period the

lease is in existence, citing Rosebud Coal Sales Co. v. Andrus, 667 F.2d 949 (10th Cir. 1982), and Kaiser Steel Corp., 63 IBLA 363 (1982). It is Kaiser's position that the BLM notice of intent to readjust the lease terms received before the end of the 20-year period is insufficient because 43 CFR 3451.1(d), which purportedly allows for the readjustment of leases up to 2 years after the 20-year anniversary date, does not apply to this lease since it was not in effect at the time the lease was entered into and was not made a part thereof.

[1] First, we must point out that contrary to appellant's interpretation of the law, failure of BLM to finally readjust the coal lease terms prior to the 20-year anniversary date of the lease does not preclude readjustment. In Rosebud Coal Sales Co. v. Andrus, supra, the Tenth Circuit held that the time for giving notice of a readjustment of the provisions of a coal lease issued pursuant to 30 U.S.C. § 207 (1976), was to be "when each twenty-year period expired, on that date and not at a later time." Id. at 951.

3/ Following this decision, this Board overruled its prior case law to the contrary, California Portland Cement Co., 40 IBLA 339 (1979), and held that in the absence of notice of readjustment prior to the end of the 20-year lease term from BLM to the lessee, BLM had no authority to belatedly readjust

3/ Indeed, in rejecting the Department's argument that failure to adjust the lease or give notice of an intent to adjust the lease prior to the 20-year expiration date did not bar subsequent readjustment the circuit court quoted with approval the finding of the district court that "[t]he list of coal lease readjustments occurring from January 1, 1960, to August 4, 1976, indicates that the majority of the leases were readjusted within days of the readjustment date and a substantial number received readjustment notices before the readjustment date expired." Id. at 952 (emphasis supplied). The court did not purport to hold that the actual readjustment must occur prior to or on the readjustment date.

the terms of the coal lease. Kaiser Steel Corp., *supra*. The predicate of the Board's action, however, was the failure of BLM to notify the lessee of the intended readjustment prior to the end of the 20-year term, not the failure to actually readjust the lease within that time frame.

In Lone Star Steel Co., 65 IBLA 147 (1982), the Board delineated this distinction. In Lone Star, notice of intent to readjust was given prior to expiration of the 20-year period, yet BLM's decision on the lessee's objections did not issue until after that date. The Board held that the coal lease was properly readjusted consistent with the Tenth Circuit's decision in Rosebud, *supra*. Most recently, we have reiterated that, where notice of intent to readjust a coal lease is given to a lessee prior to expiration of the 20-year period, such notice satisfies the statutory requirements for timely readjustment, and BLM may subsequently provide the specific terms or conditions for readjustment. Coastal States Energy Co., 70 IBLA 386 (1983), appeal filed, Coastal States Energy Co. v. Watt, No. 83-0730J (C.D. Utah filed June 3, 1983). 4/

4/ The Departmental regulations have been amended to reflect that notice of intent to readjust prior to expiration is sufficient. As stated in the Federal Register announcing that final rulemaking:

"The recent decision of the Tenth Circuit Court of Appeals in the Rosebud Coal Sales Co. v. Andrus (No. 80-1842, Jan. 8, 1982) case is currently being reviewed in the Bureau of Land Management. The United States has decided not to appeal the decision. The court's decision was rendered after publication of the proposed rulemaking. The language of § 3451.1(b) has been amended in the final rulemaking to reflect the court's decision that Federal coal leases may not be readjusted unless actual notice is given of the readjustment, or of the intent to readjust, prior to the twenty-year anniversary date of the lease." 47 FR 33129 (July 30, 1982).

[2] Appellant's theory as to the inapplicability of 43 CFR 3451 to its lease is also without merit. We have specifically considered and rejected the argument that the general lease provisions of an older coal lease insulate the lessee from the current regulations promulgated pursuant to the Federal Coal Leasing Amendments Act of 1976 (FCLAA). In Coastal States Energy Co., supra at 390-91, we stated:

That general lease language cannot serve to negate the statutory authority of the Secretary to readjust lease terms and conditions. Regulations in effect at the time of readjustment are applicable to leases subject to readjustment. Coastal would have us believe that only regulations in effect at the time its leases were issued govern the readjustment process. This is clearly incorrect. Just as the statute authorizes readjustments of terms and conditions, so too may the procedures for implementation be adjusted. Those procedures were revised pursuant to FCLAA. We find no ban to applying those regulations to readjustment of Coastal's leases.

Accordingly, the terms of 43 CFR 3451.1(c)(1) and (2) which allow for readjustment up to 2 years after the 20-year anniversary date with proper notice of proposed readjustment prior to that date are applicable and control the disposition of this case.

[3] In this situation it is clear that BLM gave sufficient notice within the requirements of 43 CFR 3451.1(c)(1) prior to the lease anniversary date with its notice of February 22, 1980. However, appellant contends that by failing to meet its own time limits set forth in this notice, as well as the subsequent one issued on June 11, 1980, BLM has waived its right to readjust the lease. We agree. The applicable regulation, 43 CFR 3451.(c)(2), provides:

In any notification that a lease will be readjusted under this subsection, the authorized officer shall prescribe when the notice of readjusted lease terms shall be transmitted to the lessee. This time shall be as soon as possible after notice that the lease shall be readjusted, but shall not be longer than 2 years after such notice. Failure to transmit the notice of readjusted lease terms in the specified period shall constitute a waiver of the right to readjust, unless the delay is caused by events beyond the control of the Department. [Emphasis added.]

This regulation gives BLM up to 2 years from initial notification to transmit the details of the readjusted lease terms to the lessee. Under this regulation, BLM has latitude to shorten that period by setting an earlier date than the maximum 2 years provided by the regulation. BLM did this by first setting a date of September 1, 1980, and next setting a date "no later" than July 1, 1981. Once a time limit is set by BLM in its notice, readjustment terms must be communicated to the lessee within that period, absent a delay caused by events beyond the Department's control. Thus 43 CFR 3451.2(a) clearly sets forth: "(a) If the notification that the lease will be readjusted did not contain the proposed readjusted lease terms, the authorized officer shall, within the time specified in the notice that the lease shall be readjusted, notify the lessee of the proposed readjusted lease terms." (Emphasis added.)

When BLM did not transmit the readjusted lease terms to appellant within its own "specified period," it failed to comply with the requirement of the regulations and waived its right to readjust the lease. ^{5/} The fact that BLM might have originally set a period of up to 2 years is irrelevant.

^{5/} Inasmuch as it is immaterial to the outcome of the instant appeal, we do not here decide whether BLM may extend the period contemplated in its initial notification by timely informing a lessee of its intent to extend such period of time.

BLM expressly chose to bind itself to a shorter timetable and must accept the consequences of its choice.

McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955).

The record does not reflect any unusual circumstances which could be termed "beyond the control of the Department" that may have caused the delay of the transmittal of the readjusted lease terms. Nor is there any evidence that BLM had interim correspondence with appellant concerning the reasons for its inability to meet its own deadline. Accordingly, BLM's decision to readjust coal lease Utah-039706 must be reversed.

Appellant also raised several objections to specific terms and conditions of the readjusted lease which we need not discuss since these issues are now moot in view of the disposition of the case.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is reversed and the case is remanded for action consistent herewith.

James L. Burski
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

