

IN THE MINING WARDEN'S COURT
AT ST LEONARDS

J A BAILEY, CHIEF MINING WARDEN

FRIDAY 20TH DECEMBER 2002

CASE NO. 2002/38

RAY DRIVER

v.

MINING REGISTRAR

SECTION 206

REVIEW OF DECISION OF MINING REGISTRAR

APPEARANCES AT HEARING:

Applicant: Mr R Driver appears in person unrepresented.

Respondent: Mr D Martin, Solicitor appears for the Mining Registrar.

HEARING DATE: 18 December 2002 at Lightning Ridge

DECISION

HANDED DOWN IN ABSENCE OF PARTIES

Raymond Driver, the claim holder of mineral claim 42924, lodged, under the provisions of S.206 Mining Act 1992, an application to review a decision made by a Mining Registrar, to cancel that claim.

The decision to cancel the claim was made by Terence John Francis Brennan, a Mining Registrar, on three grounds:

1. Fail to comply with condition 1 of the miner claim, that is, fail to ensure that the mineral claim area is effectively worked to the satisfaction of the Mining Registrar
2. Fail to comply with condition 14a, that is, erection of a building or camp on the area without the written approval of the Mining Registrar
3. Fail to comply with condition 20, that is, failing to maintain all pickets/posts, trenches etc, defining the area of the mineral claim while the mineral claim remains in force.

At the hearing, evidence was produced that a structure was on the site, without the approval of the Registrar, and it was obvious that it had been for some time. When applying for renewing the claim, the claim holder did not refer to that structure and only disclosed that a caravan was on site for accommodation purposes.

Further evidence was produced that it was apparent that mining work had not been performed for some period of time.

A number of inspections had revealed that the “mark out” had not been maintained.

These matters were brought to the attention of Mr. Driver, regrettably with little results. Some attempt had been made to rectify the mark out, but did not go far enough to satisfy the requirements of the Act and Regulations. Undertakings were given to remove the camp site, but they were not met.

As the Mining Registrar was unable to have the claim holder comply with his obligations under the Mining Act 1992, a decision was made to cancel the claim.

Mr. Raymond Driver, who appeared before the court representing himself, did not dispute that the claim had not been worked on a regular basis, indeed he said that it had not been worked "for at least 18 months". Furthermore, in respect of the "mark out", he indicated that he knew what was required, but did not bother to measure the trenches at all and did not dispute that the "mark out" of the claim did not comply with the provisions of the Mining Act 1992 or the Regulations thereto.

In respect of the camp site on the claim, Mr. Driver told the court that it was on the claim when he took the claim over some years ago. Previous claim holders apparently resided in it, but he himself has never used it as a camp site. It would appear, from what he said when giving evidence, that when making application for renewal of the claim, in the section referring to a residence, he ticked "caravan" because that is what he was using at the time for a residence.

I accept that he was genuine in telling the court that he ticked "caravan" because he simply did not think of the structure on the site as being a residence.

When questioned about the conditions which are attached to the Mineral Claim, Mr. Driver admitted that he did not read them at the time he obtained the claim.

Mr. Driver said that when he was requested to have the structure removed, he had made arrangements with other people to remove it, however their promise to do so did not materialise. Mr. Driver conceded that he will now have to remove the structure on his own and will do that in the near future.

The principle reason why Mr. Driver has not complied with the requests of the Mining Registrar to rectify the matters complained of, is that he has been occupied, for the past 18 months or longer, as the principle carer for his aging father, in Bulli.

There was not challenge to the fact that Mr. Driver is the carer for his elderly father.

Mr. Driver indicated that he no longer intends to live on the claim. That he is currently making arrangements for a neighbour to assist him in caring for his father,

and that he is also making arrangements for accommodation in town. When all of that is done, he will be in a position to work the claim on a more regular basis. He said that he will not be able to stay at Lightning Ridge for months on end, but can come up on a regular basis for two to three weeks at a time. He told the court that it may take some two to three months before all of that is put in place.

On the evidence before the court, it is apparent the Mining Registrar was fulfilling his obligations under the Act in cancelling mineral claim 42924.

However, it would appear that Mr. Driver, when obtaining the mineral claim, was not fully conversant with his obligations under the Mining Act 1992. He demonstrated in court a willingness to meet those obligations and I accept that the reason why his obligations were not met was due to the fact that he is the carer for his elderly father.

It would appear that, having regard to the circumstances which brought about the breaches of obligation by Mr. Driver will alter in the near future, it would be just to allow Mr. Driver a chance to display his promise to meet his obligations.

Accordingly, I make the following order:

MINERAL CLAIM 42924 BE REINSTATED TO MR. RAYMOND DRIVER ONLY IF MR.DRIVER MEETS THE FOLLOWING OBLIGATIONS:

1. THAT THE STRUCTURE WHICH IS ATTACHED TO THE SUBJECT MINERAL CLAIM BE REMOVED ON OR BEFORE 31ST MARCH 2003
2. THAT HIS OBLIGATION UNDER CONDITION 14a TO MAINTAIN THE 'MARK OUT' BE MET BEFORE THE MINERAL CLAIM IS REINSTATED
3. THAT MR. DRIVER SUBMITS A PROPOSED PLAN OF WORKS IN RESPECT OF THE CLAIM WHICH MEETS THE SATISFACTION OF THE MINING REGISTRAR.

THAT UPON THE REINSTATEMENT OF MINERAL CLAIM 42924, THE FOLLOWING ADDITIONAL CONDITION BE INSERTED:

THE CLAIMHOLDER SHALL NOTIFY THE MINING REGISTRAR LIGHTNING RIDGE, IN WRITING, NO LATER THAN THE 31ST DECEMBER EACH YEAR, OF THE AMOUNT OF MINING WORK PERFORMED UPON THE CLAIM DURING THE PAST CALENDAR YEAR.