



INTERIOR BOARD OF INDIAN APPEALS

Racquet Drive Estates, Inc. v. Deputy Assistant Secretary -
Indian Affairs (Operations)

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United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

RACQUET DRIVE ESTATES, INC.

v.

DEPUTY ASSISTANT SECRETARY--INDIAN AFFAIRS (OPERATIONS)

IBIA 82-39-A

Decided May 24, 1983

Appeal from decision of Deputy Assistant Secretary--Indian Affairs (Operations) affirming cancellation of business lease PSL-225, Contract No. J53C1420-3552, in Palm Springs, California, for failure to complete construction of residences on the leased tract in violation of the lease terms.

Vacated and remanded.

1. Indian Lands: Leases and Permits: Revocation or Cancellation

The Secretary of the Interior has authority to cancel a lease of Indian trust land and to review administratively a decision of a subordinate official that such a lease should be canceled.

2. Indian lands: Leases and Permits: Revocation or Cancellation

Departmental regulations in 25 CFR Part 2 and 43 CFR Part 4, Subpart D, ensure that due process is accorded to all parties to a lease of Indian trust land before such a lease is canceled.

3. Indian Lands: Leases and Permits: Arbitration

In the absence of extenuating circumstances, the Board of Indian Appeals will uphold an arbitration clause in a lease involving Indian trust land.

4. Indian Lands: Leases and Permits: Arbitration--Indian lands: Leases and Permits: Revocation or Cancellation

Cancellation of a lease of Indian trust land is improper if arbitration procedures required by the lease have not been followed.

APPEARANCES: Erwin and Anderholt, Palm Desert, California, for appellant; Chedville L. Martin, Esq., Office of the Solicitor, Division of Indian Affairs, Washington, D.C., for appellee. Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE MUSKRAT

Background

On December 29, 1977, the Acting Sacramento Area Director, Bureau of Indian Affairs (Bureau, BIA), approved business lease PSL-225 between Ambuco Enterprises, Inc., as lessee, and Jeane Marie Chormicle Balzano (Kapp), Agua Caliente (Palm Springs) allottee PS-94, as lessor (Exh. 1). ^{1/} The Director, Palm Springs Office, BIA (Director), approved the substitution of Racquet

^{1/} All references to exhibit numbers refer to exhibits attached to appellant's June 29, 1981, brief submitted to the Deputy Assistant Secretary-Indian Affairs (Operations).

Drive Estates, Inc. (RDEI, appellant), as lessee on February 5, 1980. (Exh. 2).

Under the terms of the lease, RDEI leased approximately 20 contiguous acres in Palm Springs, California, for a period of 65 years. According to Article 4 of the lease, the lessee was to construct on the property a minimum of 55 single family residences, with a market value of approximately \$3 million, by December 29, 1980. Article 5 of the lease provided that the lessor was to receive rental payments of \$8,000 the first year of the lease, \$16,000 the second year, and \$24,000 per year every year thereafter. As RDEI sold its interest in the improved residential lots, the yearly rental payment would be proportionately reduced and the lessor would receive a rental payment according to a schedule of annual rent which was to provide not less than \$38 per month for each lot (Appellant's Brief at 3).

On July 17, 1980, RDEI wrote the Director explaining:

As you are aware, economic conditions during the first half of this year have severely impaired all development efforts throughout the country. While the developers of PSL-225 have been processing their development plans through the City of Palm Springs and have expended substantial sums on pre-development costs, the fact remains that economic conditions do not favor commencing construction at this time.

Accordingly, it is hereby requested, on behalf of Racquet Drive Estates, Inc., that the provisions of Article 4 of the subject lease be extended for an additional two year period within which time it is fully expected that the subject property will be developed as required.

Because no reply was received after more than a month, appellant again wrote the Director on August 18, 1980, repeating the request for an extension.

On August 20, 1980, the Director replied:

At this time we do not have a definitive response from the Lessor, but we can state that Lessor is not pleased with the prospect of delay in development.

As the lease is structured Lessor contemplates an increase in rentals when development is completed and sales commence. The ultimate increase at completion of sales is expected to be several thousand dollars per year with additional periodic rental adjustments based on inflation. As you can see a delay in completion of development is also a delay in realizing the full rental potential of the property. A two year delay in achieving full rental coupled with a similar delay in adjustment for inflation can result in a sizeable loss of income to Lessor. We suggest that Racquet Drive Estates Inc. amend its request for additional time to develop and offer either increased guaranteed minimum rental as amendments to Articles 5 and 17 of the lease or a one time cash payment to offset the rental loss Lessor would suffer by the delay in development to make the requested additional time more palatable to Lessor.

As soon as we receive your further consideration of the above we will communicate same to Lessor for her determination.

After a further exchange of correspondence, representatives of RDEI met with the Director to discuss the proposed extension and amendments to the lease. In accordance with the Director's earlier suggestions, on October 8, 1980, RDEI proposed that, in return for the requested 2-year extension, it would increase the number of single family residences constructed from a minimum of 55 to a minimum of 60, increase the rental for the fourth and fifth years from \$24,000 to \$30,000 per year, and increase the rental for each lot in the annual rent schedule from a minimum of \$38 to a minimum of \$45 per month (Appellant's Brief at 4). RDEI emphasized the approaching construction deadline and expressed its desire to "complete these negotiations as quickly as possible" and its willingness "to meet with the Lessor and/or the Bureau at any time as necessary" (Exh. 5).

When it received no reply, RDEI wrote to the Director on November 1, 1980, requesting the Director's immediate attention to the matter. On November 19, 1980, RDEI again wrote the Director reporting its progress toward fulfilling its construction commitment, noting that resolution of the extension question was imperative, and requesting a response to its earlier letters of October 8 and November 1 (Appellant's Brief at 5).

The December 29, 1980, construction deadline passed without a reply to RDEI's October 8 proposal from either the lessor or the Director. Finally, on January 22, 1981, RDEI received the Director's reply: "This matter has been discussed with Mrs. Jeane Kapp, the lessor. Mrs. Kapp is not favorably disposed to the granting of the time extension. Pending a resolution of the question, the rental payment of \$12,000 which was received on December 31, 1980, has been transferred to a Special Deposit Account" (Exh. 8).

On February 6, 1981, RDEI wrote directly to the lessor to inform her of the progress in the development of the leased property 2/ and to request a meeting. On March 6, 1981, after 2 hours notice from the lessor, RDEI finally met with the lessor and the Director. At the meeting, the lessor declared the lessee was in default and demanded an increase in the annual rent schedule to \$83,000 per year (a 370-percent increase over the existing rate) (Appellant's Brief at 7). Further discussion revealed that the lessor was primarily concerned with the long-range rent schedule and that she was willing to consider additional proposals regarding the matter. A subsequent

2/ At this point, appellant stated it had "incurred over \$100,000 in pre-development obligations and commitments in a good faith effort to proceed with construction of improvements under the lease" (Exh. 9).

meeting of RDEI representatives and the lessor's agent proved fruitless and on March 21, 1981, RDEI by letter to the Director reported the apparent inability of the parties to negotiate a solution and therefore "formally demanded Arbitration pursuant to Article 26 of the lease" (Appellant's Brief at 8).

On April 10, 1981, RDEI received notice, in accordance with 25 CFR 131.14 (1981) (redesignated without substantive change as section 162.14 at 47 FR 13327 (Mar. 30, 1982)), from the Sacramento Area Director that it was in violation of Article 4 of lease PSL-225 and would be allowed 10 days to show cause why the lease should not be canceled (Exh. 13). Four days later, on April 14, 1981, RDEI's March 21 request for arbitration was denied by the Director (Exh. 12):

Your request for arbitration has been reviewed with the Area Director. It is his position that it would be inappropriate to consider such a request at a time that the lease is in default. In fact the Area Director has written [RDEI] requesting that [it] show cause why the lease should not be canceled.

On April 22, 1981, RDEI filed a timely response to the show cause order. Appellant admitted failure to comply with the construction deadline but detailed reasons why the lease should not be canceled, requested a reasonable period of time pursuant to section 131.14 to take any necessary corrective measures, and renewed its request for an extension (Appellant's Brief at 8).

The Area Director replied in a letter dated May 1, 1981 (Exh. 15). He acknowledged receipt of the reasons why the lease should not be canceled

and the request for a 2-year extension, but ignored RDEI's request for a reasonable time to correct the breach:

As stated in previous letters from our Palm Springs Office * * *, the lessor, Jeane Marie Chormicle Kapp, is not in favor of an extension under the terms offered by your corporation, therefore, the request that an extension be approved is denied.

In accordance with Section 25 CFR 131.14, "Violation of Lease", Lease Number PSL-225 is canceled effective the date of this letter and you are hereby notified that payment of all obligations are now due and payable together with possession of the premises.

You have thirty (30) days from date of receipt of this letter to appeal this decision per Section 25 CFR Part 2, "Appeals from Administrative Actions".

On May 27, 1981, RDEI filed a notice of appeal from the cancellation decision with the Area Director. On June 29, 1981, the appeal was forwarded to the Deputy Assistant Secretary-- Indian Affairs (Operations). On April 6, 1982, the Deputy Assistant Secretary affirmed the lease cancellation. Appellant's notice of appeal to the Board of Indian Appeals was received on May 6, 1982. On June 7, 1982, after receiving the administrative record in the case, the Board issued a notice of docketing including a briefing schedule. Appellant relied on its appeal brief to the Deputy Assistant Secretary. Neither BIA nor Mrs. Kapp filed a brief.

Issues on Appeal

Appellant asserts the following in support of its appeal: (1) The Secretary and his subordinates lack jurisdiction to cancel the lease or to review administratively the validity of the purported cancellation; (2) the

cancellation of the lease violated the provisions of 25 CFR 131.14 (1981); (3) under California law, which governs in this case, appellant's failure to complete construction by December 29, 1980, does not justify the cancellation of the lease; (4) the cancellation of the lease without a hearing constitutes a denial of due process; (5) the cancellation constitutes a denial of equal protection; (6) the Director's refusal to submit the dispute to arbitration pursuant to Article 41 of the lease invalidated the subsequent purported cancellation; (7) the lessor is estopped to assert a default under Article 4 of the agreement; and (8) the acceptance of rent checks after the occurrence of the alleged default constitutes a waiver of any such default.

Jurisdiction

Appellant initially challenges the jurisdiction of the Secretary to cancel this lease or to review a decision of a subordinate official that the lease should be canceled. This argument is based upon appellant's reading of Sessions, Inc. v. Morton, 348 F. Supp. 694 (C.D. Cal. 1972), aff'd, 491 F.2d 854 (9th Cir. 1974). Appellant contends that Sessions holds that the Secretary, as a party to an Indian lease, cannot unilaterally cancel a lease or review a decision that a lease should be canceled. Instead, according to appellant, Sessions requires that the cancellation of an Indian lease be effected only through court order.

The discussion to which appellant cites, found in 348 F. Supp. at 698-99, relates to whether the action of the Secretary in canceling or attempting to cancel an Indian lease, effectuated under authority of 25 U.S.C. § 415

(1976), was committed to agency discretion within the meaning of 5 U.S.C. § 701(a)(2) (1976). If it were, the court would not consider the Secretarial action subject to judicial review. The court noted that the issue before it was not the grant or denial of a lease, which it said would constitute “non-reviewable discretion,” but rather, the extinguishment of the rights and obligations of the parties. Such a judicial-type action, which must abide a determination of facts showing a breach of the contractual terms of the lease, was, according to the court, “not entrusted to the Secretary but rather is reserved to court action.” 348 F. Supp. at 699.

[1] Although this holding was not appealed (Sessions, 491 F.2d at 856 n.3), the district court's characterization of the nature of the Secretary's action is inconsistent with other Federal court rulings and has not been accepted by the Department. The Secretary's interpretation of his authority to cancel an Indian lease as being a binding determination of rights between the parties, subject to judicial review as permitted under 5 U.S.C. § 702 (1976), is consistent with the court's statement in Yavapai-Prescott Indian Tribe v. Watt, 528 F. Supp. 695, 698 (D. Ariz. 1981). ^{3/} There the court recognized the authority of the Secretary to cancel leases involving Indian trust lands and described in detail the Secretary's powers. Generally, the court observed:

There is nothing in the Federal Statutes which authorizes the Secretary to terminate a lease of Indian land. However that power

^{3/} See also Smith v. United States, 113 F.2d 191 (10th Cir. 1940) (upholding cancellation of a lease of Indian trust property). Cf. Udall v. Littell, 366 F.2d 668 (D.C. Cir. 1966), cert. denied, 385 U.S. 1007, rehearing denied, 386 U.S. 939 (1967) (involving Secretarial cancellation of an attorney's contract with an Indian tribe).

is inherent in the powers delegated to him by Congress to supervise the public business of Indian tribes, 43 U.S.C. § 1457, and to manage all Indian affairs, 25 U.S.C. § 2. * * * [T]hat power is necessary to enable him to carry out the duties with which he is charged by law * * *. [Citations omitted.]

More specifically, the court noted:

The statute authorizing leases of restricted Indian lands for business purposes, 25 U.S.C. § 415, specifically requires that any lease have the approval of the Secretary and that it "shall be made under such terms and regulations as may be prescribed by the Secretary." In this case the Secretary gave his approval, and the lease recited that it was under the provisions of the Act as implemented by Part 131 of the Code of Federal Regulations, Title 25.

* * * Part 131 of Title 25 of the Code of Federal Regulations does not purport to specify in detail the provisions to be included in any lease of Indian lands, and CFR § 131.14 does not purport to specify an exclusive method for cancelling leases. It simply establishes a procedure whereby the Secretary may cancel a lease upon a showing satisfactory to him that there has been a violation of the lease. [Emphasis in original.] [4/]

The Board therefore holds, in accordance with these decisions, that the Secretary and his delegates have jurisdiction to consider and, if appropriate, power to cancel an Indian lease under the provisions of that lease and any applicable regulations, statutes, or judicial precedents. 5/

4/ The Secretary's authority to cancel leases is not limited to Indian Affairs, for which, as noted above, he has broad supervisory authority, but extends as well to his management of the public lands. See, e.g., 43 CFR 3108.3; Boesche v. Udall, 373 U.S. 472 (1963). In Boesche, the Court acknowledged the power of the Secretary to cancel mineral leases administratively "under his general powers of management over the public lands," except where this authority has been withdrawn by Congress. Boesche, supra at 476.

5/ In addition, the record in the present case indicates that the appellant acknowledged and agreed to the Secretary's authority to cancel the lease or to review an agency cancellation decision by its acceptance of the lease. Article 27(B)(2) of the lease provides that "should Lessee breach any * * * covenant of this lease, * * * the Secretary may * * * [t]erminate this lease at any time." Furthermore, the initial paragraph of the lease incorporates

[2] Furthermore, the means through which the Secretary reviews decisions to cancel Indian leases, embodied in regulations found in 25 CFR Part 2 and 43 CFR Part 4, Subpart D, ensures that due process is accorded to the parties before the termination of any legal rights. See Coomes v. Adkinson, 414 F. Supp. 975 (D.S.D. 1976); 25 CFR 2.3(b); 43 CFR 4.21(b). Under 25 CFR Part 2, any interested party adversely affected by a decision of an official of the Bureau of Indian Affairs may appeal that decision to the Deputy Assistant Secretary--Indian Affairs (Operations). ^{6/} In cases in which the decision is based upon an interpretation of law, 25 CFR 2.19(c)(2) gives the Board of Indian Appeals jurisdiction to review the Deputy Assistant Secretary's decision. In appropriate cases the Board can order an evidentiary hearing before an Administrative Law Judge under 43 CFR 4.337(a). As the Department noted when it promulgated these administrative review regulations:

Exercise of the Secretary's review authority by the Board of Indian Appeals will insure impartial review free from organizational conflict in that the Board is a part of the Office of Hearings and Appeals in the Office of the Secretary and as such is independent of the Bureau of Indian Affairs.

40 FR 20819 (May 13, 1975). See Willie v. Commissioner of Indian Affairs, 10 IBIA 135, 138 (1982). ^{7/}

fn. 5 (continued)

the cancellation authority and procedures included in 25 CFR 131.14 (1981), which in turn provides that "[t]he notice of cancellation shall inform the lessee of his right to appeal pursuant to Part 2 of this chapter."

^{6/} The Deputy Assistant Secretary--Indian Affairs (Operations) was designated the official to fulfill the administrative review functions of the vacant office of Commissioner of Indian Affairs. See memorandum of May 15, 1981, signed by the Assistant Secretary for Indian Affairs.

^{7/} This independent review also ensures that the BIA does not overlook the legal rights of other parties in discharging its trust responsibilities to Indians.

The Board has consistently acted to maintain its independence from the BIA and to ensure that parties before it receive impartial and fair administrative review of legal disputes arising from the exercise of the Department's Indian affairs responsibilities. To this end, the Board has defined the difference between decisions issued under discretionary authority vested in the BIA and those rendered after an interpretation of law, 8/ and has held that the characterization of a decision by the BIA as discretionary is a legal conclusion subject to Board review. 9/ These decisions ensure that parties whose legal rights are adjudicated by the Department are accorded all due process protections. 10/

The Board holds that the requirements of due process in administrative appeals are met through the review mechanisms provided by Departmental regulations and the decisions of this Board. 11/

Discussions and Conclusions

Appellant asserts, among its other contentions, that the Secretary's refusal to accept its request for arbitration pursuant to Articles 41 and 26

8/ See, e.g., Urban Indian Council, Inc. v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 146 (1983); Billings American Indian Council v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 142 (1983); Wishkeno v. Deputy Assistant Secretary--Indian Affairs (Operations), 11 IBIA 21, 89 I.D. 655 (1982).

9/ See, e.g., Urban Indian Council, supra; Billings American Indian Council, supra.

10/ Furthermore, Board decisions are subject to judicial review in accordance with the provisions of 5 U.S.C. § 702 (1976). Thus, the Federal courts are available for the correction of any error that might occur in the administrative review process.

11/ For this reason the Board finds that appellant's argument that cancellation of the lease without a hearing constitutes a denial of due process is without merit. The requirements of due process are met by this hearing before

of the lease invalidates the subsequent cancellation. We agree and remand this matter to the Bureau for arbitration.

Article 41 of the lease 12/ provides that where a delay in construction is caused by an event beyond the lessee's power to control, the period of delay so caused shall be added to the period originally allowed for completion, and furthermore, that any questions of fact and/or any disputes under said article which cannot be resolved by the parties, would be arbitrated in accordance with Article 26 of the lease. 13/ Article 4, as previously discussed, established a construction deadline of December 29, 1980. 14/ On July 17, 1980, appellant initiated the present controversy by writing to the

fn. 11 (continued)

the Board. The Board has had no reluctance to overturn BIA lease cancellations where warranted. See, e.g., Bonaparte v. Commissioner of Indian Affairs, 9 IBIA 115 (1981).

12/ Article 41 of lease PSL-225 reads:

“41. FORCE MAJEURE

“Whenever under this instrument a time is stated within which or by which original construction, repairs or reconstruction of said improvements shall be completed, and if during such period a general or sympathetic strike or lockout, war or rebellion or some other event occurs beyond Lessee's power to control, the period of delay so caused shall be added to the period allowed herein for the completion of such work. Any questions of fact arising hereunder shall be arbitrated under Article 26, ‘Arbitration,’ hereof.

“Any disputes arising under this Article which cannot be resolved by the parties, shall be arbitrated pursuant to Article 26 hereof.”

13/ Article 26 of lease PSL-225 reads:

“26. ARBITRATION

“Whenever the terms of this lease require that a dispute be settled by arbitration, an Arbitration Board shall be established, consisting of three members, one each to be selected by the Lessor and the Lessee, and such members to select the third member. The costs of such Arbitration Board shall be shared equally by the Lessee and the Lessor. The Secretary shall be expected to accept decisions reached by said Arbitration Board, but he shall not be bound by any decision which might be in conflict with the interests of the Indians or the United States.”

14/ Article 4 of lease PSL-225 reads:

“4. PURPOSE OF THE LEASE

“Lessee shall use the leased premises for the following purposes: Single family residences. Lessee covenants and agrees that within 3 years from the date upon which this lease is approved, it shall construct at least 55 single family residences having a market value of approximately \$3,000,000.00.”

Director requesting a 2-year extension of the construction deadline on grounds that the prevailing economic conditions did not favor commencing construction at that time. Following the failure of months of negotiation regarding the proposed extension, appellant requested arbitration in accordance with Article 26 of the lease on March 21, 1981. That request was denied by the Director on April 14, 1981, on grounds that it would be inappropriate to consider such a request because the lease was then in default and section 131.14 cancellation procedures had already been invoked.

In affirming the cancellation of the lease, the Deputy Assistant Secretary's decision of April 6, 1982, at page 5, found that arbitration was not required:

The lessor is not obligated under Article 26 to submit a question to arbitration in every instance simply because the lessee requests it. In order to be entitled to have a matter submitted to arbitration, the party requesting arbitration must show there is an arbitratable dispute within the scope of the arbitration clause. It is my view that no such showing has ever been attempted by the appellant. The record shows only that the appellant claimed in July 1980 that "economic conditions do not favor commencing construction at this time." There is nothing in the record to indicate that the appellant presented or offered to present substantiating evidence to prove that such economic conditions constituted an "event" (within the meaning of Article 41) which prevented it from completing the required construction on time. No demand for arbitration under Article 41 was made until March 21, 1981, well after the December 28, 1980 [sic], deadline had passed. Even then, the letter from counsel for the appellant requesting arbitration did not assert that arbitration was demanded as a matter of right under Article 41; instead counsel stated that inasmuch as RDEI had been unable to reason with either Mrs. Kapp or Mr. Pierce, it had no alternative but to seek a resolution of this problem through arbitration.

It is my conclusion that any application at this late date to submit the matter of extension to arbitration is neither required nor in the best interest of the Indian lessor.

(Decision at 5).

We disagree with this reasoning and the conclusion reached by the Deputy Assistant Secretary. As the court stated in San Tan Ranches v. United States, No. CIV 80-359 PHX VAC, slip op. at 2-4 (D. Ariz. July 12, 1982), another case involving the application of an arbitration clause in a dispute under an Indian lease:

[T]here is a general federal policy favoring arbitration, and * * * in cases of doubt, the doubt is to be resolved in favor of arbitration. See, e.g., Federal Arbitration Act, 9 U.S.C. § 1 et seq.; Stateside Machinery Co., Ltd. v. Alperin, 591 F.2d 234, 240 (3rd Cir. 1979). * * * [There is no] statute which indicates that Congress intended to exclude Indian-related matters from its policy favoring arbitration. Cf. United States v. Electronic Missile Facilities, Inc., 364 F.2d 705 (2d Cir.), cert. denied, 385 U.S. 924 * * * (1966) (Miller Act case). Furthermore, there is no special body of federal contract law governing the commercial relations of Indians, Gila River Indian Community v. Henningson, Durham & Richardson, 626 F.2d 708, 714-15 (9th Cir. 1980), neither is there anything in the nature of the instant dispute which suggests that the matter falls peculiarly within the realm of expertise of the Department of Interior. Compare Bache Halsey Stuart, Inc. v. French, 425 F. Supp. 1231 (D.D.C. 1977).

The court therefore ordered that the dispute be submitted to arbitration.

[3] In reviewing the Deputy Assistant Secretary's decision, we find that appellant has shown a dispute with the lessor involving the proper interpretation of a lease provision in regard to whether adverse economic conditions constitute an "event" within the meaning of Article 41. Under Article 41, any questions of fact or disputes that cannot be resolved by the parties are required to be submitted to arbitration. Were the Board to accept the BIA decision on this issue, a party to an Indian lease containing an arbitration clause would be required to persuade the BIA of the merits of

its arguments before it would be entitled to invoke the arbitration provisions. The Board declines to so hold. In the absence of extenuating circumstances, this lease clearly requires that any disputes not resolved by the parties must be submitted to arbitration before consideration by the Secretary.

The decision of the Deputy Assistant Secretary suggests three reasons why the BIA is not required to submit this dispute to arbitration. First, BIA implies that appellant forfeited its right to request arbitration by not demanding it before the passage of the construction deadline. Although appellant may technically have been in violation of the lease when this deadline passed, the BIA had issued no formal declaration of breach. Therefore, the lease and all of its provisions, including the arbitration clause, were still in effect and available to both the lessor and the lessee. 15/

Furthermore, the BIA is not without some degree of fault in the delay in resolution of this case. As the court noted in Sessions, 348 F. Supp. at 703:

The delays of the Department of Interior through its Bureau of Indian Affairs, joined by * * * [the Indian lessor] raise serious questions of concern for Indian affairs * * *. The Department is charged with the responsibility of the management of its trust obligations in the best interest of Indian beneficiaries. This fiduciary duty carries with it--if not express--at least an implied requirement of diligence.

15/ The Board does not here consider whether a party to an Indian lease may invoke an arbitration clause after it has been formally declared to be in breach.

The fact that appellant did not request arbitration until after the construction deadline had passed resulted at least in part from the BIA's failure to respond diligently to appellant's earlier requests for an extension of time and its repeated representations that a resolution might still be reached with the Indian lessor through informal means. The BIA will not be permitted to use delays, which it in part caused, as an excuse for refusing to abide by the dispute resolution mechanisms established in a lease.

For the same reasons, BIA will not be heard to argue that the best interests of the Indian lessor demand that the issue not be arbitrated at this time. The lessor's best interests require resolution of this matter expeditiously and in accordance with the mutually agreed mechanisms for such resolution established in the lease.

Finally, the BIA states that appellant did not characterize its request for arbitration as an assertion of a right granted under Article 41. The Board has previously noted that decisions of the BIA, although constituting determinations in an administrative appellate proceeding, do not always employ legal or judicial terminology. See Walch Logging Co. v. Portland Assistant Area Director (Economic Development), 11 IBIA 85, 91 n.5., 90 I.D. 88, 91 n.5 (1983); United States v. Acting Aberdeen Area Director and Celina Young Bear Mossette, 9 IBIA 151, 153 n.1, 89 I.D. 49, 50-51 n.1 (1982). Nevertheless, the Board has upheld the procedures followed, regardless of the way in which BIA characterized them, when they were proper. Id.

The same right to employ proper procedures without regard to the words used to invoke or describe those procedures will be accorded to all parties

in proceedings before the Board, so long as the mischaracterization is not misleading to other parties. Appellant's lease contained a provision granting a right to the arbitration of certain issues. Any notice reasonably calculated to inform the BIA and other interested parties that the right was being invoked is sufficient. 16/

Consequently, we find that although a violation of the lease occurred on December 29, 1980, section 131.14 cancellation procedures were not then invoked and that consequently the lease remained in effect. As of March 21, 1981, the lease provisions still governed the relationships between the parties and accordingly arbitration was required under the terms of the lease.

[4] Therefore, the April 10, 1981, invocation of section 131.14 cancellation procedures, prior to arbitration as required by the lease, was improper. Although appellant's right to arbitration vested as of its request of March 21, 1981, the Bureau nevertheless subsequently initiated cancellation

16/ Appellee, in response to appellant's arbitration argument, maintains that the July 17, 1980, letter from appellant did not claim economic conditions necessitated a delay beyond the Dec. 29, 1980, construction deadline; rather the letter specifically stated "economic conditions do not favor commencing construction at this time," and that appellant's request for arbitration was untimely in that a specific request for arbitration under Article 41 was not raised until after the initial filing of this appeal (May 1, 1981, Decision of the Deputy Assistant Secretary--Indian Affairs (Operations) at 4-5).

Appellant's letter of Mar. 21, 1981, is a definite request for arbitration under the terms of the lease. Because the lease mentions arbitration in connection with only three articles (#11 - "Improvements"; #25 - "Eminent Domain"; and #41 - "Force Majeure"), aside from the arbitration provisions of Article 26 itself, it would not be difficult to ascertain what appellant was requesting in the context of appellant's dealings with the BIA. In any event, BIA denied appellant's request not on grounds of vagueness, but rather on grounds that the lease was in default. This is precisely the issue which arbitration would resolve.

proceedings under section 131.14. The Bureau's decision to ignore the appellant's request for arbitration and instead to initiate cancellation procedures was in error. Because the subject required to be arbitrated was the alleged violation of the lease, which also served as the grounds for initiating section 131.14 procedures, BIA should have deferred cancellation under section 131.14 until arbitration was complete.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Deputy Assistant Secretary--Indian Affairs (Operations) is vacated and the case is remanded to the Bureau of Indian Affairs for submission to arbitration in accordance with Articles 41 and 26 of the lease. 17/

//original signed
Jerry Muskrat
Administrative Judge

We concur:

//original signed
Wm. Philip Horton
Chief Administrative Judge

//original signed
Franklin D. Arness
Administrative Judge

17/ Because of this disposition we do not reach appellant's remaining arguments. We note, however, that prior decisions of Federal courts and this Board have considered some of those arguments. See Sessions, supra; Sessions Inc. v. Miguel, 4 IBIA 84, 82 I.D. 331 (1975); Sessions, Inc. v. Ortner, 3 IBIA 145, 81 I.D. 651 (1974); Sunny Cove Development Corp. v. Cruz, 3 IBIA 33, 81 I.D. 465 (1974); Villa Vallerto v. Patencio, 2 IBIA 140, 81 I.D. 9 (1974).