LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: Jones v Ember Resources Inc. 2022 ABLPRT 1097

Date: 2022-08-03
File No. RC2021.1262
Decision No. LPRT2022/SR1097
Municipality: Kneehill County

The Surface Rights Board ("SRB") is continued under the name Land and Property Rights Tribunal ("Tribunal"), and any reference to Surface Rights Board or Board is a reference to the Tribunal.

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:
SW 1/4-18-32-22-W4M as described in Certificate of Title No. 191 245 772 +2 (the "Land"), particularly the area granted for Alberta Energy Regulator Licence No. 0363268 (the "Site").

Between:

Ember Resources Inc.,
and
Canadian Oil & Gas International Inc.,

Operators

- and -

Dorothy Jean Jones,

Applicant.

Before: Katherine Camarta (the "Panel").

DEMAND FOR PAYMENT

IT IS DEMANDED the Operator pay ONE THOUSAND FIVE HUNDRED AND FIFTY NINE THOUSAND 50/100 DOLLARS ($1,559.50) (the "Compensation") to the Applicant.

IT IS ORDERED that if the Tribunal does not receive satisfactory evidence that the Compensation has been paid in full to the Applicant, then without further notice the Operator's right to enter the Site shall be suspended and terminated under section 36(5) of the Act at 4:30 p.m. on the dates below. This shall not affect any of the Operator's obligations in regards to the Site, nor any other person's rights as against the Operator. The surface lease agreement remains in place for purposes of shutting-in, suspension, abandonment, and reclamation.

- Suspension effective from August 18, 2022, for 15 days.
- Termination effective from September 2, 2022.

DECISION AND REASONS

[1] The Applicant filed an application under section 36 of the Act seeking recovery of allegedly unpaid compensation due under a Surface Lease Agreement for the above Site dated April 26, 2006 (the "Right of Entry Instrument").

[2] During the Tribunal's routine searches, it found more than one party that might be an operator of the Site for the purposes of section 36 of the Act.

ISSUES

[3] The issues before the Panel are:

(1) Which of the parties should be named as the Operator(s) for the purposes of section 36 of the Act?

(2) Is there money past due and unpaid by the Operator(s) to the Applicant under a surface lease agreement or compensation order?

(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 Operators' entry rights and direct the Minister to pay the Applicant out of the General Revenue Fund under section 36(6) of the Act?

DECISION

[4] The Panel decides:

(1) For the purposes of section 36 of the Act, the Operators are Ember Resources Inc. and Canadian Oil and Gas International Inc., jointly.

(2) The Compensation is payable to the Applicant by the Operators, jointly, and the evidence satisfactorily proves non-payment.

(3) There is no reason to direct the Minister to pay a reduced amount.

(4) Unless the Tribunal receives satisfactory evidence that the Compensation has been paid in full to the Applicant, the Operators' entry rights shall be suspended and terminated according to the preceding order and the Tribunal may direct the Minister to pay.

ANALYSIS

Determination of Operator(s)

[5] For the purpose of rental recovery applications, the definition of the word *operator* is set by section 36(1) of the Act, which explicitly gives the word a broader meaning than in the rest of the Act.

[6] Section 36(1)(c) expands the definition of *operator* to include the holder of a licence issued by the Alberta Energy Regulator. This includes the person who held the licence on the due date and successors to the licence. Well Licence No. 0363268 shows that the Site is now licenced in the name of Ember Resources Inc. The Panel therefore finds that clause (c) makes Ember Resources Inc. an *operator* for the purpose of section 36 on the 2021 due date.

[7] Section 36(1)(b) expands the definition of *operator* to include any person who, at the time of non-payment, was carrying on an activity on or in respect of the land other than under a licence. AER Well Summary Report shows that Canadian Oil & Gas International Inc., was a working intere4st participant on the site, with 15% interest. The Panel therefore finds that clause (b) makes Canadian Oil & Gas International Inc., an *operator* for the purpose of section 36 on the 2021 due date.

[8] The Tribunal can suspend and terminate an Operator's rights to access the site when appropriate. There is no reason to delay this application by doing so when an Operator is either insolvent, or is not accessing the site. The Decision to suspend or terminate Ember Resources Inc.'s rights is reserved.

Determination of Compensation Due

[9] After a careful review of the evidence, the Panel finds that the Compensation is owed by the Operators to the Applicant for annual payment due under the Right of Entry Instrument. This amount is calculated as partial payment of $1,559.50.50 due on the anniversary of the Right of Entry Instrument for the year 2021.

[10] The current Certificate of Title confirms the Applicant is the owner of the Land and was the owner when the rentals became due. A caveat confirming the Right of Entry Instrument has been provided and the rental rate is supported by documentation on file. The Applicant confirmed in writing that the Compensation has not been paid.

[11] The Site has not been reclaimed, and accordingly the Right of Entry Instrument remains in effect.

[12] There is no evidence that payment of the Compensation would result in overpayment.

Dated at the City of Calgary in the Province of Alberta this 3rd day of August, 2022.

LAND AND PROPERTY RIGHTS TRIBUNAL

Katherine Camarta, Member