THOR K. LANDE
v.
ACTING BILLINGS AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 92-133-A Decided July 22, 1992

Appeal from a decision concerning the leasing of a Crow Tribal Allotment.

Vacated and remanded.

1. Indians: Lands: Tribal Lands--Indians: Leases and Permits: Generally

   Under 25 CFR 162.3, an Indian tribe has the authority to grant leases of tribally owned lands.

2. Bureau of Indian Affairs: Generally--Indians: Leases and Permits: Generally--Indians: Tribal Powers: Generally

   When an official of the Bureau of Indian Affairs has reason to question a tribal decision which requires action by the Bureau, such as the leasing of tribal trust land, he or she should make the question known to the proper tribal official or forum and ask for clarification of the tribal position.

APPEARANCES: Thor K. Lande, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Thor K. Lande seeks review of a January 29, 1992, decision of the Acting Billings Area Director, Bureau of Indian Affairs (BIA; Area Director), concerning the leasing of Tract 23, Crow Tribal Allotment No. T-3520. For the reasons discussed below, the Board of Indian Appeals (Board) vacates that decision, and remands this matter to the Area Director for further action in accordance with this opinion.

Background

The background of this controversy is set forth in the January 29, 1992, memorandum from the Area Director to the Crow Agency Superintendent, BIA, (Superintendent), which is the basis for this appeal:

> Tribal Lease Advertisement No. 90-1, held May 30, 1990, included Tract No. 23, which covers Allotment No. T-3520. Tract No. 23 received two bids, Jay Stovall bid $2,417.80 annual rental and [appellant] bid $2,276.00 annual rental.

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Sale No. 90-1 was a "Special Advertisement for Farming and Grazing Leases Restricted to Members of Crow Tribe Only." The sale was held in accordance with Crow Tribal Resolution No. 87-6. Priorities in award of bids were listed in the Sale Notice.

On June 1, 1990, the Crow Land Resources Committee [committee] awarded Tract No. 23 to the low bidder, [appellant], and both parties were advised of the sale award results. Apparently, Mr. Stovall protested orally to Crow Tribal officials on not being the successful bidder. [The Superintendent] wrote to both parties requesting them to submit new bids on the tract, no later than July 25, 1990.

Mr. Stovall submitted a new bid of $998.50 per year; [appellant] protested having to resubmit a bid and stated he would not bid again. Mr. Stovall was informed by [the Superintendent] on August 18, 1990, he was the successful bidder and he was provided a lease form to complete. The lease was prepared for a rental of $2,417.80.

By letter of September 12, 1990, [appellant] protested the lease award to Mr. Stovall. His protest was considered by the Crow Tribal Appeals Board, which met December 18, 1990. The Appeals Board awarded the lease to [appellant]; the Board minutes do not record that a rental amount was stipulated. [The Superintendent] provided lease documents to [appellant] for his signature; the rental amount was $2,417.80.

[Appellant] completed the lease and paid the lease rental. Lease No. 0-8812 was approved on March 8, 1991.

Mr. Stovall appealed the lease approval [to BIA] on August 8, 1991. He itemized complaints about the lease award process, which [the Superintendent] responded to by * * * letter of October 2, 1991. [The Superintendent's] letter to Mr. Stovall also included appeal rights.

(Memorandum at 1-2).

The Area Director's memorandum continued:

Lease Sale No. 90-1 contained priorities in award of bids in the advertisement; the sale process was established by the lease sale advertisement. [The Superintendent] identified * * * that Mr. Stovall and [appellant] were "equally eligible" bidders for tribal tracts. The fact that Mr. Stovall's bid was higher than [appellant's], however, is not an equal factor. The high bid was not successful, there is no indication that [appellant] was required to meet Mr. Stovall's high bid.

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> The * * * committee selected the low bid as the successful bid, although their reasoning is not documented in their Committee minutes of June 1, 1990. Such action by the Committee was a rejection of bid; bidders are not required to enter into a lease for a rejected bid amount. The subsequent request for rebid apparently was initiated by the Crow Tribe and sanctioned by [BIA]. Mr. Stovall complied with the re-bid request; [appellant] chose not to re-bid, although it is unclear whether he intended his original bid to stand or was not interested in complying with the re-bid process. [Appellant] excluded himself from consideration of leasing the tract by not submitting a new bid.
>
> Mr. Stovall's bid of $998.50 was a legitimate offer of lease and should have been followed through in the lease process.
>
> When [the Superintendent] wrote to Mr. Stovall on August 15, 1990, informing him he was the successful bidder, [the Superintendent] prepared a lease for the original high bid of $2,417.80, which had been rejected by the * * * Committee, rather than for the $998.50 re-bid amount. The Committee specified in their minutes that the original high bid was to be the lease award amount. The failure in the lease award process at this point was that the re-bid was not officially rejected, but rather was simply ignored.
>
> [Appellant] protested the lease award to Mr. Stovall. The Crow Tribal Appeals Board subsequently awarded [appellant] the lease, stating their decision was final under authority of Tribal Resolution No. 87-6.
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> [The Superintendent] then provided [appellant] the prepared lease for $2,417.80, and the record does not indicate that Mr. Stovall was provided any notification of changes of the lease award.
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> * * * * * *
>
> Your decision to approve lease No. 0-8812 is hereby overturned and the case is remanded back to you for further action.
>
> It is my decision the lease to [appellant] be terminated effective immediately; a lease shall be issued to Mr. Stovall based upon a re-bid amount of $998.50, unless there is further negotiation.

(Memorandum at 2-3).

Copies of this memorandum were sent to appellant and Stovall, and each person was informed of his appeal rights. The Board received appellant's notice of appeal on February 27, 1992. Only appellant filed a brief on appeal. On June 23, 1992, the Board received a memorandum from the Area Director, who stated that he would not file an answer brief. The Area

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Director also requested, on behalf of appellant, that the Board expedite its consideration of this appeal. The request for expedited consideration is hereby granted.

Discussion and Conclusions

The land at issue in this case is a tribal allotment that was advertised for lease under a competitive bidding process open only to Crow tribal members. The Board has previously discussed BIA's role in leasing or allocating tribal lands. In Redfield v. Billings Area Director, 13 IBIA 356 (1985), a case arising under Crow Tribal Resolutions 67-15 and 70-40, predecessors to Resolution 87-6, the Board declined to review a decision of the committee concerning the leasing of a tribal allotment. Finding that the decision at issue had been made by the tribal committee rather than by a BIA official, the Board held that "[a]ny arguments relating to the tribe's interpretation of its grazing resolutions or the wisdom of that interpretation are not appropriate for decision by [the Board]" (Redfield at 360). The Board has distinguished a tribe's leasing or allocation of its own lands from BIA's leasing or allocation of individually owned lands pursuant to a tribal resolution. See Conway v. Billings Area Director, 20 IBIA 29, 32 (1991); LaPlante v. Billings Area Director, 19 IBIA 261 (1991).

On appeal appellant alleges only that Stovall is not a "bonafide rancher or farmer" within the meaning of Crow Tribal Resolutions Nos. 87-6 and 91-17 because he does not graze his own cattle. 1/ The determination that Stovall was a bona fide rancher within the meaning of Resolution 87-6 was made by the committee, not by BIA. Under its holding in Redfield, the committee's decision concerning whether or not Stovall is a bona fide rancher is not subject to Board review.

This finding, however, does not end the inquiry in this matter. 43 CFR 4.318 provides that "except as limited in this part or in Title 25 of the Code of Federal Regulations, the Board shall not be limited in its scope of review and may exercise the inherent authority of the Secretary to correct a manifest injustice or error where appropriate." The Board finds that a manifest injustice or error exists in this case.

The Area Director ordered the Superintendent to cancel appellant's lease and to issue a lease to Stovall for a rental amount of $988.50. This order was based upon the Area Director's interpretation of the events leading up to the granting of a lease. The Superintendent had issued a lease to appellant at the direction of the tribal appeals board established pursuant to Resolution 87-6. The relevant portion of the resolution provides

> that in a case of a disagreement with the decision of the committee's awarding of a lease, the participating parties concerned

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1/ Crow Tribal Resolution No. 91-17 was adopted by the tribe on Jan. 12, 1991. This resolution was not in effect at the time of either the original lease advertisement or the re-bid advertisement, and therefore has no application in this case.

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> shall have a right to appeal the decision. An appeal board shall be set up to hear appeals. Appeals shall be submitted to the Superintendent, Crow Indian Agency, within ten (10) days after awarding of a lease. The decision shall be reviewed by the Lease Appeal Board made up of Realty Officer, Credit Officer, Range Management Officer, Chairman Credit Committee and Chairman, Land Resource Committee. The decision of the Lease Appeal Board shall be issued not more than ten days after receipt of the appeal and shall be final.

[1] The effect of the Area Director's decision was to terminate a lease of tribal land to an individual approved by the appropriate tribal forum, require the leasing of tribal land to an individual not approved by the appropriate tribal forum, and lease tribal land at a rental amount not approved by the appropriate tribal forum. 25 CFR 162.3 provides that "[t]he following may grant leases: * * * (4) tribes or tribal corporations acting through their appropriate officials." 25 CFR 162.2 sets forth the circumstances under which the Secretary may lease trust land. All of the circumstances enumerated in section 162.2 concern the leasing of individually owned land or land owned by the Federal Government; none authorize the Secretary to lease tribal land without the consent of, and against the express decision of, the tribal owner. See also 25 CFR 166.4, 166.9(b), and 166.10, for limitations on BIA's authority to lease tribal lands for grazing purposes.

[2] Under 25 CFR 162.5, the tribal lease was subject to approval by the Secretary. If the Area Director had questions about the circumstances surrounding the awarding of the lease, he should have raised those questions with the appropriate tribal forum or officials and allowed the tribe to take whatever action it deemed appropriate to clarify its position. See, e.g., Potter v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 10 IBIA 33 (1982); Stands Over Bull v. Billings Area Director, 6 IBIA 98, modified, 6 IBIA 117 (1977).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the January 29, 1992, decision of the Billings Area Director is vacated, and this matter is remanded to him for further action in accordance with this opinion.

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Kathryn A. Lynn
Chief Administrative Judge

I concur:

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Anita Vogt
Administrative Judge

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