



INTERIOR BOARD OF INDIAN APPEALS

Jerry Livermont v. Acting Aberdeen Area Director, Bureau of Indian Affairs

33 IBIA 81 (12/08/1998)

Related Board case:
33 IBIA 254



United States Department of the Interior

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

JERRY LIVERMONT, Appellant	:	Order Reversing Decision
	:	
	:	
v.	:	
	:	Docket No. IBIA 97-162-A
ACTING ABERDEEN AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	
	:	
	:	December 8, 1998

Appellant Jerry Livermont seeks review of a June 23, 1997, decision issued by the Acting Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), cancelling a grazing permit for Range Unit (RU) 165, Contract No. 14-20-A06-4943, on the Pine Ridge Reservation. For the reasons discussed below, the Board of Indian Appeals (Board) reverses the Area Director's decision.

The grazing permit under review here was issued to Jerry, Wade, and Willie Livermont for the term beginning November 1, 1995, and ending October 31, 2000. It called for the payment of \$10,752.50 in annual rental by November 1 of each year.

In September 1996, the Superintendent, Pine Ridge Agency, BIA (Superintendent) evidently sent letters to all grazing permittees on the reservation. The administrative record contains a September 10, 1996, "Dear Permittee" letter asking permittees to review an enclosed Statement for Collections for the range units permitted for the 1997 grazing season. The letter stated that it was not official notification of the bill, but that official notification would be sent on or before October 1, 1996. The letter further stated: "[T]here will be no extensions granted for late payments. Please make your financial arrangements so payments can be received on November 1, 1996. If payment is not received by November 1, 1996, your range unit(s) will be cancelled." The Statement for Collections appearing in the administrative record related to RU 165 and was addressed to Jerry, Wade, and Willie Livermont at P.O. Box 65, Martin, SD 57551.

A September 26, 1996, "Dear Permittee" letter provided the official notification of the bill. That letter stated: "We must * * * receive your full payment by 4:30 p.m. MST on Friday, November 1, 1996. All grazing permits that have not been paid in full by this date will be canceled. There will be no extensions or exceptions to this due date." The bill appearing in the administrative record was again addressed to Jerry, Wade, and Willie Livermont at the Martin, South Dakota, address.

By letter dated December 5, 1996, the Superintendent wrote to Jerry, Wade, and Willie Livermont at the same address. Although the salutation of this letter named another individual, the body clearly concerned RU 165. The letter stated: “[Y]ou [were] given until December 1, 1996, to make payment on your range unit. We have not received your payment, therefore your range unit is hereby cancelled. Your range unit will now be made available for other allocations or advertisement for the sale of grazing privileges.”

Appellant apparently asked the Superintendent to reconsider the cancellation. On March 28, 1997, the Superintendent wrote to Appellant, stating: “After further review of the cancellation of your Range Unit Contract on Range Unit 165, the decision to cancel will stand as stated in the December 5, 1996, letter to you.” The letter informed Appellant that he could appeal to the Area Director.

Appellant appealed to the Area Director by letter dated May 1, 1997. In that letter, Appellant listed a different address.

The Area Director affirmed the Superintendent’s decision on June 23, 1997. Appellant appealed to the Board. Appellant and the Area Director filed briefs on appeal.

In his Opening Brief, Appellant states that he did not receive any of the September or December 1996 letters because he was in the midst of a divorce and was no longer receiving mail at the Martin, South Dakota, address. He says that he notified BIA the first week of December 1996 that he had not received a bill; that the Superintendent returned his call; that he informed the Superintendent that he could pay the bill in the first part of January 1997; and that the Superintendent told him the bill would have to be paid by January 6, 1997.

Appellant further contends that he attempted to make payment on January 3, 1997, in accordance with the extension of time he alleges the Superintendent granted him, but that BIA would not accept payment. He states that, on January 6, 1997, he met with the Superintendent, who had not been present on January 3, 1997, when he attempted to make payment; and that the Superintendent remembered calling him in December and giving him additional time to make payment, but did not remember the January 6 date.

Although Appellant raises several arguments on appeal, the Board finds that this case can and should be decided on one issue, *i.e.*, whether or not the Superintendent granted Appellant an oral extension of time. Appellant contends that he was granted an extension, while the Superintendent says that he does not remember giving Appellant an extension, and that his practice was to grant oral extensions for only a day or over a weekend. Essentially, this issue becomes a question of Appellant’s word against that of the Superintendent. The materials before the Board do not provide conclusive evidence as to whether Appellant or the Superintendent is more credible.

However, it is part of the Superintendent’s job responsibility to ensure that proper written records are created concerning the handling of Indian leases and range units. He knew, or should have known, that the granting of extensions of time orally was not proper, but that, if an oral extension of time was granted, it should promptly be reduced to writing in, at least, a memorandum

to the file. The Superintendent has admitted that he granted oral extensions of time, although asserting that it was his practice to grant only short oral extensions, and that he does not remember giving an extension of time to Appellant in particular. These statements stop short of denying that he granted Appellant a 30-day extension of time.

Furthermore, the Superintendent's December 5, 1996, letter suggests that a 30-day extension of time for payment (from November 1 to December 1, 1996) had been granted earlier. Indeed, the Area Director's June 23, 1997, decision acknowledged that "[t]he Superintendent provided an additional 30-day period from November 1 to December 1, 1996, to make payment." Area Director's Decision at 2. There is no written grant of an extension in the record. Thus, it appears that the extension was granted orally. Accordingly, at the time the events giving rise to this dispute arose, there appears to have been some precedent at the Pine Ridge Agency for the oral granting of 30-day extensions of time.

Appellant has supported his statement that he was given an oral extension of 30 days with three affidavits from individuals who state that Appellant told them in December 1996 that the Superintendent had granted him an extension of time until January 6, 1997.

Although the evidence is far from conclusive, under the circumstances here, where the Superintendent has not denied that he granted Appellant an oral extension of time and where he bore the responsibility to prepare written records of transactions concerning trust property, the Board concludes that Appellant's statement that he was granted an extension of time until January 6, 1997, is more persuasive. Based on this conclusion, the Board finds that BIA should have given Appellant until January 6, 1997, in which to make payment; that BIA improperly refused to accept payment when it was tendered on or before January 6, 1997; and that BIA improperly cancelled Appellant's lease for failure to make the lease payment.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Area Director's June 23, 1997, decision is reversed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

//original signed
Anita Vogt
Administrative Judge