

PLATEAU MINING COMPANY

IBLA 99-169

Decided January 23, 2002

Appeal from a decision of the Associate Director for Policy and Management Improvement, Minerals Management Service, denying an appeal from a demand for payment of underpaid royalties. MMS-95-0570-MIN.

Affirmed.

1. Coal Leases and Permits: Readjustment–Coal Leases and Permits: Royalties–Mineral Leasing Act: Royalties

Under 30 CFR 206.256(d), coal that is produced before the effective date of the readjustment of a federal coal lease but sold more than 30 days after that date is properly subject to the royalty rate in the readjusted lease.

APPEARANCES: Brian E. McGee, Esq., Denver, Colorado, for appellant; Janet H. Lin, Esq., and Geoffrey Heath, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Federal coal lease U-13097 was issued to Plateau Mining Company (Plateau) on May 1, 1974. Section 2(c) of the lease provided that the royalty for coal mined by underground mining methods was “4.0 percent of the gross value of the coal produced but not less than: 15 cents per ton \* \* \* for the first 10 years [and] 17½ cents per ton \* \* \* for the second 10 years.”

On December 30, 1993, the Utah State Office, Bureau of Land Management (BLM), issued a decision re-adjusting Plateau’s lease effective May 1, 1994, pursuant to 43 CFR 3451.1(a)(1) and (2). Section 3451.1(a)(2) provides that “[a]ny lease subject to readjustment which contains a royalty rate less than the minimum royalty prescribed in § 3473.3-2 of this title shall be readjusted to conform to the minimum prescribed in that section.” Section 3473.3-2(a)(2) requires “payment of a royalty of 8 percent of the value of coal removed from an underground mine.” Accordingly, section 2(a) of the re-adjusted lease provided a royalty rate of 8% “of the value of coal produced by underground methods”; no minimum cents-per-ton provision was included.

When Plateau submitted its royalty report to the Minerals Management Service (MMS) for the month of June 1994, it calculated the royalty due at the 4% rate on the grounds that the coal had been produced and stockpiled before May 1, 1994.

In August 1995 the MMS Royalty Management Program sent Plateau a bill for \$235,064.11, the difference between 4% and 8% of the sales value of the coal sold in June 1994, on the grounds that the coal was sold after June 1, 1994, and Plateau had underpaid royalties for that month. MMS ultimately decided that coal sold in May 1994 was subject to the 4% rate pursuant to the first sentence of 30 CFR 206.256(d), which provides:

When a coal lease is readjusted pursuant to 43 CFR part 3400 and the royalty valuation method changes from a cents-per-ton basis to an ad valorem basis, coal which is produced prior to the effective date of readjustment and sold or used within 30 days of the effective date of readjustment shall be valued pursuant to this section.

That regulation, 30 CFR 206.256, provides valuation standards for cents-per-ton leases.

Plateau appealed to the Director of MMS. The November 25, 1998, Decision of the Associate Director for Policy and Management Improvement denied Plateau's appeal on the basis of the second sentence of 30 CFR 206.256(d), which provides:

All coal that is not used, sold, or otherwise finally disposed of within 30 days after the effective date of the readjustment shall be valued pursuant to the provisions of Part 206.257 of this subpart and royalties shall be paid at the royalty rate specified in the readjusted lease.

(Decision in MMS-95-0570-MIN at 4.) That regulation, 30 CFR 206.257, provides valuation standards for ad valorem leases.

Plateau has appealed to us. Plateau argues that its obligation to pay royalty is incurred (or accrues or adheres) when the coal is removed, in accordance with 43 CFR 3473.3-2(a)(2), and therefore MMS may not impose an 8% royalty rate on coal that Plateau removed before May 1, 1994. Plateau notes that 43 CFR 3473.3-2(a)(2) provides that a readjusted lease shall require payment of a royalty of 8 percent of the value of "coal removed" from an underground mine. (Emphasis supplied.) Plateau argues this regulation mandates "that the 'obligation' to pay production royalties adheres or is incurred **WHEN** the coal is removed, i.e., the production royalty in effect **WHEN** the coal is removed must be conclusively determined to be the rate upon which production royalty is payable. In turn, a 'readjusted' royalty is only contractually applicable to 'coal produced' after the readjustment effective date and cannot be assessed retroactively

against coal which was removed from the leased lands prior to the readjustment effective date.” (Statement of Reasons (SOR) at 13-14 (emphasis in original).)

Plateau also argues, citing 30 CFR 206.250(b), that 43 CFR 3473.3-2(a)(2) is consistent with the “coal produced” language of its lease, and that MMS did not have authority to establish a time when Plateau’s royalty obligation arises in its valuation regulations that is inconsistent with the BLM regulation and the language of its lease. (SOR 15-17, 21-23). 30 CFR 206.250(b) provides: “If the specific provisions of \* \* \* any coal lease subject to the requirements of this subpart are inconsistent with any regulations in this subpart then the \* \* \* lease provision \* \* \* shall govern to the extent of that inconsistency.”

Plateau argues in the alternative that although section 6 of the Federal Coal Leasing Act Amendments of 1976, 30 U.S.C. 207(a)(1994), authorized the Secretary to promulgate regulations defining “the value of coal,” MMS did not articulate and did not have a rational basis for changing the long-standing point at which the obligation to pay royalty on coal removed from leased lands arises when it promulgated the coal valuation regulations in 1989. It argues that, because there is no rational basis in the rulemaking record for adopting 30 CFR 206.255(c), which provides that the lessee shall pay royalty at a rate specified in the lease “at the time the coal is used, sold, or otherwise finally disposed of,” MMS violated the Administrative Procedure Act and, further, that MMS’s August 1995 bill “presumably based upon § 206.255(c) (1989) must be held to be arbitrary, capricious, and/or an abuse of discretion.” (SOR at 17-19). Plateau also argues that “[i]n the promulgation of 30 CFR 206.256(d) (1989), there is no discussion, factual showing, nor recited rationale in the 1987/1988 proposed rulemakings nor in the Preamble to the MMS 1989 Coal Product Valuation Regulations as to WHY any post-readjustment window is provided or WHY only a 30-day post-readjustment window was permitted for the sale of coal produced from the [1974 lease] prior to the effective date of readjustment,” and therefore MMS’s action was “arbitrary, capricious, and/or an abuse of discretion.” (SOR at 20-21 (emphasis in original).)

Plateau concludes that MMS’s action applying the 8% royalty rate to coal produced before May 1, 1994, must be vacated and remanded with instructions that the applicable royalty rate for all coal mined before that date is 4% of gross value. (SOR at 67-68).

[1] We cannot accept Plateau’s basic argument that MMS did not have authority to establish the point of royalty determination in its 1989 regulations. Section 6 of the Federal Coal Leasing Act Amendments of 1976 (FCLAA), 30 U.S.C. 207(a) (1994), provides that a “lease shall require payment of a royalty in such amount as the Secretary shall determine of not less than 12½ per centum of the value of coal as defined by regulation, except the Secretary may determine a lesser amount in the case of coal recovered by underground mining operations.” Making the transition from the cents-per-ton basis of valuation in section 7 of the Mineral Leasing Act of 1920, 30 USC § 207 (1970), with a period to make royalty payment (“not less than 5 cents per ton \* \* \* due and payable at the end of each

third month succeeding that of the extraction of the coal”), to the ad valorem basis enacted in section 6 of FCLAA necessarily entailed establishing a time or point when the coal would be valued. Nothing in FCLAA or its legislative history prevented the Secretary, acting through MMS, from determining that the time the coal is valued is when the coal is used, sold, or otherwise disposed of, even if that constituted a change from the Department’s practice under section 7 of the Mineral Leasing Act of 1920. Further, 30 U.S.C. § 189 (1994) provides general authority for the Secretary “to prescribe necessary and proper rules and regulations \* \* \* to carry out the purposes of” the Mineral Leasing Act of 1920, as amended by FCLAA.

The regulations in 30 CFR 206.255 and 206.256 speak directly to the facts of this case. “Coal produced and added to stockpiles or inventory does not require payment of royalty until such coal is later used, sold, or otherwise finally disposed of.” 30 CFR 206.255(b). The lessee “shall pay royalty at a rate specified in the lease at the time the coal is used, sold, or otherwise disposed of, unless otherwise provided for at § 206.256(d) of this subpart.” 30 CFR 206.255(c). This provision was not intended “to mean that royalty normally is due when coal is removed from a lease and transferred to a nearby stockpile prior to sale.” 54 FR 1492, 1509 (Jan. 13, 1989).

As set forth in 30 CFR 206.256(d) above, when a coal lease is readjusted and the valuation method changes from a cents-per-ton basis to an ad valorem basis — as occurred effective May 1, 1994, in this case — “coal which is produced prior to the effective date of readjustment and sold or used within 30 days of the effective date of readjustment shall be valued pursuant to” § 205.256. “All coal that is not used, sold, or otherwise finally disposed of within 30 days after the effective date of readjustment shall be valued pursuant to the provisions of §206.257 of this subpart, and royalties shall be paid at the royalty rate specified in the readjusted lease.” 30 CFR 206.256(d). We note that the comment on this regulation in proposed form that “[t]he royalty to be paid for coal depends on the actual date of coal severance (date of being mined)” was not accepted; instead, MMS explained: “The purpose of this regulation is to provide the lessee formal written policy regarding the imposition of new ad valorem royalty rates on previously mined coal inventories, which were in existence on the effective date of the lease readjustment.” 54 FR 1492, 1510 (Jan. 13, 1989).

We do not find MMS’s regulations inconsistent with the terms of FCLAA. The “coal recovered” language in FCLAA does not establish when the royalty obligation adheres; rather, it defines what coal is subject to royalty, i.e., coal that has been produced, mined, removed — in short, severed — as distinct from coal that has not been. Nor do we find MMS’s regulations inconsistent with the provisions of Plateau’s lease under 30 CFR 206.250(b). We are not persuaded that the “coal produced” language of the lease defined when the royalty obligation accrued, i.e., production or removal, as Plateau argues, as distinct from what coal the royalty obligation applied to.

To the extent not specifically addressed, Plateau's arguments have been considered and rejected.

Therefore, in accordance with the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the November 25, 1998, decision of the Associate Director for Policy and Management Improvement, MMS, is affirmed.

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Will A. Irwin  
Administrative Judge

I concur:

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David L. Hughes  
Administrative Judge