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# The Mining and Lands Commissioner Le Commissaire aux mines et aux terres

Russell Yurkow )  
Deputy Mining and Lands Commissioner )

Monday, the 17th day  
of June, 1991.

## IN THE MATTER OF

An appeal from the decision of the Mining Recorder of the Larder Lake Mining Division dismissing a dispute against Mining Claims L-1137549 in the Larder Lake Mining Division.

## B E T W E E N :

JAMES R.B. PARRES

Appellant

- and -

SKEAD HOLDINGS LTD.

Respondent

This appeal was heard in Kirkland Lake on the 11th day of June, 1991.

J. R. B. Parres, the appellant, appeared on his own behalf.  
Robert MacGregor, the principal of the respondent corporation, appeared on behalf of Skead Holdings Ltd.

On March 27th, 1991, two stakers, in competition, each staked a claim on land that came open for staking that day. Daniel Lacasse (Daniel), who had been assisted by Lucien Lacasse (Lucien), recorded his staking first as 1137549. J. R. B. Parres (Parres) had his application to record claim 1120323 accepted as "Filed Only". Daniel subsequently transferred his interest in the claim to Skead Holdings Ltd (Skead).

Parres disputed Daniel's staking. The dispute was heard by the mining recorder who found in favour of Daniel. Parres appealed this finding.

## BASIS OF DISPUTE

The basis of Parres' dispute was that Daniel started staking before 7 a.m.

which was the time that the land came open for staking. He testified that, before 7 a.m., Daniel had erected his No. 1 post and inscribed "Post 1" and "Churchill Twp" on the post. He also testified that Lucien had started to blaze to the south some minutes before 7 a.m.

### UNLISTED WITNESS

During the hearing a question arose as to whether Parres should be permitted to give evidence. The parties were required to provide, well before the hearing, a list of witnesses that they proposed to call at the hearing. Parres submitted a list but did not show that he would be a witness. Skead indicated that it did not propose to call its own witnesses but would cross-examine any witnesses that Parres called.

Parres, just prior to the hearing, asked to subpoena the mining claims inspector who had been shown on his list. The request was denied because the notice was too short and he submitted no evidence that the testimony of the inspector was relevant or required for his case. This condition is a requirement of the Tribunal. As an alternative, Parres wanted to take the witness stand on his own behalf. Mr. MacGregor (MacGregor) objected on the basis that Parres was not listed as a witness.

In the event, Parres was allowed to testify. The pre-hearing procedure of the Tribunal is designed to preclude the element of surprise and to ensure that each party is given a full opportunity to know and prepare for the case that it has to meet. Parres indicated that his evidence would be, essentially, the matters set out in his filed submissions. There would be nothing new that MacGregor was not aware of. MacGregor, after hearing Parres' evidence, was given the opportunity to arrange to call rebuttal witnesses. The Tribunal was prepared to adjourn to allow him to arrange this. MacGregor decided that it would not be necessary to call a rebuttal witness. He did cross-examine Parres but, otherwise, the evidence was not challenged. The Tribunal found Parres to be a creditable witness and accepts his evidence. The main elements of his testimony are set out in the paragraph that sets out the basis of his dispute.

### WHAT CONSTITUTES STAKING

Subsection 47(1) of the Mining Act sets out what a prospector must do to stake a claim. There are three basic acts in the staking process: erection of posts, inscription of posts and blazing of lines.

Clause (a) requires a post to be erected at each corner and the number

of each post to be marked on it. Clause (b) requires certain information to be written on the No. 1 post. I read this clause to include the name of the township as information to be put on the post. Clause (c) requires the staker's name and licence number to be put on the numbers 2, 3 and 4 posts. Clause (d) requires blazing on the trees and cutting of underbrush. These are the elements of staking. Since they are all required, doing any one of these constitutes the start of staking.

## REVIEW OF CASES

Labine v. Leahy is an unpublished case decided by Commissioner Ferguson on the 20th day of July, 1984. He says, on page 4:

"... the integral parts of the staking process should not be performed prior to the time the land comes open for staking."

Although the Commissioner does not specifically so say, it is clear that he considered blazing an integral part of the staking process. It is also clear that he considered that pre-blazing would invalidate a staking. I agree with the Commissioner.

In the same case, the Commissioner addresses the issue of acts required as part of staking being done earlier to obtain a time advantage in recording.

It is clear from the cases that the preparation of posts before staking is started is permitted because the preparation of posts is not an integral part of the staking process. That coincides with my reading of the Act. Parres prepared his posts before the staking and there is nothing wrong with this.

In Meunier v. Larche, (5 M.C.C., 485) Commissioner Ferguson concluded on page 491:

"... ,preinscription of corner posts would invalidate the staking by Larche. The reasons for such invalidity would be that the staking commenced prior to the time that the mining rights came open for staking."

The Commissioner noted with approval Whelan v. MacGregor (5 M.C.C. 97), a case cited by Parres.

In the Whelan case Commissioner Horan held a staking invalid because the No. 1 post was erected twenty minutes before the land came open.

In Robinson v. Gracie (4 M.C.C. 120) where a staker, in a competitive

staking, put an inscription on a post before the land was open for staking, the Commissioner reluctantly invalidated the staking.

## CONCLUSION

The Tribunal finds that Daniel, both, inscribed (to some extent) information required by the Act on, and erected, the No. 1 post before the land came open for staking. It, also, finds that Lucien started to blaze before the land come open. In other words, all three of the integral parts of staking were started. Any one of these acts constitutes the start of staking. Accordingly, the Tribunal allows the appeal.

Parres, in his summation, said that it is unfortunate that where two stakers honestly competed for a claim one had to lose. I share this view. From Parres' own evidence it appears that both sides intended to comply with the Act. It appears to me that Daniel Lacasse did not fully appreciate the technicalities of the Act. The technicalities can be important, particularly in a competitive staking.

## ORDER

It is ordered that claim 1137549 held by Skead be cancelled and that Parres' claim 1120323 accepted as "Filed Only" be recorded. There is no order as to costs.

DATED this 17th day of June, 1991.

Original signed by  
R. Yurkow

R. Yurkow  
Deputy Mining and Lands Commissioner.