



LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Stankievech v Ember Resources Inc, 2023 ABLPRT 904953

Date: 2023-08-09
File No.: RC2020.3132
Order No.: LPRT904953/2023
Municipality: Kneehill County

In the matter of a proceeding commenced under section 36 of the *Surface Rights Act*, RSA 2000, c S-24 (the “Act”)

And in the matter of land in the Province of Alberta within the:
SE ¼-18-32-22-W4M as described in Certificate of Title No. 071 389 629 (the “Land”),
particularly the area granted for a well site and access road for the 102/08-18-032-22W4M well,
Alberta Energy Regulator Licence No. 0380743 (the “Site”).

Between:

Ember Resources Inc.
and
COGI Limited Partnership,
(By its current general partner, Canadian Oil & Gas International Inc.),

,

- and -

Harvey Lyle Stankievech,

Operators,

Applicant.

Before: Jerry Zezulka, Chair
Tamara M. Bews
(the “Panel”).

Appearances by written submissions:

For the Applicant:	Paul Vasseur
For the Operators:	
COGI Limited Partnership	None
Ember Resources Inc.	None

SECTION 36(6) DIRECTION TO PAY

The Tribunal directs the Minister to pay out of the General Revenue Fund the sum of ONE THOUSAND FIVE HUNDRED TWENTY and 00/100 DOLLARS (\$1,520.00) (the “Compensation”) to Harvey Lyle Stankieveh of Three Hills in the Province of Alberta for compensation that became due in the year 2022.

DECISION AND REASONS

[1] On April 7, 2022, the Applicant applied under section 36 of the *Act* seeking recovery of unpaid compensation due under a surface lease dated April 4, 2007 for the Site. The Applicant submits that Ember did not pay the full annual compensation amount of \$3,620.00 due on April 4, 2022. The Applicant claims \$1,520.00 remains outstanding for the 2022 Surface Lease year.

[2] By letters dated December 5, 2022, the Tribunal issued a Notice and Demand for Payment to COGI Limited Partnership and Ember Resources Inc. (“Ember”). No responses were received from COGI Limited Partnership or Ember.

ISSUES

[3] The issues before the Panel are:

- (1) Who is an Operator under section 36 of the *Act*?
- (2) Is there money past due that has not been paid by the Operators to the Applicant under the Surface Lease?
- (3) If money is past due and unpaid, is there any reason why the Tribunal should direct the Minister to pay a reduced amount?
- (4) Should the Tribunal suspend and terminate the Operator’s entry rights under section 36(5) of the *Act*?
- (5) Should the Tribunal direct the Minister to pay the Applicants out of the General Revenue Fund under section 36(6) of the *Act*?

DECISION

[4] The Panel decides:

- (1) Under section 36 of the *Act*, at the time of non-payment in 2022, the Operators are COGI Limited Partnership (by its current general partner, Canadian Oil & Gas International Inc.) and Ember Resources Inc.
- (2) Compensation of \$1,520.00 is payable to the Applicant by the Operators, jointly, and the written evidence satisfactorily proves that it has not been paid.
- (3) There is no reason to direct the Minister to pay a reduced amount.

- (4) There is no reason to delay the application further by issuing orders of suspension and termination because because Canadian Oil & Gas International Inc., the current general partner of COGI Limited Partnership, is insolvent.
- (5) A Direction to Pay shall issue forthwith.

ANALYSIS

1. Who is an operator under section 36 of the Act?

[5] For the purpose of recovery of compensation applications, the definition of the word *operator* is set by section 36(1) and (2) of the *Act*. Specifically, section 36(1) and (2) expands the definition of *operator* so that it has a broader meaning than in the rest of the *Act*.

Section 36(1)(c) – AER Licence Holder

[6] Under section 36(1)(c), the holder of a licence issued by the Alberta Energy Regulator (AER) is an operator. This includes the person who held the licence on the due date and successors to the licence. AER Well Licence No. 0380743 for the Site is in the name of Ember. The Panel finds that Ember is an operator under section 36(1)(c) on the Surface Lease 2022 due date.

Section 36(1)(d) – Working Interest Participants

[7] Under section 36(1)(d), working interest participants are *Operators*. An AER Well Summary Report Search dated November 21, 2022, for Well Licence No. 0380743 shows that COGI Limited Partnership (15%) and Ember (85%) are working interest participants in this well, effective August 1, 2017.

[8] An Alberta Trade Name / Partnership Registry Search dated February 24, 2023 of COGI Limited Partnership shows the current general partner is Canadian Oil & Gas International Inc.

[9] Having regard to the above, the Panel finds COGI Limited Partnership, by its current general partner, Canadian Oil & Gas International Inc. (as confirmed by the Alberta Trade Name / Partnership Registry Search dated February 24, 2023) and Ember are an *operator* under section 36(1)(d) on the Surface Lease 2022 due date.

2. Is there money past due and unpaid by the Operators to the Applicant under the Surface Lease?

[10] Certificate of Title No. 071 389 629 confirms Harvey Lyle Stankieveh has owned the Land since August 3, 2007. Accordingly, the Panel finds that Harvey Lyle Stankieveh was the owner of the Land when the Surface Lease annual compensation was due in 2022.

[11] The application and the Applicant's declaration indicate that compensation of \$1,520.00 is owed under the Surface Lease as follows:

Year Requested	Current Compensation Rate	Amount Received	Amount Claimed
2022	\$3,620.00	\$2,100.00*	\$1,520.00
Total			\$1,520.00

Note: The Applicant indicates that he received partial payments of \$2,100.00 from Ember.

[12] In support of his application and declaration, the Applicant provided:

- a. A letter dated December 20, 2021 from Ember to Harvey Stankievech which indicates, among other things, that:
 - i. The rental for the Surface Lease was up for review in 2022 under section 27 of the Act.
 - ii. Ember proposed to adjust the annual rental from \$3,620.00 to \$2,100.00 per year effective April 3, 2022.
 - iii. If the Applicant was in agreement, he was to acknowledge this by dating, signing and returning the duplicate letter to Ember's attention.
 - iv. Any payment directed to the Applicant's account, including the cashing of any cheques, is not deemed as acceptance of this offer.
- b. A copy of an Ember cheque remittance which includes the Surface Lease and Site. This remittance shows that the annual compensation paid for the Site was \$2,100.00 for the period from April 4, 2022 to April 3, 2023.

[13] An AER Well Summary Report dated February 24, 2023 for Well Licence No. 0380743 shows that the well associated with the Site is a suspended well. Given that AER records show the well on the Site as suspended, and not reclaimed, the Panel finds that the Surface Lease remains in effect.

[14] The Applicant's position appears to be that the Surface Lease was not amended to reduce the compensation from \$3,620.00 to \$2,100.00 per year effective April 3, 2022, such that \$1,520.00 remains outstanding for the 2022 Surface Lease year.

[15] The onus is on the Applicant to prove that the money is due and paid under the Surface Lease. The Panel notes that the Applicant's declaration referenced the partial payments made by Ember and provided other documentary evidence related to the Surface Lease.

[16] In the absence of additional submissions, evidence and legal authorities being provided, the Panel finds that Ember's proposed December 20, 2021 amendment to the Surface Lease is not legally binding on the Applicant. Accordingly, the Panel finds that the annual Surface Lease compensation due on April 4, 2022 was \$3,620.00.

[17] Furthermore, the Panel does not have the authority under section 36 of the Act to vary the annual compensation, but only to require or order the payment of annual unpaid compensation: see, e.g., *Penner v Canstone Energy Ltd*, 2021 ABLPRT 416 (CanLII) at paragraph 20.

[18] Having regard to the above, the Panel finds that compensation of \$1,520.00 is still owed by the Operator to the Applicant for the 2022 Surface Lease year.

3. *If money is past due and unpaid, is there any reason why the Tribunal should direct the Minister to pay a reduced amount?*

[19] Concerning the condition of the Site, the Applicant submitted, among other things, that: the Site is fenced, there is equipment or structures on the Site, and the Site is still being visited by workers. The Applicant's position is the losses and impacts of the Site are still the same.

[20] In *Devon Canada Corporation v Alberta (Surface Rights Board)*, 2003 ABQB 7, 337 AR 135 (“*Devon*”), the Court of King’s Bench considered the Tribunal’s responsibility when considering an order under s. 36(5) and (6) and held at paragraph 29:

... the function of sections 36(5) and 36(6) appears to me to provide the surface owner with some assurance that if they cooperate with providing the oil industry access to their lands, they need not fear the operator will not pay them.

The sections provide a pragmatic solution whereby the surface owner need only prove the existence of a lease and that rent has not been paid. Upon proof of such, in most cases, the province would then pay the rent and the operator would then face the province, seeking reimbursement from the operator.

... if the ... owner’s claim is unjustified, is patently absurd, or provides an unjust enrichment, the Board should be able to use its discretion under s. 36(6) to refuse to direct that Alberta taxpayers pay the rental arrears.

[21] According to *Devon*, the Panel’s decision to direct the Minister to pay out of the General Revenue Fund is discretionary. This was confirmed by the Alberta Court of King’s Bench in *Provident Energy Ltd v Alberta (Surface Rights Board)*, 2004 ABQB 650.

[22] In *Praskach Farms v Lexin Resources Ltd*, 2020 ABSRB 85 (“*Praskach*”), the Tribunal concisely summarizes the scope of authority under section 36 of the *Act*, the factors to consider direct the Minister to pay either the full amount of Compensation owing or a reduced amount if payment if the full amount is unjustified. The Tribunal held (at paragraphs 10):

[10] There are two factors particularly important for considering annual compensation and whether directing the Minister to pay the full amount owing is unjustified. ... this is not a review of compensation under section 27, however, the loss of use and adverse effect are components of fair compensation which the Board can consider when determining if directing the Minister to pay the full amount owing is justified.

and this Panel adopts and applies the reasoning from *Praskach*.

[23] There is no evidence to convince the Panel that payment of the remaining compensation of \$1,520.00 would result in overpayment to the Applicant. There are active equipment and structures on the Site, including a producing coalbed methane well. The Panel finds that loss of use and adverse effect from the Site has continued to occur.

4. *Should the Tribunal suspend and terminate the Operators’ entry rights under section 36(5) of the Act?*

[24] Under section 36(5) of the *Act*, the Tribunal can suspend and terminate an Operators’ rights to access the Site when appropriate. There is no reason to delay the application here because Canadian Oil & Gas International Inc., the current general partner of COGI Limited Partnership, is insolvent (e.g., see, *Smoky Lake Grazing Association v Canadian Oil and Gas International Inc*, 2020 ABSRB 583).

5. *Should the Tribunal direct the Minister to pay the Applicant out of the General Revenue Fund under section 36(6) of the Act?*

[25] The statutory pre-requisites for issuance of the Direction to Pay are that a written demand of the operator has been made under section 36(4) and that the operator has not proven to the Tribunal’s

satisfaction that full payment has been made. Here, Notice and Demand for Payment under section 36(4) of the *Act* were made of the two named operators, COGI Limited Partnership and Ember Resources Inc., on December 5, 2022. No responses were received from COGI Limited Partnership or Ember Resources Inc. to the Notice and Demand for Payment regarding the \$1,520.00 amount claimed.

[26] As noted above, the Panel found compensation of \$1,520.00 is owed by the named operators to the Applicant for the 2022 Surface Lease year. In the Panel's view, there is no purpose in delaying the issuance of the Direction to Pay.

[27] Accordingly, the Direction to Pay will issue immediately.

Dated at the Calgary in the Province of Alberta this 9th day of August, 2023.

LAND AND PROPERTY RIGHTS TRIBUNAL



Tamara M. Bews, Member