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Robert D. Castille

EMPLOYEE ERROR OR DISHONESTY NOT GROUNDS FOR REINSTATING FEDERAL OIL AND GAS LEASES

ADMINISTRATIVE LAW: It is not arbitrary and capricious for the Secretary of the Interior to deny reinstatement of federal oil and gas leases when employee error or dishonesty causes nontimely payment of the annual rental. *Ramoco Inc. and Ram Petroleums, Inc. v. Andrus*, 649 F. 2d 814 (10th Cir. 1981).

Ramoco, Inc. and Ram Petroleums, Inc., affiliated corporations owning federal oil and gas leases in Utah, designated an employee to type and mail annual rental payments for these oil and gas leases. Although the employee assured both the company president and the company attorney that the required rental payments were in order, the employee had not in fact paid them prior to the due date.[1] Therefore, by operation of law,[2] eleven Ramoco, Inc. leases in Utah terminated on July 1, 1977, the anniversary date of the leases. Ramoco officials became aware of the nonpayment when they received notice terminating the leases.[3]

Ramoco sought reinstatement of the leases under the Mineral Leasing Act.[4] When both the Bureau of Land Management (BLM)[5] and the Interior Board of Land Appeals (IBLA)[6] denied reinstatement, Ramoco appealed to the district court in Utah. The district court upheld the denial of reinstatement.[7] Ramoco appealed the district court decision to the Tenth Circuit court of appeals. Ramoco argued that the Secretary of the Interior's

1. Ramoco, Inc. v. Andrus, 649 F.2d 814 (10th Cir. 1981).

2. The Mineral Leasing Act of 1920, 30 U.S.C. § 188(b) (1977) provided that "upon failure of a lessee to pay rental on or before the anniversary date of the lease, for any lease on which there is no well capable of producing oil and gas in paying quantities, the lease shall automatically terminate by operation of law."

3. Ramoco, Inc. v. Andrus, 649 F.2d 814, 815 (10th Cir. 1981).

4. 30 U.S.C. § 188(c) (1977) provides: "Where any lease has been or is hereafter terminated automatically . . . for failure to pay . . . the full amount of rental due, but such rental was paid on or tendered within twenty days thereafter, and it is shown to the satisfaction of the Secretary of the Interior that such failure was either justifiable or not due to a lack of reasonable diligence on the part of the lessee, the Secretary may reinstate the lease if . . . a petition for reinstatement together with the required rental . . . is filed with the Secretary."

5. The BLM administers the Mineral Lands Leasing Act for the Secretary of the Interior. *See* 43 C.F.R. §§ 3100.0-3 (1980).

6. The Interior Board of Land Appeals acts for the Secretary of the Interior pursuant to 43 C.F.R. § 4.1(b)(3) (1980) which provides for review of departmental decisions.

7. Ramoco Inc. and Ram Petroleums, Inc. v. Andrus, No. 79-007 (D. Utah 1979).

interpretation of "reasonable diligence" and "justifiable" was arbitrary, capricious, or an abuse of discretion.[8]

The Secretary of the Interior had interpreted "reasonable diligence" as "sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment."[9] The Secretary's reasonable diligence standard for reinstatement could be met if severe winter weather[10] or floods and earthquakes[11] caused late lease payments. The Secretary consistently declined reinstatement of leases if the lessee or his employees made errors which caused the late payment.[12]

The Secretary interpreted "justifiable" as exonerating only those late payments caused by factors outside the lessee's control.[13] In earlier decisions, the Secretary reinstated leases when injury to a key employee[14] or illness of the lessee[15] caused late rental payments. Employee dishonesty fell outside these exceptions. The Secretary stated in *Ram Petroleums, Inc. and Ramoco, Inc.*, that "[it] is axiomatic that appellants bear the responsibility and the consequences for the action or inaction of their employees."[16]

In reaching its decision, the Tenth Circuit deferred to the Secretary's construction of § 188(c).[17] While the Tenth Circuit recognized that the Secretary's interpretation of "reasonable diligence" and "justifiable" was "indeed narrow,"[18] it was not arbitrary, capricious, or an abuse of the discretion granted by § 188(c).[19] The court noted that this narrow interpretation still allowed the Secretary of the Interior to fulfill the task mandated by Congress, to "do equity."[20] It also reduced the need for Congress to consider many private bills for lease reinstatement.[21] Con-

8. The Administrative Procedures Act, 5 U.S.C. § 701–706 (1976), provides for review in the district court after exhaustion of administrative review. The Act requires a showing that an administrative decision is arbitrary, capricious, or an abuse of discretion.

9. 43 C.F.R. § 3108.2(1)(c)(2) (1980).

10. Genevieve C. Aabye, 33 IBLA 285 (1978).

11. Fuel Resources Development Co., 43 IBLA 19, 21–22 (1979).

12. *Id.*

13. Ramoco, Inc. v. Andrus, 649 F.2d 814, 815 (10th Cir. 1981).

14. David Kirkland, 19 IBLA 305 (1975).

15. Ada Lundgren, 17 IBLA 132 (1974).

16. 37 IBLA 184, 186–87 (1978).

17. In another decision dealing with administrative law, the United States Supreme Court held that "the construction of a statute by those charged with its execution should be followed unless there are compelling indications that it is wrong . . ." Red Lion Broadcasting Company v. F.C.C., 395 U.S. 367, 381 (1969).

18. Ramoco, Inc. v. Andrus, 649 F.2d 814, 816 (10th Cir. 1981).

19. *Id.*

20. *See* H.R. REP. NO. 1005, 91st Cong., 2d Sess., *reprinted in* [1970] U.S. CODE, CONG. & AD. NEWS 3002, 3005.

21. *Id.*

gress expressly gave the Secretary broad discretion when it amended § 188 to allow for reinstatement.[22] The Tenth Circuit refused to reinstate Ramoco's cancelled leases.[23]

Ramoco has requested review of the Tenth Circuit's decision by the United States Supreme Court.[24] The question presented by Ramoco's petition for certiorari is: "May the Secretary of the Interior adopt an interpretation of the Amendment to the Mineral Leasing Act of 1920, 30 U.S.C. § 188(c) that renders the amendment nugatory?"[25]

CONCLUSION

The Tenth Circuit Court of Appeals deferred to a line of administrative law decisions holding employers responsible for the action or inaction of their employees in making annual federal oil and gas lease payments. The appeal to the United States Supreme Court, if heard, will ask the Court to break with administrative law precedent even though the Ninth and Tenth Circuit courts of appeals have supported these administrative decisions. The Ninth and Tenth Circuits have appellate jurisdiction in the West where the United States government has vast holdings subject to mineral leases. On appeal, the Court will be asked to give relief to petitioners in situations similar to those in which Congress itself has passed private laws reinstating leases. Unless Congress expresses dissatisfaction with the Secretary's narrow but consistent interpretation of

22. "A reinstatement may be made by the Secretary only after he is fully satisfied that the mistake was justifiable or not due to lack of reasonable diligence on the part of the lessee. The Committee expects the Secretary of the Interior to examine carefully each petition for reinstatement and to adjudicate favorably only those cases where it is clearly shown that the failure was, as indicated above, either justifiable or not due to lack of reasonable diligence." *Id.* at 3005.

23. Ramoco, Inc. v. Andrus, 649 F.2d 814, 816 (10th Cir. 1981).

24. A petition for certiorari was filed in the United States Supreme Court on August 25, 1981. 50 U.S.L.W. 3306-07 (No. 81-383, 1981 term). Oct. 20, 1981.

25. *Id.* at 3307. The posturing of the question parallels that found in Ram Petroleums, Inc. v. Andrus, 478 F. Supp. 1165 (D. Nev. 1979), *rev'd*, 658 F.2d 1349 (9th Cir. 1981). The same employee mendacity that led to the loss of the 11 Ramoco leases in Utah had also led to the loss of 19 Ram Petroleum, Inc. leases in Nevada. The United States District Court in Nevada reinstated the leases because it found Congress had itself passed private laws reinstating terminated oil and gas leases when faced with a situation similar to the one presented to the United States District Court in Nevada. The district court concluded that the Secretary should remedy those situations which Congress itself remedies by passing private laws reinstating terminated oil and gas leases. An IBLA administrative judge, Joseph Goss, had also expressed this same view in dissenting opinions. *See e.g.*, Ram Petroleums, Inc., and Ramoco, Inc., 37 IBLA 184, 188 (1978), and Fuel Resources Development Co., 43 IBLA 19-25 (1979). In reversing the decision of the district court in Nevada, the Ninth Circuit Court of Appeals explicitly rejected the argument that private laws enacted by Congress to reinstate leases define the discretion of the Secretary of the Interior. The Ninth Circuit refused to interfere with the discretion exercised by the Secretary of the Interior because "We should intervene only when we are convinced that its exercise has broken the chain that binds it to the purposes Congress intended the discretionary power to serve." 658 F.2d at 1354.

"reasonable diligence" and "justifiable," the United States Supreme Court will likely defer to the Secretary's construction of the statute. If the number of private relief bills before Congress increases, Congress may find it necessary to amend § 188 (c) to require the Secretary to grant administrative relief in situations similar to this case. Until then, this Tenth Circuit decision will likely remain law.

ROBERT D. CASTILLE