

DECISION

BENCH: Thank you. I have before me an Application to suspend the conditions of a claim - that is my consent is sought for the suspension of those conditions. Section 34 of The Mining Act provides that I can make by instrument in writing - an Order, giving that consent for a period of up to three months. Supporting the application were the grounds 1. to 5., which I have previously read out.

Now it is a matter of record that the respondent to the application consents to the application, so one would have thought that that would have been an end to the matter, but the applicant has then sought to have a "second barrel" as it were and then use these proceedings to get a civil remedy to a problem which he has with the respondent. Normally applications of this sort - that is to suspend conditions, they are given as a reason for certain other things occurring, for instance, shortage of water or excess rainfall, inability to work the claim because of shortage of labour, difficulties with low prices of the product or generally other factors outside the power of the titleholder. But the reasons aren't similar certainly in this matter to those normal types of reasons. That doesn't necessarily say that the present reasons are incompetent, but it does seem to me that the "second barrel" of the applicant's application - that is that he seeks this Court to make Orders to settle the dispute which he has with the respondent, are not appropriate when he has attached them to an application to suspend the conditions on a claim. He should have, in my view, proceeded under Section 133. It's true that that Section 135 of the Act gives the Warden power to hear proceedings without very much ceremony and in fact it is possible for a complaint to be determined, I would feel, summarily, but notwithstanding all that, if the respondent objects to that course as he has now, it seems to me that the applicant would be left to the alternative of taking out a Summons which would have to have as the initiating process a written complaint. Of course no written complaint has been made in this matter but I have certainly had an application to suspend the conditions.

I propose therefore, to grant an instrument in writing consenting to the suspension of the conditions as provided by Section 34. The period will be from 22nd November, 1977, to 21st February, 1978 or until expiry whichever comes first. But as to the other matters, I rule the grounds outside the jurisdiction of this Court. I find in respect of matters 1. to 4., that the application has been made incompetently, that is, there has been no complaint and that as the respondent has objected to Section 135 applying, that is the hearing of the proceedings summarily, then I have no choice but also to disallow that.

That's the situation Mr. Doyle. I've granted your application, that on the face of it is what you've sought. I can only suggest to you that perhaps if you see fit, you could proceed by way of Complaint and Summons under Section 133, but it's a matter entirely for you and your Legal Advisors.

The other thing I'd like to indicate to both parties, that any further discussion between you would have to not be considered to be without prejudice in future. In other words, whilst you've discussed things in the Courtroom at my suggestion, they would be without prejudice, but any further discussion hasn't that privilege.

I propose now to adjourn.

Thank you.

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