

CHIEF MINING WARDEN'S COURT

HELD AT

DUBBO COURT HOUSE, DUBBO

on

TUESDAY, 11TH NOVEMBER, 1980 AT 10 A.M.

MATTER: Application by Electrolytic Zinc Company of Australasia Limited for assessment of compensation in respect of sixteen prospecting licences over lands occupied by Mr. Alan Knight.

BEFORE: Mr. J.L. McMahon - Chief Mining Warden.

APPEARANCES: Mr. J. Milovanovic with Mr. J. Matthews on behalf of Electrolytic Zinc Company of Australasia Limited.  
Mr. A. Knight, respondent.  
Mr. R. Wakeman from the Department of Mineral Resources, Broken Hill Office.

CHIEF MINING WARDEN'S COURT

APPLICATION BY ELECTROLYTIC ZINC COMPANY OF  
AUSTRALASIA LIMITED FOR ASSESSMENT OF  
COMPENSATION IN RESPECT OF SIXTEEN PROSPECTING  
LICENCES OVER LANDS OCCUPIED BY MR. ALAN KNIGHT.

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DECISION

BENCH: This has been a hearing of an application on behalf of Electrolytic Zinc Company of Australasia Limited which has been referred to by me in this assessment as the prospector for assessment of compensation in respect of some sixteen prospecting licences in the Cobar Mining Division. These prospecting licences are numbered 588, 569, 584, 586, 571, 572, 573, 574, 575, 612, 613, 614, 450, 451 and two others which are set out in the notice as being 577 and 578 which I am informed ought more properly to be 339 and 585. These prospecting licences are over lands occupied by Mr. Alan Knight the respondent in this matter under a Western Lands lease.

The respondent has ~~some~~ some 77,000 acres in a station property called Moquilambo Station at Cobar and the prospecting licences form a small part only of the total area of this vast holding. The activities of the prospector are at this stage confined to sinking of drill holes, whether by diamond drill, percussion drill or by auger, the evidence before the court is that the whole programme of drilling has reached a mature stage and that on expiry of some of the prospecting licences some might well not be renewed. The rate for such holes whether they be diamond, percussion or auger has been \$50 for diamond drill holes, \$20 for percussion drill hole and 20 cents per auger hole and the respondent has now questioned this in effect implying that there should be some increase.

In order to avoid litigation the prospector says: It was offered to the respondent that the sum of \$100 per diamond drill hole, \$40 per percussion drill hole and 25 cents per auger hole could apply but this has not been acceptable in full by the respondent. It seems that the only query of this increase, the 25 cents per auger hole and feel it should be 40 cents per auger hole. The strangest fact is that at present the prospector intends not to put down any auger holes on the respondent's land although the witness, Mr. Milovanovic a geologist with the prospector says that perhaps later in order to clarify a

BENCH: (contd) ...situation as to mineralisation the sinking of auger holes may become necessary.

The prospector relies on what has been the acceptable rate by the other lands occupiers in the area, that is the \$50, \$20, 20 cents rate and highlights the fact that only yesterday, 10th November, 1980 another occupier signed an agreement at this rate. On the other hand the respondent says that this has been the rate for some time, in fact since around 1972 and surely now the time has come for some increase.

I would bear in mind while it is suggested that this is a test case this may or may not be the situation although in my view it has no general application unless of course the parties in any other transactions unanimously decide that it is to be a precedent.

Part VIII of the Mining Act provides that: The Warden may assess compensation and in dealing with it he ought to take into account the following matters and I read from section 124(1)(v): (1) Damage to the surface of land, damage to crops, trees, grasses or other vegetation on the land or damage to buildings and improvements thereon being damage which has been caused by or which may arise from prospecting or mining operations. (2) Deprivation of the possession or of the use of the surface of land or any part of the surface. (3) Severance of land from other land to the owner or occupier of that land. (4) Surface rights-of-way and easements. (5) Destruction or loss of or injury to or disturbance of or interference with stock on land and (6) All consequential damages.

Now I would add that the respondent has mentioned only in respect of these particular criteria the possible disturbance of stock and I propose to deal with that later.

The subject land is at Cobar. The evidence is that it is in parts scrubby country and elsewhere bare of vegetation including grasses, typical of some of the hardened low rainfall plains in far-western New South Wales. The situation has been aggravated by what is a well recognised fact and that is the existence of a crippling drought which has led to little useful rainfall on the land for some three or more years before the present day, so much so that now on the 77,000 acres the respondent runs only 1,600 sheep. He advances that entering by the prospector's employees and vehicles on the land close to these sheep disturbs the sheep and turns them away from water. This may well be the case but of course the situation is no different to what took place in 1972 and 1973 when the going rate of compensation was struck. In addition as the respondent correctly says it is

BENCH: (contd) ...difficult to know how much damage is done although there is some, the respondent says when sheep are cut away from water in this fashion. In the circumstances I think in view of the size of the holding, I think it is so negligible that assessment of damage is inappropriate as to this factor.

I turn then to the figure supplied by the prospector as to the current and acceptable rate. There is unfortunately no evidence advanced by either party to support any figures excepting merely from the prospector's point of view for me to say that this is the current acceptable rate and the respondent only pays the Western Lands Commission some 1.48 cents per hectare and the respondent is saying that in effect: They offered me 100 per cent increase in regard to the diamond and percussion holes and only 25 per cent increase for the auger holes. Why not have 100 per cent increase all round. As can be seen it is well nigh impossible without any evidence to come to a figure of compensation which is mathematically correct and supportable on an actuarial calculation. However the Act recognises that this occurs in many cases and has said that compensation is to be an assessment, that is a figure arrived at after consideration of all evidence presented to the Warden but certainly not necessarily mathematically correct or correct on actuarial calculations.

There can be no doubt that there has been inflation in Australia since 1972/1973. How this has affected the value of this particular land is difficult to determine. It is possible on the other hand that with the long drought that the land may well have decreased in value per hectare. Again the figure which the respondent has paid to the Western Lands Commission has remained constant for some 10 years, a period of which has now some 2 years still to run on the evidence.

In the light of the evidence, which as I have said is by no means comprehensive as I would like it to be, I'm of the view that the Western Lands Commission figures as they stand should be some guidance to me. In the circumstances as there's been no increase for some 10 years I'm of the view that there should therefore be no increase in the going rate of compensation. I say that if there is some increase in figures then I would be happy to take into account the criteria as laid down by section 124(1)(v) which are the only matters that I can take into account and not necessarily inflation and arrive at some higher figure than that which has been generally acceptable in the Cobar area.

It seems therefore fair for me to say at this

BENCH: (contd) ...stage that the figure of \$50, \$20 and 20 cents should remain the going rate of compensation.

I make the following assessment. Compensation is assessed at \$50 per diamond drill hole, \$20 per percussion drill hole and 20 cents per auger hole to be paid by the prospector to the respondent direct within 1 month of the completion of sinking.

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