



INTERIOR BOARD OF INDIAN APPEALS

Bryan Knows Ground, et al. v. Acting Billings Area Director,
Bureau of Indian Affairs

19 IBIA 50 (11/06/1990)



United States Department of the Interior

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

BRYAN KNOWS GROUND ET AL.

v.

ACTING BILLINGS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 90-93-A

Decided November 6, 1990

Appeal from a decision declining to cancel a lease of allotted Indian land.

Affirmed.

1. Bureau of Indian Affairs: Administrative Appeals: Generally--
Indians: Leases and Permits: Cancellation or Revocation

A Bureau of Indian Affairs official is bound by a decision in an administrative appeal which has become final for the Department of the Interior.

2. Indians: Leases and Permits: Cancellation or Revocation

A Bureau of Indian Affairs Superintendent must follow the procedures in 25 CFR 162.14 when cancelling a lease of Indian land issued under 25 CFR Part 162.

APPEARANCES: Bryan Knows Ground, pro se and for all other appellants; Richard Whitesell, Billings Area Director, Bureau of Indian Affairs, for appellee; Martin J. Elison, Esq., Hardin, Montana, for lessee Richard Kehler, Jr.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellants Brian Knows Ground, Kenneth Knows Ground, Anita Knows Ground Iron, Aaron Knows Ground, Curtis Knows Ground, Everett Knows Ground, and Janice Knows Ground seek review of a November 2, 1989, decision of the Acting Billings Area Director, Bureau of Indian Affairs (Area Director; BIA), which reversed a July 31, 1989, decision of the Superintendent, Crow Agency, BIA, to cancel Lease No. 0-6839, covering Allotments Nos. 468 and 469 on the Crow Indian Reservation. For the reasons discussed below, the Board affirms the Area Director's decision.

Background

Appellants each own an interest in Crow Allotments Nos. 468 and 469. Richard Kehler, Jr., was awarded a lease covering these allotments after he submitted the high bid at an October 29, 1986, lease sale. The lease was approved by the Acting Superintendent on March 6, 1987, for a term beginning November 1, 1986, and ending September 30, 1991. Prior to approval of the lease, Bryan and Kenneth Knows Ground had sought to lease the property under an "owner's use agreement," but had failed to submit an agreement in a form satisfactory to BIA. ^{1/}

After receiving objections to the lease from Bryan and Kenneth, the Superintendent formally advised Kenneth by letter of July 9, 1987, that he could file an appeal of the lease award with the Area Director. On July 17, 1987, an appeal was filed by Aaron, Bryan, Everett, Kenneth, and Curtis Knows Ground. On October 7, 1987, the Area Director affirmed the issuance of the lease to Kehler and informed appellants that they could appeal his decision to the Washington, D.C., Office of BIA within 30 days of their receipt of the decision. ^{2/} Over a year later, on October 24, 1988, Bryan attempted to appeal the Area Director's decision to the Washington BIA office. The record does not include any direct response to this attempted appeal, although it does include an August 18, 1989, letter from the Acting Deputy to the Assistant Secretary - Indian Affairs (Trust and Economic Development) to Representative Ron Marlenee, indicating that the appeal was considered untimely.

On July 31, 1989, the Superintendent notified Kehler that his lease was being cancelled because of errors committed when it was issued. These errors, the Superintendent stated, had been found during a reexamination of the lease file, conducted at the request of appellants. Kehler wrote to the Superintendent, protesting the cancellation. By letter of August 31, 1989, the Superintendent reaffirmed his earlier decision but stated that Kehler could appeal to the Area Director.

Kehler appealed. On November 2, 1989, the Area Director reversed the Superintendent, stating:

Your appeal is valid, and I hereby find that lease cancellation was an improper action taken against you. The issue of

^{1/} An owner's use agreement provides for use of allotted land in fractionated ownership by one or more of the owners. See Plain Feather v. Acting Billings Area Director, 18 IBIA 26, 27 n.3 (1989), for BIA and Crow tribal policy concerning approval of such agreements on the Crow Reservation.

^{2/} Under appeal regulations then in effect, Area Directors' decisions were appealable to the Commissioner of Indian Affairs. See 25 CFR Part 2 (1987).

whether the lease was properly executed is invalid, and may not be used as a point of cancellation. My decision of October 7, 1987, which upheld the Superintendent's decision to issue a lease is still in force and may not be overturned by the Superintendent. There has been no demonstrable lease violation for which your lease may be cancelled.

No copies of this decision were sent to any of the appellants.

In an October 18, 1989, memorandum to the Superintendent, the Area Director explained his decision in more detail. He stated:

There are several factors involved in my decision. They are outlined below:

1. There has been no documented or reported violations of any lease provisions by Mr. Kehler.
2. There was no 10-day show cause letter issued to Mr. Kehler.
3. The cancellation letter did not properly advise the lessee of his appeal rights. The regulations in 25 CFR require that you advise the lessee that the appeal be filed within 30 days of the date the administrative decision is received. The 30-day notification was not provided to Mr. Kehler. * * *
4. You do not have the authority to overturn a decision which was made by your office, and through appeal, upheld by my letter of October 7, 1987. The landowners were given the opportunity to pursue this matter further through the appeal process. No appeal or notice of appeal was filed by any of the landowners. Thus, my appeal decision is final for the Department and cannot be reversed by your office.

You contend that the landowners were not given a reasonable opportunity to use the land as they have requested. You also state that the lease execution and approval was erroneous and should not have been completed. I considered these issues at the time of my previous appeal decision; you do not have the option to resurrect the matter.

(Area Director's October 18, 1989, memorandum at 1-2).

On May 14, 1990, the Board received appellants' notice of appeal. The Board accepted the appeal even though it was ostensibly untimely, because the Area Director had not sent copies of the decision to appellants or

informed them of their right to appeal. 3/ No briefs were filed before the Board. 4/

Discussion and Conclusions

[1, 2] The Area Director's October 7, 1987, decision, affirming the issuance of Lease No. 0-6839 to Kehler, became final for the Department of the Interior when appellants failed to file a timely appeal from that decision. 5/ Thus, as the Area Director's November 2, 1989, decision recognized, the Superintendent had no authority to reopen the matter. Although the Superintendent attempted to characterize his action as a lease cancellation, none of the prerequisites for a cancellation were present, 6/ and his effort emerges as a transparent attempt to avoid the obvious conclusion that, under the circumstances, he was powerless to revoke the lease.

In this case, the Superintendent's improper action resulted in appeal proceedings which should not have been necessary, placed an unwarranted burden on the lessee, and gave appellants an unrealistic hope that their efforts to void the lease might at last succeed. The Board hopes that it will not often see appeals of this nature.

3/ Under appeal regulations which became effective on Mar. 13, 1989, an Area Director is required to give written notice of his decision to all interested parties known to him. 25 CFR 2.7(a). The new regulations also provide that an appellant's right to appeal continues until proper notice is given. 25 CFR 2.7(b). Clearly, in this case, appellants were interested parties known to the Area Director.

4/ Appellants filed an untimely request for a 20-day extension of time in which to file their opening brief. Their request was untimely under 43 CFR 4.310(d)(2), which provides that "[a] request to the Board for an extension of time must be filed within the time originally allowed for filing." On an assumption that appellants may have misunderstood the regulation, the Board granted a conditional extension, under 43 CFR 4.310(d)(3), for the 20-day period requested by appellants. However, appellants filed no brief.

5/ 25 CFR 2.10 (1987) provided:

“(a) * * * [A] notice of appeal must be received in the office of the official who made the decision within 30 days after the date notice of the decision complained of is received by the appellant, together with all supporting documents. * * *

“(b) No extension of time will be granted for filing of the notice of appeal. Notices of appeal which are not timely filed will not be considered, and the case will be closed.”

25 CFR 2.3(b) (1937) provided: “If no appeal is timely filed, the decision shall be final for the Department.”

6/ The Area Director noted in his Oct. 18, 1989, memorandum that the Superintendent had established no grounds for cancellation of the lease and had failed to follow cancellation procedures required by regulation. 25 CFR 162.14 requires a “showing satisfactory to the Secretary that there has been a violation of the lease or of the regulations in [Part 162]” before lease cancellation proceedings may be initiated. The section then sets out specific procedures to be followed in order to effect a cancellation.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Billings Area Director's November 2, 1989, decision is affirmed.

//original signed
Anita Vogt
Administrative Judge

I concur:

//original signed
Kathryn A. Lynn
Chief Administrative Judge