

ANR PRODUCTION CO.

IBLA 87-685

Decided May 22, 1989

Appeal from a decision of the Assistant Director for Program Review, Minerals Management Service, denying an appeal of interest assessments for late payments of oil and gas royalties. MMS-87-0075-OCS.

Affirmed.

1. Appeals: Generally--Oil and Gas Leases: Royalties: Interest--Rules of Practice: Appeals: Statement of Reasons

Where an MMS bill for collection demanding interest on late payments of royalties is challenged by the royalty payor in an appeal to the Director, MMS, solely on the basis that interest was assessed from an improper date, resulting in an overcharge, thereby acquiescing in MMS' authority to assess interest, the Board of Land Appeals, in a subsequent appeal of the Director's decision by that royalty payor, may decline to entertain arguments directed to MMS' authority to assess interest.

2. Oil and Gas Leases: Royalties: Interest

MMS is required by 30 CFR 218.54(a) and 30 CFR 218.150(c) to assess interest for late payment of royalties from the date the royalties were due. Arguments that interest should be assessed from the date the lessee was notified of the underpayment or from the date the lessee received payment from the purchaser of the products are properly rejected.

APPEARANCES: Hugh V. Schaefer, Esq., Donna J. Blanchet, Esq., Denver, Colorado, for appellant; Peter J. Schaumberg, Esq., Howard Chalker, Esq., and Geoffrey Heath, Esq., Office of the Solicitor, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

ANR Production Company (ANR) has appealed from an April 30, 1987, decision of the Assistant Director for Program Review, Minerals Management Service (MMS), denying an appeal of certain interest assessments for under-payment of royalties due for various Federal offshore oil and gas leases.

MMS issued bill for collection No. 05600020, dated July 17, 1986, requiring ANR to pay \$8,677.38 in interest charges for late payment of royalties. ANR appealed that bill, claiming that MMS had overcharged it by the amount of \$1,361.36, and requesting a refund of that amount. ANR outlined the basis for its appeal in a September 12, 1986, letter to MMS, as follows:

The overcharge of \$1,361.36 is due to the MMS incorrectly calculating interest on late royalty payments and "Flash Gas" by ANR from first production (e.g., 1/83 production, 2/83 report) until ANR's payment of MMS royalties * * *. Instead, interest should be calculated from ANR's receipt of said royalties from its purchaser (July 31, 1985) until December 31, 1985.

In his decision, the Assistant Director denied the appeal, stating:

The Appellant challenges \$1,361.36 of the \$8,677.38 billed because certain flash gas was the subject of a retroactive price adjustment with its purchaser resulting in additional royalty.

I cannot accept that argument. The problem the lessee encounters from its purchaser is not a burden that can be transferred to the Government, nor does it justify deferral of payment of a portion of the royalties beyond the established due date as required by lease terms, laws, and regulations.

ANR timely appealed the Assistant Director's decision to this Board.

In its statement of reasons (SOR), appellant argues that collection of late payment charges is inconsistent with the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. §§ 1701-1757 (1982), and the terms of the oil and gas leases; the retroactive late payment charges imposed by MMS are, in fact, penalties entitling ANR to certain procedural protections; and collection of late payment charges would be inequitable because the late payment charges were not assessed in accordance with MMS operating policy. Appellant concludes by requesting a refund of the entire amount assessed under bill for collection No. 05600020, \$8,677.38.

In its answer, MMS argues that FOGRMA provides express authority to assess late payment interest charges; FOGRMA does apply to appellant's leases; and assessment of interest in this case was not contrary to MMS operating policy. Finally, MMS asserts that because ANR failed to raise in its SOR the issue concerning the date from which calculation of interest should begin, that portion of its appeal should be dismissed.

In its reply to MMS' answer, ANR responds to the dismissal demand by arguing that its SOR, coupled with its letter of appeal, is sufficient to avoid dismissal. It also continues by addressing the issue of the appropriate date from which the interest payment should be calculated by arguing that interest should be assessed from the date it received notice that

additional royalties were due, or, in the alternative, from the date the royalties were received from the purchaser. Appellant again requests a refund of \$8,677.38. In its response, MMS argues that interest is properly calculated from the date the royalty was due.

[1] Initially, we must address the procedural history of this case. Following receipt of the bill for collection in this case, ANR paid the full amount of the bill under protest and filed a timely appeal of the bill in accordance with 30 CFR 290.3(a). However, in its appeal ANR did not challenge MMS' authority to collect interest charges on late royalty payments, nor did it deny liability for interest charges; it merely sought to limit its liability by objecting to \$1,361.36 of the total \$8,677.38 assessment, raising only the issue regarding the date from which interest should have been calculated and arguing that it should have been from a date other than that chosen by MMS. That was the only issue before the Assistant Director, and he determined that MMS had selected the proper date from which to compute interest, *i.e.*, the date from which royalty was due.

ANR, in its SOR, however, attempts to challenge anew the bill for collection, contending that MMS lacks authority to collect interest. It does not argue that interest was calculated from the wrong date. MMS responds by arguing: "ANR does not address the issue of whether interest should be assessed from the date that royalty payments were due or from the date that ANR received payment from its purchaser. This portion of ANR's appeal must be dismissed for failure to file a Statement of Reasons" (Answer at 5).

MMS is correct that ANR failed in its SOR to confront the issue disposed of in the Assistant Director's decision. However, such a failure does not warrant dismissal of "[t]his portion of ANR's appeal," since, arguably, it was not, in fact, a part of ANR's appeal. ANR's statement constituted a generic challenge to MMS' authority to assess interest, yet it had acquiesced in that authority when, in its appeal to the Assistant Director, it concerned itself only with the date from which interest could be assessed. Failure to point out error in the Assistant Director's decision actually subjected ANR's entire appeal to summary dismissal. It is well established that an appeal in which the SOR does not point out how the appealed decision is in error may be dismissed. Mullins Coal Co. v. Office of Surface Mining Reclamation & Enforcement, 96 IBLA 333, 335 (1987); Geneva Barry, 54 IBLA 48 (1981). It is also clear, however, that such dismissal is not mandatory. Mullins Coal Co. v. Office of Surface Mining Reclamation & Enforcement, *supra* at 335; Geneva Barry, *supra* at 51. In this case, we decline to dismiss the entire appeal because ANR, in its reply brief, raised objections to the Assistant Director's resolution of the issue regarding the date from which interest should have been calculated. That issue, however, is the only one properly before the Board, and we decline to entertain the others.

Even if we were to examine those arguments raised by ANR in its SOR, we would find them unpersuasive, just as we did in our recent decision in Coastal Oil & Gas Corp. (Coastal), 108 IBLA 62 (1989). Specifically, in

that case we determined that FOGPMA does authorize the collection of late payment interest charges for leases issued prior to its enactment, unless collection would be contrary to express and specific provisions of those leases. ^{1/} In Coastal, we rejected the argument concerning the procedural safeguards to be applied when interest is assessed on the ground that a civil penalty is distinguishable from an interest charge, and we also dismissed the allegation that the assessment was contrary to MMS operating policy. ^{2/}

[2] We turn to the issue for consideration: whether, as appellant argues, MMS erred by calculating interest from the date the royalty was due. We find it did not. The regulation of general applicability, 30 CFR 218.54(a), provides, "An interest charge shall be assessed on unpaid and underpaid amounts from the date the amounts are due." The regulation governing offshore leases provides, "Late payment charges are assessed on any late payment or underpayment from the date that the payment was due * * *." 30 CFR 218.150(c).

In support of its first argument, appellant refers to Atlantic Richfield Co., 21 IBLA 98, 82 I.D. 316 (1975), wherein interest was assessed as an equitable remedy and was calculated only from the date upon which the lessee was notified of the underpayment. In defense of its alternative opinion that interest should be assessed from the date appellant received the royalties from its purchaser, ANR alleges it is inequitable to calculate interest for a time period that the lessee had not yet been paid by its purchaser. We reject both of these positions. Equitable principles apply when interest is assessed as an equitable remedy, not when interest is assessed pursuant to a statute or regulation. See Atlantic Richfield Co., 21 IBLA at 107, 82 I.D. at 320; Full Circle, Inc., 35 IBLA 325, 340-41, 85 I.D. 207, 215 (1978). Consequently, the date from which interest was assessed in Atlantic Richfield Co. is irrelevant in the present case, where MMS is instructed by 30 CFR 218.54(a) and 30 CFR 218.150(c) to assess interest from the date the royalty was due. Those regulations do not say that interest is due only from the date payment is received from the purchaser or only from the date of notification of royalty liability. Moreover, as MMS points out, adoption of the position that interest does not accrue until notification could encourage the underpayment of royalties, in that a payor could purposefully underpay and await notification, all the time enjoying the use of the underpaid amount, and incur little or no interest liability.

^{1/} ANR does not show that collection of interest for late payment would be contrary to any provision of its leases.

^{2/} We did set aside one assessment because it did not appear to be consistent with MMS policy. Id. at 67-68. In this case, its assessment is consistent.

Accordingly, 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.

Bruce R. Harris
Administrative Judge

I concur:

C. Randall Grant, Jr.
Administrative Judge