JAMES L. MORGAN, Appellant	:	Order Affirming Decision as Modified
v.	:	Docket No. IBIA 95-73- A
ACTING ABERDEEN AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee	:	August 16, 1995

Appellant James L. Morgan seeks review of a December 15, 1994, decision issued by the Acting Aberdeen Area Director, Bureau of Indian Affairs (Area Director; BIA), assessing liquidated damages for several alleged violations of appellant's Plan of Conservation Operations for land leased through the Winnebago Agency, BIA. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision as modified in this opinion.

In the spring of 1994, the Winnebago Agency received several separate reports that appellant had violated the no-till provisions of agricultural leases he held on the Omaha Reservation in Nebraska. After investigating the allegations, the Winnebago Agency Superintendent (Superintendent) determined that the allegations were correct, and that appellant had also violated other lease provisions. After allowing appellant an opportunity to explain his actions and after determining that one alleged violation should be excused, by letter dated August 8, 1994, the Superintendent assessed appellant a total of $22,650 in liquidated damages.

Appellant appealed to the Area Director, who, on December 15, 1994, affirmed the Superintendent's decision. Appellant then appealed to the Board. Although advised of his right to do so, appellant did not file an opening brief to supplement his notice of appeal. The Area Director filed an answer brief.

Appellant bears the burden of proving that the Area Director's decision was erroneous or not supported by substantial evidence. See, e.g., Larry Boyer Land & Cattle Co. v. Portland Area Director, 28 IBIA 135 (1995), and cases cited therein. Appellant does not dispute that his leases contained no-till provisions. Instead, he contends that he only disked the soil to a depth of 2 inches in order to activate a herbicide, which, because of the lack of rain, was not otherwise activated. Appellant cites several reasons for disking the ground to activate the herbicide. He contends that disking was also needed to fill in ruts and holes that had been created by spring combining.

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Whether or not disking was indicated under the conditions existing in the spring of 1994 is irrelevant to this appeal. If appellant had discussed the situation with the appropriate BIA officials prior to disking, he might have received a modification to the leases to allow disking. However, he did not seek BIA authorization; instead, he acted unilaterally and in direct violation of the unambiguous provisions of his leases. The Board holds that the Area Director properly assessed liquidated damages for appellant's violations of the no-till provisions. 1/

Appellant also contends that the Superintendent authorized him to alter the crop acreage in certain fields by letter dated May 13, 1993. On appeal, the Area Director concedes that this authorization was not taken into account and requests that the Board reduce the damage assessment to $21,500, based on a recalculation of the liquidated damages. The Board accepts this reduction.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Acting Aberdeen Area Director's December 15, 1994, decision is affirmed except that the damage assessment is reduced to $21,500.

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Kathryn A. Lynn
Chief Administrative Judge

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Anita Vogt
Administrative Judge

1/ Appellant stated in his notices of appeal to both the Area Director and the Board that the owners of the land at issue were "hands-on" lessors, and that they were interested in meeting with BIA to discuss the issues raised in this appeal. His notice of appeal to the Board includes Jan. 16, 1995, letters from two landowners, one of which states the landowner's belief that appellant should not be severely fined. Even if this letter represents the position of all landowners, it does not relieve appellant from abiding by the explicit terms of his leases.

This decision concludes that appellant violated his leases and was properly assessed liquidated damages for those violations in accordance with the lease terms. It does not preclude the possibility of a meeting among BIA, the landowners, and appellant, if all of the landowners wish to attempt to reach some other final resolution of this matter. BIA's trust responsibility, however, requires it to take action when a lessee not only violates the conditions of a lease, but also threatens the trust res, i.e., the land itself.

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