

IN THE WARDEN'S COURT
HOLDEN AT LIGHTNING RIDGE.
20TH MAY, 1975.

BEFORE J.L. McMAHON, ESQ.,
CHIEF MINING WARDEN.

IN THE MATTER OF THE APPLICATION BY LYALL FOXE
UNDER POWER OF ATTORNEY ON BEHALF OF OPAL SALES
PTY. LTD.

CASE NO. 63A/1975. - For (a) Amalgamation of Claims - Regulation 42.
" 63B/1975
CASE NO. 63/1975. - (b) Permission to use power operated equipment
and machinery - Regulation 22.

IN RESPECT OF CLAIMS NUMBERED :-

(NOTE: Case No. 63A/1975 6126, 6127, 6129 & 6130,
--Amalgamation 6133 - 6129. 6128, 6131, 6132 & 6133.
Case No. 63B/1975
--Amalgamation 6130 - 6127.)

BENCH :- By consent and with the request of all concerned I have heard
and considered the evidence given to support the applications by the
applicant all at the one time. The address and evidence submitted while
given only once before me has been, with the consent of, and at the request
of, all concerned been applied to each of the eight applications before me.

Generally in respect of the eight applications, Mr. Foxe has
deposed of some twenty years continuous experience in mining activity and
that it is the desire of the applicant company to work the eight subject
claims by use of machinery. He outlined the intentions of his company thus:-
"It is proposed to strip thirty feet of overburden, that sits on the opal
level, it is proposed then to stockpile that on an area within the claims
or if some form of agreement can be arranged with adjoining open cuts to
replace this overburden so that we are restoring someone else's open cut.
It is then proposed to take out the opal bearing material, treat it and as
that area is finished, replace the overburden adjoining the first section,
in other words continually restoring the area which has firstly been taken
out." He then deposed as to the cost of the equipment needed, but it was
then subsequently shown in his evidence that there was no need to purchase
most of that equipment because his company already had avenues of supply
which would make this equipment available.

Also called for the applicant was Mr. Brian Partridge who with 20 to 25 years experience in mining deposed of having inspected the areas the subject of the proposed applications to mine by machinery, and to amalgamate. His considered opinion was that the area was highly unsafe, particularly for anyone working or attempting to work with implements other than machinery. He deposed further that even with proper capping or propping the area was unsafe and would fall.

Mr. Foxe and Mr. Partridge present as experienced men who have ventured an honest opinion of the absence of safety to any person working in the area by means other than machinery within the meaning of Regulation 22.

Putting aside for the moment the question of amalgamation and dealing only with the applications under Regulation 22, that Regulation gives the Warden power to grant to the registered holder of a claim permission to prospect or mine by means of power operated equipment or machinery, and also empowers the Warden to place any conditions upon such permission. "Power operated equipment or machinery" is defined and certain implements are not conclusively included and certain other means and activities are excluded.

It seems clear to me therefore that in the granting or refusing of the permission envisaged by the Regulation, the Warden has a discretion, firstly as to whether or not to grant or to refuse and secondly if there be a grant, as to the conditions attaching to such grant. Such discretions provided they are to be exercised reasonably and without any denial of natural justice would otherwise appear to have no other restriction on them.

I am further of opinion that the exercise of either discretion is not bound merely by evidence given in Court. The Warden has a duty to pay appropriate attention to the evidence but I am of the view that I should look also at some other factors, e.g. the requirements of other miners, particularly the holders of adjoining or surrounding claims; the nature of mining activity at a particular centre; the requirements and needs of the public and both the short-term and long-term welfare of the people resident in a particular centre, in this case Lightning Ridge, e.g. proximity to the town-ship; premature working out of the opal field; the environmental factor.

Now in this application for permission I have heard a lot of evidence about the safety factor, and in fact, the danger which would flow to a miner working the claims by means other than by machinery. The safety of a person must be a primary consideration, but as I have already just set out, it is not the only factor. On the aspect of safety generally, many activities which involve the winning of precious articles are of a nature that they involve some element of danger. It is not difficult to imagine several of this type of pursuit wherein the safety or health of the person involved in it is at risk. So, while safety is important, it is by no means, in my opinion, the guiding or pertinent factor in the exercise of the discretion to grant or refuse machinery permits, and indeed, just because there is evidence to show that an area is unsafe to be worked by hand implements, will not, of itself be sufficient reason for me to grant a machinery permit.

The mine-field at Lightning Ridge has been mined by conventional hand-type implements for many years without any apparent adverse effect on the township, but on the contrary, to the obvious advantage to the centre and those who live or have businesses there. It ought to be obvious to even the most naive of observers that were machinery permitted without limitation, not only would there be a premature working out of the area and commercial mining restricted to those who had the means or ready access to the means to exploit the opal deposits; but also once the deposits in the area were exhausted, the effect upon the town-ship and those living in it would be drastic.

In the present applications by Mr. Foxe to use machinery it is obvious that while such use would no doubt result in safer, faster and more convenient extraction of the opal bearing earth, it does appear to me that this grant would not be in the best interests of the township of Lightning Ridge, the members of the public who live in it, those other miners who are, and will be in the future whether by choice or by restriction of means, forced merely to use hand implements; nor adjoining claim holders whose areas must be affected.

The applications to use machinery are refused.

Dealing with the applications to amalgamate, Mr. Foxe in evidence was asked whether or not if his applications under Regulation 22 were refused he would still wish to continue with his Regulation 42 applications. He replied, after consultation with Mr. Britton, to the affirmative and ~~to~~ see nothing wrong with such amalgamations and the following claims are amalgamated:-

6126, 6127, 6129 and 6130
with each other

and

6128, 6131, 6132 and 6133
with each other.

The conditions relative to the granting of the claims individually are to subsist but with the exception that in respect of each set of amalgamations labour conditions are set at four men.

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