RUTILE AND ZIRCON MINES (NEWCASTLE) LIMITED

- V -

BILL WRIGHT (TAREE) PTY. LIMITED

DECISION: J.L. McMahon, Esquire, Chief Mining Warden.

BENCH: This matter is one in which Rutile made an application for a mining lease over Wright's land and Wright objected. The history of it is set out in my findings as to jurisdiction which I delivered today.

Both the application and objection are rights prescribed by the Mining Act in a person or body who may apply and a person or body may object. The Act provides that once an objection to an application is lodged under section 112, a Warden can be asked by the Minister to inquire into and report to the Minister on the matter. The Warden, in the normal course of events, would inquire into the merits of the application and the objection and any other matter considered to be relevant.

Having found that I have jurisdiction as to the matter of costs in these particular proceedings, I now determine what costs, if any, are to be awarded.

The objection having been lodged to the application on 6th February, 1978, there were a number of adjournments many of which were not the fault of the applicant company, before the matter finally was listed for hearing at Taree on 4th March, 1980. The situation as to these adjournments has been fairly accurately set out by Mr. Hamman as to the number of, and reasons for, the various adjournments.

I do not think that the existence of a drought or the presence of industrial trouble within the applicant's organisation, or the whereabouts of senior personnel of the applicant company, who happened to be overseas, can be seen to give the applicant Rutile any comfort in resisting the claim by Wright for costs, for these matters are not the fault of Wright. They may well have been frustrating to the parties, but the objector cannot be called upon to account for them.

The Mining Act is a public Act and the applicant did nothing more than it was entitled to do under it. Similarly, the objector exercised it's rights under the Act in objecting. Therefore in preparing to support their respective cases at the Inquiry, the incurring of costs was considered to be a reasonable, but necessary expense.

It was strongly put to me by Mr. Hamilton that it was the late notice of the withdrawal of the application which has caused some of the mischief here. But the Act envisages that an application may be withdrawn at any time while it is still an application. That withdrawal may be in whole or in part.

As a general observation there are obvious commercial and financial matters which an applicant company or body has to consider even up to the last moment, in negotiating with an objector. Likewise an objector in dealing with an applicant. As a result, often these matters are listed for hearing, only to be settled virtually when the parties get to the door of the court.

I think therefore that the fact that there was a late withdrawal in this matter is an indication, not of any intention on the part of the applicant to cause mischief to the objector, necessitating the incurring of an unnecessary expense but merely an inability on the part of both the applicant and the objector satisfactorily to reach a settlement in the matter for it is obvious that negotiations did take place prior to the hearing.

I am given a discretion in the matter. Had the hearing proceeded I may have recommended either way, I cannot say at this stage, as to the merits of the application or the objections thereto.

I am of the view that -

(1) because the applicant was within its rights to withdraw the application;

(2) because of the number of adjournments having been obtained by the objector;

(3) the fact that both sides incurred expenses; and

(4) the fact that they had corresponded and negotiated with each other up to late in the day in the life of the application and objection,

all induce me to make no Order as to costs.

I formally mark the file "Parties to pay their own costs."

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