



March 10, 2005

IN THE MATTER OF:

File #2003-02
Lesavage v. Mines Branch
June 19, 2003

DECISION OF THE MINING BOARD

Participating Board Members:

Roy McPhail (Presiding Member)
Barbara Sherriff (Deputy Presiding Member)
Harvey Slobodzian
Ernie Guiboche

REASON FOR APPLICATION

Mr. Lesavage (the Applicant) has applied to the Board under Section 29 (2)(a)(ii) of *The Mines and Minerals Act* (the Act), requesting that the Board overturn a decision of the Mines Branch, to disallow costs in the amount of \$39,861.91 related to the operation of Mining Claims MORORE W44876, SNOPI W48125, ROC W53999, NANCY W48126, AND PATY 2 W48326.

BACKGROUND TO APPLICATION

The Act requires that mining claims be worked, in order for the claim to be renewed. Specifically, the Act states:

Conditions for renewal of a claim

80(1) *Subject to subsection 84(1), the recorder shall not renew a claim unless the holder of the claim is in compliance with this Act, has performed the required work in respect of the claim and, in accordance with regulations, submits to the recorder, no later than the 60th day following the second anniversary of the date on which the claim is recorded and thereafter no later than the 60th day following each anniversary date, a written report of all work performed on the claim since the claim was staked or the previous anniversary date, as the case may be, including work performed in excess of required work, together with a statement of the expenditures incurred in performing the work.*

Costs and charges may be disallowed

80(2) *Where, after consideration of a report and a statement of costs submitted under subsection (1), the recorder is of the opinion that*

- (a) the documented expenditures significantly exceed current commercial rates;*
- (b) a length of time given for the performance of work significantly exceeds a reasonable length of time for performing the work;*
- (c) charges for equipment, services, transportation or personnel that are unusual are included in the expenditures incurred in performing the work; or*
- (d) expenditures are included that are not related to mineral exploration;*

the recorder may exclude expenditures that seem excessive or unusual unless the expenditures are explained to the satisfaction of the recorder. (emphasis added)

Section A1 of Schedule B of the *Mineral Lease Regulation, 1992* (Regulation 64/92), further specifies the types of work required for the claim to be renewed. They are:

- (a) prospecting;*
- (b) trenching;*
- (c) shaft sinking and underground work;*
- (d) land surveys;*
- (e) geological surveys;*
- (f) geochemical surveys;*
- (g) geophysical surveys;*
- (h) drilling;*
- (h.1) reclaiming any property;*
- (h.2) rehabilitating buildings or structures;*
- (h.3) preparing environmental impact or assessment studies for proposed exploration purposes;*
- (i) any other activity of a similar nature to any of the above.*

In addition, Section A2 of the Regulation specifies:

Expenditures for the following may be submitted for credit as required work where those expenditures are made for the purpose of carrying out work mentioned in paragraph A1:

- (a) labour and field supervision on the mineral disposition;*
- (b) supplies used on the mineral disposition;*
- (c) all reasonable costs of transportation of supplies and personnel from the point of procurement to the mineral disposition;*
- (d) access road construction which is reasonable;*
- (e) assays and chemical analysis of materials from the mineral disposition;*
- (f) depreciation of capital equipment providing it does not exceed 10% of the submitted expenditures;*
- (g) head office supervision and expense providing they do not exceed 10% of the submitted expenditures;*

- (h) transportation of drill core to a departmental core storage facility or to a location for retrieval by department;*
- (i) any other reasonable expenditures of a nature similar to any of the above.*

When the required work on the mineral disposition is personally conducted by the holder of the mineral disposition,

- (j) his or her daily work may be credited at a rate equal to thirty-two times the minimum hourly wage established under The Employment Standards Code at the time the work was conducted, or such other amount as may be approved by the director; and*
- (k) transportation costs of the holder may be claimed in accordance with clause (c).*

No credit will be given for the above work unless new geoscientific information has been obtained as a result of the work. (emphasis added)

The Applicant has previously relocated core samples from his various drill sites to his private property in Bissett, Manitoba. Each time the cores have been relocated to his Bissett property, a claim has been made for these expenses, as part of the costs necessary in order for the mining claim to be renewed.. The Mines Branch has typically approved these expense claims, including the 10 percent mark-up for overhead expenses provided for in Section A2 (g) of Regulation 64/92.

Over time, the weight of the core racks caused settlement of the ground beneath the storage area, and some of the wooden core supports deteriorated. In 2002, as a result of this deterioration, the Applicant undertook a major rehabilitation of the storage system of his inventory of core samples, as evidenced by Exhibit No. 1 (photograph of new racks). The rehabilitation included relocation of the cores from one area within the Bissett property belonging to the Applicant to a nearby area within the same property.

On or about January 2, 2003, the Applicant submitted Work Report #02-2 to the Mines Branch, in accordance with Regulation 64/92. A total of \$42,326.65 was allocated to the five mining claims. Rehabilitation of the core racks formed the major portion of this work report.

In a letter dated January 6, 2003, the Mines Branch returned a marked up copy of the Applicant's Work Report, indicating acceptance of \$2,464.74, and disallowing a total of \$39,861.91. By cover letter, the reason for disallowance of the major portion of the total was given as: "*... the relocation of existing drill core is not an activity that is considered as required work.*".

An exchange of correspondence followed, which led to a formal application to the Board on June 19, 2003.

DECISION

The Applicant's appeal of the Mines Branch decision is dismissed.

REASONS FOR DECISION

The Board agrees with the decision of the Mines Branch, that the disallowed costs claimed by the Applicant do not qualify as work required for the renewal of mining claims.

During the hearing, the Applicant did not dispute the calculations performed by the Mines Branch on the portion of the claim that has been disallowed. Specifically, the Applicant accepted that the change to the per diem rate from \$300 per day to \$208 per day was correct, and that the 89 days assigned to relocation of 19, 653 feet of core was reasonable. The Applicant's sole objection was that the 89 days has been disallowed.

Three arguments were developed during the hearing as possible justification for allowing a claim for relocation of the core:

1. The final sentence of Clause A2 of Schedule B of Regulation 64/92 (*"No credit will be given for the above work unless new geoscientific information has been obtained as a result of the work."*) could be held to breach the intent of Clause 2(1) of the Act: (*"The object and purpose of this Act is to provide for, encourage, promote and facilitate exploration, development and production of minerals and mineral product in Manitoba, consistent with the principles of sustainable development."*) The Board could rule that the requirement contained in the sentence therefore be disallowed as a reason for rejection of the claim;
2. Relocation of the core could be understood to include reassessment of each core sample to determine whether or not to split the sample. The Board could rule that reassessment of the merits of splitting old core generates new geoscientific information;
3. The disallowed work could be held to meet the intent of Section (i) of Clause A2 of Schedule B of Regulation 64/92 (*"any other reasonable expenditures of a nature similar to any of the above"*). The Board could rule that relocation of the core within the Bissett property was similar in nature to Section (h) of Clause A2 of Schedule B of Regulation 64/92 (*"transportation of drill core to a departmental core storage facility or to a location for retrieval by department;"*).

The Board weighed the argument that requiring new geoscientific information discourages development. It was recognized that to eliminate this requirement would "lower the bar" for maintaining a mining claim. This might encourage some claim holders to maintain claims who might otherwise find the costs of maintaining a claim onerous. The Board's difficulty with this argument is that a key intent of the Act is to ensure that claim holders do work on their claims. A balance has been struck as to an appropriate cost for maintaining a claim, and mechanisms exist for adjusting this cost as the market changes. The Board supports the requirement that the Mines Branch require and receive new geoscientific information in exchange for extending the tenure of the claims holder, and therefore rejects the argument that this requirement violates the intent of the Act.

The Board does however agree with the Applicant's contention that maintenance of the cores is important to the value of the Applicant's claims, and commends the Applicant for the good judgement and good workmanship that was exercised in the summer of 2002. But the Board notes

that the activity needs to be considered to be an overhead cost, which was already taken into account when the cores were first taken.

The Board also weighed the argument that the activity that was disallowed generated new geoscientific information. This argument was not put forward by the Applicant, but arose in the correspondence between the parties and in the lines of examination by the Board. The Mines Branch Director, Mr. Ernest Armitt, in a letter dated January 28, 2003, appears to offer guidance to the Applicant that encourages this approach (“*I agree that the preservation of drill core is a most important feature of any geological database when complemented by a detailed log.*”). The Applicant’s response, dated January 31, 2003, rejects the guidance and maintains the argument that the requirement to generate new geoscientific information violates the intent of the Act. Much of the Board’s examinations at the hearing also dwelt upon the possibility that new information may have arisen during the rehabilitation efforts. And again, the Applicant rejected the notion that new geoscientific information ought to be a quid pro quo for extension of claims tenure.

And finally, the Board weighed the argument that relocating and rehabilitating the core within the Bissett site was similar to readying the core for retrieval by the department. This argument was also not put forward by the Applicant, but arose when it became evident during the hearing that a gap existed between the value that the Applicant placed on the cores versus the value that the Mines Branch placed on those same cores. If one were to assume that the core was of sufficient value to the Province to merit eventual retrieval, perhaps by extension the preservation of the core could be interpreted as a step towards retrieval and therefore an allowed expense. The principle difficulty with this line of argument is that the decision to preserve the value of the cores was made unilaterally by the Applicant, with sanction sought retroactively. Neither the Applicant nor the Mines Branch offered evidence or argument that the value of the cores to the Province would justify a ruling that the rehabilitation be considered preparatory to retrieval by the department. Without such evidence or argument, the Board could not reasonably rule in the Applicant’s favour.

The Board notes that at least some of the correspondence from the Mines Branch ought to have borne the signature of the *Recorder*. The presence and participation of the Recorder in support of the Mines Branch position at the hearing satisfies the Board that the breach of protocol was simply an administrative oversight.

Approved on behalf of the Board:

A handwritten signature in black ink, appearing to read "Roy McPhail". The signature is written in a cursive, flowing style.

Roy McPhail
Presiding Member