



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

Russell Yurkow)
Deputy Mining and Lands Commissioner)

Thursday, the 4th day
of April, 1991.

IN THE MATTER OF

Amended April 4, 1991. An appeal from a decision of the Mining Recorder of the Larder Lake Mining Division dismissing a dispute against Mining Claim L-1162127 et al. in the Larder Lake Mining Division.

B E T W E E N :

JAMES R.B. PARRES

Appellant

- and -

MINISTER OF MINES

Respondent

This is an appeal by James Parres (Parres) from a refusal of the mining recorder for the Larder Lake Mining Division to record a fraction. Parres, in his written submission, has agreed to the appeal being settled without the cost of an oral hearing. This is not a case that requires oral testimony to determine. The material filed by both parties clearly provides the necessary information needed to reach a decision. Accordingly, a decision is being given on the basis of the material filed without requiring the parties to undergo the expense, delay and inconvenience of an oral hearing.

The current appeal has its roots in a dispute that was heard by the former Commissioner, Mr. Ferguson.

BACKGROUND

Previous Claim Restaked

A former mining claim, WD 1407, came open for staking on June 1st, 1989. Lucien Lacasse (Lacasse) and Calvin Phillips (Phillips) both set out to stake the land that came open. Phillips recorded his staking first, and Lacasse disputed the staking. The dispute was heard by Commissioner Ferguson who issued his decision and final Order on December 22nd, 1989.

Commissioner's Decision

Lacasse, in his application to record, stated that he was restaking mining claim WD 1407. Commissioner Ferguson, on page 3 of his decision, states "... the disputant (Lacasse) staked the area from the north boundary of Mining Claim W.D. 1407 to what he considered to be the south boundary overlapping (two claims immediately to the south) by approximately 200 feet ...". Because of the way that adjoining claims were staked and because of water protruding into claim WD 1407 it was very difficult to determine where the southerly boundary of WD 1407 ran. In his decision, Commissioner Ferguson allowed that WD 1407 may have overlapped two adjoining claims to the south. The Commissioner goes on to say that "the matter (the southern boundary) will remain undealt with until such time as adequate survey information is available to the Mining Recorder for making a decision." On page 5, the Commissioner states "the tribunal cannot make a finding on the location of the corners of Mining Claim W.D. 1407." The Commissioner goes on to order that the claim restaked by Lacasse be recorded. It was recorded as L 11216.

Recorder's dealings with Skead

Lacasse transferred the claim to Skead Holdings Ltd. (Skead). The mining recorder entered into some discussions with Skead. On May 25, 1990 the recorder wrote to Skead, copying the letter to Parres, stating "I will not record any mining claim which purports to be staked as a fractional portion of W.D. 1407 not covered by L 111216."

On July 16th, 1990, the recorder issued an order stating "... am satisfied that it was the manifest intention of the staker of claim L 111216 to stake the area comprising former Mining Lease W.D. 1407." The order goes on to order "that at such time as a survey of Mining Claim L 111216 is authorized by this office the survey shall correspond directly with the limits of former Mining Lease W.D. 1407." This order was recorded on the title of the mining claim. On the same day, the recorder issued a second order to the claim holder of the claims adjoining L 111216 on the south to deal with the overstaking of 111216. This second order dealt with the moving of posts and the establishing of new

limits along the southerly boundary of 1111216. It appears that the stakers to the south had encroached on the former mining claim WD 1407, staking a portion before that land was open for staking. The mining recorder was rectifying that situation.

Appeal

On September 20, 1990, Parres filed an application to record the restaking of part of WD 1407. This was shown on his application to be the staking of a triangular fraction in the vicinity of the southerly boundary of L 1111216. The recorder refused to record the restaking by Parres on the basis that there was no open ground and referring to the first mentioned order of July 16th, 1990. It is this refusal to record that Parres appealed.

CONCLUSIONS

The application to record L 1111216 shows that the intention was to restake WD 1407. Since this area was surrounded by other claims, it would have been very strange, indeed, for a restaker to intend to do otherwise. This intent seems to have been confirmed, after a hearing, by Commissioner Ferguson. The Commissioner also found that the boundaries of the claim being restaked (WD 1407) were not precisely defined. He awarded the restaked claim to Lacasse. There is nothing in the Commissioner's decision to indicate that L 1111216 was anything other than a restaking of WD 1407. The mining recorder dealt with L 1111216 on the basis that it was a restaking of WD 1407. Indeed, in view of the Commissioner's decision, the recorder could not have done otherwise. It was recognized by all involved that the boundaries of WD 1407 were vague and that they would not be settled until a survey was available.

This Tribunal finds that L 1111216 was a restaking of WD 1407 in its entirety with its precise delineation to be determined. Since all of WD 1407 was staked by Lacasse there can be no remaining portion to stake as a fraction. There, in any event, appears to have been overstaking so it does not seem possible that there could be any open land on which to stake a fraction.

This Tribunal finds that the mining recorder acted properly in all the steps that he took. I do not see how the recorder could have treated the matter any differently. To record the fraction would have been unfair to Skead. I consider that the recorder's actions to be a fair resolution of the matter between Skead and Parres and to be consistent with the general good of the industry. On that basis it is hard to see any merit in the appeal. The appeal, therefore, is dismissed.

Costs

Parres was aware of the hearing before Commissioner Ferguson and was provided with information of the discussions between the mining recorder and Skead. This was not a situation that he, inadvertently, stumbled into. He would have been aware of the intent to stake all of WD 1407. This intent is spelt out in the Application to Record filed by Lacasse and alluded to in Commissioner Ferguson's decision. The mining recorder affirmed this in his dealings with L 1111216.

My conclusion is that Parres set out to see if any advantage could be gained in an area where the boundary lines were accepted as being uncertain. In a competitive industry, there is nothing wrong with this. However, as the Ministry points out in its written argument, Parres has caused the Ministry to "spend considerable time and effort" on the appeal.

The Tribunal sees the purpose of the appeal process as providing a remedy from an administrative action by a mining recorder that results in an unfair or unjust consequence to the appellant. It does not feel that every appellant who is not successful should necessarily be penalized by having costs awarded against the appellant. However, the business of the Ministry could be ground to a halt if appeals are undertaken where there has been no unfairness or injustice or the appellant does not have a reasonable case on the merits. The Tribunal is prepared to award costs to the Ministry if it has to defend appeals that turn out to have been essentially frivolous.

The Tribunal awards costs, to the Minister, in the amount of \$200 to be paid by Parres. Had the Ministry been put to the cost of an oral hearing, the costs would have been substantially higher.

THIS TRIBUNAL DIRECTS under subsection 193(1) of the Mining Act that the Mining Recorder shall record this order without fee.

DATED this 4th day of April, 1991.

Original signed by
R. Yurkow

R. Yurkow

DEPUTY MINING AND LANDS COMMISSIONER.