

IN THE WARDEN'S COURT  
HOLDEN AT SYDNEY ON  
29TH JUNE, 1982 BEFORE  
J.L. McMAHON,  
CHIEF MINING WARDEN.

EXPLORATION LICENCE NO. 1378.  
IN THE MATTER OF AN APPLICATION BY L.D. SCHEELE  
FOR ASSESSMENT OF FURTHER COMPENSATION.

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BENCH:-

This has been an application for the assessment of further compensation for the loss caused to the land covered by Exploration Licence No. 1378 held by Esso Australia Limited brought about by landowner and occupier, Mr. Lawrence Denis Scheele, by means of correspondence with the Department of Mineral Resources, complaining about damage to his land and the Secretary of that Department referring part of his complaints to me. I have conducted a hearing, bearing in mind the provisions of Part VIII to the Mining Act, and in particular Section 126.

It is a matter of record that on 21st November, 1980 at the Warden's Court, Sydney I made an assessment in accordance with Section 124(1)(b) of the Act in relation to Exploration Licence No. 1378. On that occasion appropriate notices had been sent to both parties and while the applicant was represented by a solicitor, there was no appearance for or on behalf of the landowner or occupier who was then Mr. Scheele. Earlier the matter had been listed for hearing at the Court House, Goulburn on 17th October, 1980 when the applicant, Esso, was also represented by a solicitor and Mr. Scheele did not attend but on that occasion I was not satisfied with the sufficiency of the notice of the hearing to Mr. Scheele and directed re-listing of the matter which occurred subsequently in Sydney on 21st November, 1980, more complete notices of hearing having been sent in the meantime to Mr. Scheele and his co-owner.

Section 126 provides that after an assessment has been made and the money paid into court and disbursed in accordance with Section 124 that since the date of the payment out or the last payment out "further loss has been caused to the land to which the assessment relates, or to other land, being loss arising from any one or more of the causes referred to in Section 124(1)(b) and (c)", the Warden shall assess that loss and make certain orders as therein provided.

Section 126 is different to Section 124, which earlier section provides for an original assessment (as against Section 126 which speaks about assessment for further loss) in that Section 124 envisages that the assessment shall be for loss "caused or likely to be caused" whereas Section 126 is in the past tense only and speaks about loss which has been caused. So in respect of this particular section I feel myself limited to the extent that an assessment having already been made in accordance with Section 124 I must now look only at further loss to the land which had occurred since the date of the payment out or the last payment out as the case may be. As with many of these proceedings relative to claims for compensation the amounts, as the section envisages, are assessments only; it is often beyond practicability precisely to make a mathematical calculation of losses. The court is left then with making a reasoned and logical assessment of a figure which is as fair as possible to both sides, bearing in mind all the circumstances.

The current proceedings before me were subject of evidence on oath which occurred at the Court House, Goulburn on 11th May, 1982. Again on that occasion the respondent company, Esso Australia Limited, was represented by a solicitor but on this occasion Mr. Scheele, being the applicant, attended but was not legally represented. However, he was given every opportunity to present all matters which he considered relevant to me in support of his claim for compensation for further loss.

It became plain during the evidence that he was unhappy with the actions of Esso in regard to their movement of vehicles upon his land, construction of fences and rehabilitation work. Notwithstanding this it is clear that Esso has from time to time sought to pay to Mr. Scheele amounts of compensation in accordance with my previous assessment and on at least one occasion one of their cheques although received by Mr. Scheele was not presented for payment and had to be replaced. Mr. Scheele complained initially that some of his pastures had been destroyed by reason of the entry of vehicles and made an initial claim for some \$800.00 being the loss of output from a lucerne paddock occasioned by the sinking of auger drillholes in respect of which the topsoil had not subsequently been properly spread. In respect of two further drillholes he made additional claims for compensation there having been payments already received by him at the rate

of 20 cents per square metre but in respect of which he was claiming his increased rate of 40 cents per square metre, stating that his land was agricultural and therefore he was entitled to the higher rate. Subsequently he made claim for the cost of re-construction of some of the fences which had been built around the boreholes to enable rehabilitation. These claims were substantial - the first was for \$1,209.65, the second for \$741.50, the third for \$677.00 and the fourth being for a water truck stand for \$335.00. He then claimed the sum of \$765.00 for the loss of pasture and topsoil in respect of a roadway and then made substantial claims totalling \$758.91 for expenses such as <sup>for</sup> viewing the area, preparation of submissions and photostat copies, aircraft fares to Sydney, taxi fares, travelling expenses and telephone calls. In addition there was a similar claim for \$51.00 for the cost of removal of pegs which had been left in the ground.

My total of Mr. Scheele's claim for further compensation is \$6,124.46.

On the other hand Esso claimed that it had paid all applicable compensation with perhaps a concession that some further re-seeding must take place in accordance with the directions of the exploration licence itself. In this regard, there is no doubt that Esso has paid sums of money to Mr. Scheele and that further there has been a conflict arise between that gentleman and some personnel of the respondent company in regard to the physical presence of the company's plant upon the land. It is clear that the company paid an additional \$500.00 to Mr. Scheele when he demanded it although that was not strictly in accordance with my previous assessment. This amount was said to be for compensation for the use of a track plus rehabilitation costs for a drill site. It is equally clear that the company employed Mr. Scheele's son, Christopher, as a bulldozer operator and payments have been made or are to be paid in accordance with a contract for employment with Mr. Scheele jnr. This has nothing to do with the compensation assessment excepting that it is relevant in regard to claims by Mr. Scheele that rehabilitation was not done in accordance with his requirements, it being appropriate to observe that much of the levelling and work on initial rehabilitation is done by bulldozer.

A witness called at the 11th May Inquiry by Esso was Mr. Alfred Sendall, a rural property manager and consultant, of Goulburn who was able to give me expert opinion having carried out a very recent inspection of the property, including the three drill sites. The area was adjacent to pasture improvement, a drill site No. B1 being in an area of natural scrub, a further drill site B2 being on pasture improved land, and the third drill site B3 being in a rockier section of the property. Mr. Sendall was of the opinion that in relation to B1 the soil had been satisfactorily spread and the work had been quite well carried out, that B2 required some further work, and B3 had actually improved the area which had been in its natural state much rockier. He commented that it would be impossible to replace the area with natural soil but that one or two truck loads per drill site could see a satisfactory base from which pasture improved grasses would grow. In regard to the fencing around the drill sites, Mr. Sendall stated that the fences were not stockproof at the moment and that further work needed to be done on them to ensure that once the young pastures commenced to grow, stock would not prematurely encroach upon them.

It is clear that the area has been subjected to considerable drought and the sparse nature of the grass at the moment is caused to a large extent by the weather conditions. It is clear also that Mr. Scheele has been hand-feeding his stock but Mr. Sendall was of the opinion that no over-stocking had taken place. To Mr. Scheele's claim that reduction in the lucerne coverage of his paddock has been caused by the company's activities, Esso has replied through Mr. Beams that the drought has affected the whole of the region and that the personnel of whom he is in charge on site have kept to existing tracks in driving both heavy and light vehicles on the land. He said it is very difficult to find any difference between the present state of the property and as it is and as it was when it was first subjected to exploratory work. Mr. Beams considered that some of the fencing might need fixing and looking at some of the photographs which were exhibits, I agree. In addition he said that if drill sites are in need of rehabilitation or further rehabilitation, Esso would be willing to take technical advice and ensure that this was done. Again, in view of the evidence from the three witnesses and the photographs, I agree that some further rehabilitation work is needed.

As previously stated compensation is assessed rather than being the subject of a mathematical calculation. It is a matter of record that Mr. Scheele has lodged an objection which is being considered by the Director-General of Agriculture. This objection relates to his claim that the land is "agricultural land" within the meaning of the Mining Act. I would not have thought it proper for me at this stage to attempt to make a direct assessment between the 20 cents and 40 cents applicable to the respective types of land as referred to in the original assessment, for that may be seen to be encroaching upon the province of the Director-General of Agriculture. In view of the evidence of Mr. Scheele and Mr. Sendall there does seem, however, to have been some loss occasioned recently in addition to the matters which previously I had cognizance of in making the original assessment; certainly the landowner has lost the use of some of his land for grazing purposes over an extended time, bearing in mind that that loss had a contributing, but not the only, factor which has been the severe drought.

Evidence given by Mr. Sendall also indicates that there have been some four access tracks used. As regards three of these there appears to have been no major damage but in relation to the fourth, which he called track 2, certain major disturbance of the area has taken place and it will possibly be not before the Spring of 1983 before pasture recommences to grow. In the circumstances I am of the view that there is some further loss in regard to this fourth track which ought to be the subject of an assessment.

Section 124(1)(b) talks about damage to the surface of land and to, among other things, grasses, deprivation of possession of the surface, severance of land, surface rights of way, injury to stock and all consequential damages. It is clear for instance that in some parts there has been damage to the surface of the land not only in the drill sites but also along the access track and therefore some loss of use by the landowner. I make an assessment in accordance with Section 124(1)(b) in relation to the matters raised therein as to loss of use and other aspects and am of the view that a figure of \$750.00 is appropriate compensation. In relation to the claim for expenses for travelling, preparation of documents, views on site, telephone calls and the like, I have in the past allowed compensation for supervisory roles and I feel that this is a subject

which is a factor here. On the question of compensation again I make an assessment that there should be payable to Mr. Scheele the sum of \$200.00 in respect of his claim for such expenses.

I consider that I have no power to direct that Esso carry out the rehabilitation work itself but I do not intend, on the other hand, to order that Esso pay compensation for Mr. Scheele to have that work done. It follows that in my opinion Esso should meet the expenses direct and carry out the rehabilitation work to the drill sites and to the track or tracks of access up to a satisfactory standard which is in the opinion of Mr. Sendall appropriate. Similarly Esso ought to improve the fences but I have no power to so order. I propose to make no order for compensation payable to Mr. Scheele for this to be done by him at Esso's expense. It follows that Esso should make its own arrangements for repairs to the fences, again up to a standard which is satisfactory in the opinion of Mr. Sendall. In relation to rehabilitation and fences therefore I make no order as to compensation on the basis that Esso is to be understood to make its own arrangements in respect of these matters.

I order that the sum of \$950.00 being my assessment herein be payable by Esso to the landowner within one month from today. There will be no other costs from these proceedings.