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

Russell Yurkow) Thursday, the 21st day
Deputy Mining and Lands Commissioner) of February, 1991.

AND IN THE MATTER OF

An application under subsection 86(1) of the Mining Act for a relief from forfeiture on terms in respect of Mining Claims PA-487247 to 487254, both inclusive, in the Patricia Mining Division.

B E T W E E N :

GEORGE A. ARMSTRONG and ALLAN P. BEST

Applicants

- and-

WILLIAM G. WAHL

Respondent

This is an application for relief from forfeiture of eight claims held by the applicants. The claims were restaked by the respondent.

Mr. Morton appeared on behalf of the applicants. Mr. Comisso and Mr. Kleinman appeared on behalf of the respondent.

Background:

George Armstrong (Armstrong) and Allan Best (Best), as partners, held a block of claims in the Patricia Mining Division. Within this block were the eight claims in dispute. The disputed claims were recorded by Best on January 26th, 1980 with a half interest then being transferred to Armstrong. During the years there were other transfers under option agreements but at the relevant time the claims were back in the name of Armstrong and Best. Two hundred days work was recorded for each of the claims. The applicants had until the 26th day of January, 1990 to apply for a lease. They failed to do so and the claims forfeited, by law. Dr. Wahl (Wahl) had the claims restaked on January 30th, and February 1st and 2nd, 1990.

On February 5th, 1990, Best found out about the restaking and restaked one of the restaked claims himself. He felt that one of the restakings by Wahl had

been defective. He then filed a dispute on this restaking. On February 8th, 1991, the applicants applied for relief from forfeiture on all eight of the claims. Best's dispute was ultimately lost after a hearing before the mining recorder.

Respondent's Theories:

Wahl's written argument was that the applicants had abandoned the claims. During the hearing an alternate (and incompatible) theory was advanced. theory was that the applicants let the claims lapse in order that the applicants could restake them. The argument was, and the evidence supports this, that it would cost at least $25,000 to bring the claims to lease whereas it would cost the applicants only a few hundred dollars to do one year's work on the claims in order to keep them in good standing. The Tribunal finds no merit in either the theory of abandonment or that the applicants intended let the claim forfeit and then restake.

The applicants' evidence is that they simply missed the crucial date. applicants had their adjoining claims surveyed and had applied for a lease on those claims. They had, at the time of the forfeiture, completed some survey work on two of the disputed claims and had permission to survey all the disputed claims. In the week preceding the forfeiture, Best and Wahl were engaged in negotiating an option agreement for the disputed claims. The applicants could have applied for an extension of time to apply for a lease and, under current practice, would likely have received an extension. Alternatively, if they did intend to restake (and that would not make a lot of sense in the circumstances) then they would surely have done so on January 27th, 1990 when the claims came open and not have waited for more than one week.

Wahl hangs his theory on the fact that Best did restake one of the claims. There is some contradictory evidence as to whether Best did this on his own initiative or on the advise of his lawyer. In either case, the Tribunal accepts that this was a belated attempt to salvage the lost claims and not a preconceived plan to restake.

Best gave evidence that he and his partner did not intend to let the claims forfeit and that the omission to obtain an extension of time to apply for a lease

was pure oversight. Although Best was confused, to some degree, on dates and precise sequence of events, the Tribunal finds that he is a creditable witness who gave his testimony to the best of his recollection.

On the basis of Best's evidence and any reasonable view of the facts, the Tribunal finds that the forfeiture of the claims was the result of an oversight by the applicants.

Return of Claims:

The applicants have two hundred days work recorded for each of the disputed claims. The Tribunal is not aware of any case where a claim holder with that amount of work did not have the claim returned. If there is such a case, it has not been brought to the Tribunal's attention. Whatever has happened in the past, the Tribunal is not prepared to rule that a claim with two hundred days work will inevitably be returned. A restaker would, however, have to present a compelling case.

Wahl argues that, because of option agreements, the applicants have received a substantial amount of money from these claims and are more than compensated for their expense and time invested in them. The Tribunal finds this to be, likely, the case but does not consider that sufficient reason not to return the claims.

Wahl, also, argues that he is better able to develop the claims. The Tribunal is of the view that as more work is recorded on claims, the less weight should be given to this aspect. On the evidence, the Tribunal finds that the parties have approximately equal resources. It is likely that either party would attempt to option its holdings but each has the resources for further exploration. The disputed claims abut a block of claims that Wahl has on the one side and a block of claims that Armstrong and Best have on the other side.

The Tribunal finds that Wahl has not dispelled the very high onus required to preclude claims with two hundred days work being returned.

Compensation:

We now come to the question of compensation. The practice is to compensate a restaker for the costs incurred. Ordinarily, unless there is specific evidence to justify a higher amount, this compensation varies from $100 to $300 a claim. The applicants suggest $8,000 and Wahl states that total costs, including costs of drilling by Wahl immediately after restaking, come to $26,722.

As stated earlier, Wahl and Best were negotiating a possible option agreement immediately before the claims forfeited. Wahl testified that before proceeding with negotiations he checked the public record to see if the claims were in good standing. When he realized that they had forfeited, he restaked them for himself. The applicants argue that it was only through the negotiations that Wahl realized the situation and took advantage of it. This, it was argued, is "watching" and negotiating in bad faith. They argue that there was a moral duty not to take advantage of the situation.

The Tribunal finds that Wahl did not gain an unfair advantage through the negotiations. Since Best did not know of the impending forfeiture, there was nothing in the negotiations that would lead Wahl to infer that the claims were about to forfeit. Indeed, if this were known, there was no point to the negotiations.

The Tribunal would like to lay to rest the concept of "watching" as a reason for returning claims or reducing compensation. The law provides that in certain circumstances claims forfeit and the land is thereby open for restaking. It is every claim holder's responsibility to maintain the claim in good standing. A restaker has the legal right to enter immediately and restake. It is entirely understandable why this practice is unpopular with a claim holder whose claim has just forfeited. However, in a highly competitive and potentially profitable industry, one has to accept that prospectors will take every legal advantage that they can get.

The Tribunal does not feel that Wahl should be penalized for taking advantage of information that is available to the public if it chooses to search it out.

Nor should he be penalized for restaking as soon as he found out that land was open for restaking. The Tribunal does not feel that Wahl had any obligation to alert a competitor to a loss of the competitor's claims.

On the other hand, Wahl had every reason to expect that the applicants would want their claims back. They were, after all, in the midst of negotiations to sell options on the claims. Being a highly experienced person in the mining industry, indeed a consultant on mining matters, he would reasonably expect that the claims would likely be returned to the applicants. Still, he choose to drill immediately after restaking. The Tribunal sees no reason for Wahl to be compensated for this expense. It is not an expense of staking. It is not an expense incurred with the reasonable expectation that he would retain the claims. The Tribunal finds that the drilling was either to quickly establish support for an entitlement to the claims or to run up costs in the event the claims were returned. The Tribunal finds nothing reprehensible with either course but does not feel that a restaker should be rewarded for either course.

Whatever expenses the respondent alleges for the restacking, the Tribunal feels he could easily have had the restaking done for substantially less than the $8,000 suggested by the applicants. He was working claims in the area and had crews there. The purpose of compensation is to reimburse a restaker for expense and time reasonably incurred.

Accordingly, the Tribunal finds that the applicants' suggested compensation of $8,000 to be fair and awards that amount as compensation.

The Tribunal awards costs in the amount of $1,000 to the applicants to be paid by the respondent.

The Tribunal orders that the costs be set off against the compensation.

If the applicants file with the Tribunal, before the 28th day of March, 1991, satisfactory evidence that they have paid $7,000 to the respondent, an order will issue restoring the disputed claims to them. In the alternative, if payment is not made

before that day, the Tribunal, on its own motion or on an application by the respondent, may dismiss the application.

DATED this 21st day of February, 1991.

Original signed by
R. Yurkow

R. Yurkow

DEPUTY MINING AND LANDS COMMISSIONER