

LAND AND RESOURCES TRIBUNAL QUEENSLAND

CITATION: *Hennessy v Georgina Pastoral Company Ltd* [2007] QLRT 108

PARTIES: **In the matter of Mining Lease 60359. Application by Brian Neil Hennessy for determination of compensation payable to Georgina Pastoral Company Ltd**

FILE NO: MLC88/07

PROCEEDING: Application for determination of compensation

DELIVERED ON: 10 August 2007

DELIVERED AT: Brisbane

HEARING DATE: Heard on the papers

MEMBER: Windridge MR

ORDER/S:

- 1. I determine compensation under s. 281 in the sum of \$300.00 (at [13])**
- 2. I direct that the miner pay the total compensation in the sum of \$300.00 to the current landowner Georgina Pastoral Company Ltd within 3 months of notification of grant of the mining lease by the Mining Registrar. (at [14])**

CATCHWORDS: MINING LEASE – DETERMINATION OF COMPENSATION

Mineral Resources Act 1989, ss 279, 281

Smith v Cameron [1986] 11 QLCR 64
Shaw v Heritage Holdings Pty Ltd [1992] 14 QLCR 139
Mitchell v Oakhill and Mitchell (10.03.98) unreported

COUNSEL: N/A

SOLICITORS: N/A

Background

- [1] The applicant Brian Neil Hennessy (the miner) seeks the renewal of Mining Lease 60359 in the Quilpie Mining District. The application for grant for a term of 5 years was lodged at the office of the Mining Registrar Quilpie on 23 March 2004.
- [2] The proposed lease is located on Lot 439 on Plan PH2146, Parish of Beallah, County of Kyabra, being part of Keeroongooloo Station. There are no details provided in respect of access but it appears access is through the same property. The lease is over an area of 2.8237 hectares and is granted for the purpose of mining for opal. As of the commencement of the proposed renewal, this property was owned by Colonial Agricultural Company Ltd. In August 2006, this property, along with others, was acquired by Georgina Pastoral Company Ltd.

The Act

- [3] Section 279 of the *Mineral Resources Act 1989* (“the Act”) provides that a mining lease shall not be granted or renewed unless an agreement in relation to compensation has been filed at the office of the Registrar, or in the absence of such an agreement, a determination of compensation has been made by the Tribunal. In this instance, no agreement has been lodged with the Registrar and the matter has been referred to the Tribunal for determination. This determination has the same characters as the determination in respect of Mining Lease 60358 and similar findings must follow as a matter of course, there being no substantial change in circumstances relative to this matter.
- [4] The matters which must be considered by the Tribunal are set forth in section 281(3) of the Act. Although section 281 sets out the matters to be considered, it does not define any method of assessment. Whilst the Tribunal is only bound by its own legislation, the following past appeal cases offer some guidance as to the methodology that might be used in arriving at a determination of compensation. In *Smith v Cameron* (1986) 11 QLCR 64, the Land Court held at p.74...

“The section in my opinion merely identifies matters which shall be taken into consideration in making the assessment. It does not prescribe a method of valuation. No doubt each case will depend on its own facts and circumstances but it seems to me that either method is open to the valuer.”
- [5] In *Shaw v Heritage Holdings Pty Ltd* (1992) 14 QLCR 139, the Court at p.146 said:

“the method of assessment remains a matter which will be governed by the facts and circumstances of each case in which event emphasis may shift from one method to another.”
- [6] In considering *Mitchell v Oakhill and Mitchell* (10 March 1998) unreported, the President of the Land Court, referring to section 281(3) of the Act, found

“the latter section does not prescribe a method of assessment. In my view, as long as the amount of compensation finally determined sufficiently accounts for each of the matters referred to in the sub-section, it is not necessary to quantify an amount in respect of each of the matters referred to.”

The evidence

- [7] Neither party sought to appear before the Tribunal and this matter has been dealt with on the papers. The landowner referred to the determination in *Xalco Pty Ltd & Colonial Agricultural Company Ltd* [2005] QLRT 94, (see submission 25 May 2007), but has determined their own regime of fees that should apply on properties controlled by them. Some documentation in relation to factual matters was provided by the Mining Registrar. Where necessary, I have referred to these documents for the purpose of accuracy. It is not the function of the Tribunal to conduct a hunt for evidence on behalf of either party. Therefore the matter has been dealt with on the documents filed which include the application for renewal, the landowner's submission, and the public lease report issued by the Mining Registrar.
- [8] There was no formal valuation evidence to consider therefore the Court does not have that assistance in arriving at a determination. Due to the small area involved, the cost of a valuation would far outweigh any award for compensation. Due to the small area involved, co-use or co-occupation would not be feasible, and the land owner has notionally lost the use of the lease area for the term of the renewal.
- [9] In my view of the position advanced by the landowner is appropriate and I agree generally with that submission.
- [10] In summary, there was no evidence called to support any claim under any other head of compensation, apart from the submission of the landowner, nor was any matter raised which would necessitate consideration under paragraphs (a), (c), (d), or (e) of subsection 4 of section 281 of the Act.

Access

- [11] There are no details of access and therefore no determination can be made in respect of access.

Quantum

- [12] In making this determination I take into account that the land in this area is generally classed as capable of low intensity grazing, provided weather conditions are fair and pasture is available.
- [13] Having regard to all the circumstances, I consider that the following award will satisfy the requirements of section 281 for the term of the renewed lease for the limited purposes authorised by the renewal of the lease. Drawing on the limited evidence that is available, I determine compensation under Part 7 of the Act, to satisfy all heads of compensation set forth in subsection 3 of section 281 of the Act shall be the sum of \$15.00 per hectare for 2.8237 hectares per annum for the term of the lease namely 5 years. I allow the sum of \$50.00 as an administrative/accounting fee for the reasons advanced in *Xalco* (and referred to in the submission of 25 May 2007). Total of this award is \$261.78. I further award the sum of \$26.17 under section 281(4) (e) (i.e.10%) to reflect the compulsory nature of the action taken under this part. This equates to a total award of \$287.97. I round off compensation due and payable to the sum of \$300.00

Terms of payment

- [14] In relation to the terms, conditions and times when payments should be made, I take into account the quantum of the order, the size of the lease and the term of the lease. In these circumstances, I order that the miner pay total compensation to the current landowner Georgina Pastoral Company Ltd in the sum of \$300.00 within a period of (3) months from notification of grant of the mining lease by the Mining Registrar.
- [15] The claim by the landowner for GST is disallowed. The award under s.281(4)(e) is “as of right” under the legislation, was not intended to and does not operate as a real or de facto GST levy. The respondent landowner asserts that the company is registered for GST and states that no exemption exists. It would be necessary to examine this advice. The landowner does not lease land for mining purposes. The State of Queensland leases land for mining purposes as the Crown i.e. the State retains ownership of all minerals. Queensland stamp duty is not levied on compensation agreements, and the Tribunal has no instance of GST levies being levied on other compensation awards under the Mineral Resources Act or acquisition of land under the Acquisition of Land Act.