

**IN THE MATTER BEFORE THE PROVINCIAL  
MINING RECORDER**

**IN THE MATTER OF: Mining Claim 1244583, staked by Gerry Strilchuk, in Dome Township, Red Lake Mining Division;**

**AND IN THE MATTER OF: Mining Claim 1244579, staked by Anthony J. Maciejewski, in Dome Township, Red Lake Mining Division;**

**AND IN THE MATTER OF: "Filed Only" Mining Claim, 1230305 staked by David J. Meunier, in Dome Township, Red Lake Mining Division;**

**ALSO IN THE MATTER OF: a dispute filed by**

**David J. Meunier**

**Disputant**

**-against Mining Claims 1244583 and 1244579 held respectively by:**

**Gerry Strilchuk and Anthony J. Maciejewski**

**Co-respondents**

**UPON: consideration of the evidence submitted by the parties,**

**I ORDER: the dispute against Mining Claims 1244579 and 1244583 is hereby dismissed**

**I FURTHER ORDER: that filed only Mining Claim 1230305 is hereby cancelled as of this date,**

**I FURTHER ORDER: Pursuant to Section 67(3) of the Mining Act, that the time Mining Claims 1244579 and 1244583 were pending before the Provincial Mining Recorder being 663 days and is hereby excluded and the 28<sup>th</sup> day of March 2006 be fixed as the date by which the first unit of assessment work must be performed and filed on Mining Claims 1244579 and 1244583. All subsequent anniversary dates are deemed to be March 28<sup>th</sup>.**

**Dated at Sudbury this 26th day of May 2004.**

*Originally signed by Roy Denomme*

**Roy Denomme  
Provincial Mining Recorder**

**Note: Parties have the right of appeal to the Mining and Lands Commissioner as indicated in Section 112 of the Mining Act RSO 1990 (Mining Act). An appeal must be filed within 30 days of the date of this decision.**

## **REASONS**

**A hearing was held on July 3, 2003, to determine this matter.**

**David J. Meunier attended in person and made submissions on behalf of the disputant.**

**Ken Pye attended by teleconference as a witness for the disputant.**

**Anthony J. Maciejewski attended in person and made submissions on behalf of the respondent.**

**Jerry Strilchuk attended by teleconference and made submissions on behalf of the respondent.**

### **Background:**

On June 1, 2002, a number of Licences of Occupation situated in the area of Rahill Bay, Dome Township, Red Lake Mining Division came available for staking out, sale or lease at and after 8:00 a.m. standard time (9:00 a.m. daylight savings time).

The opening created a competitive situation with a number of individuals participating for the ground. All parties involved in this dispute indicated that they commenced staking at 9:00 a.m. (daylight savings time) on the opening day.

Anthony J Maciejewski's staking was a 1 unit mining claim (1244579) encompassing the area which included all of the land covered by mining licence of occupation, for mining claim K.R.L. 11567. Mr. Maciejewski's application to record indicated that he staked mining claim 1244579 commencing at the #1 post at 9:00 a.m. (D.S.T.) on June 1, 2002, and completed the claim at the #1 post at 9:04:02.

Gerry D. Strilchuk's staking was a 6 unit mining claim (1244583) encompassing the area which included all of the land covered by mining licence of occupation, for mining claim K.R.L 12034, and most of the lands covered by mining licence of occupation for mining claims K.R.L 13411 and K.R.L 13253. Mr. Strilchuk's application to record indicated that he staked mining claim 1244583 commencing at the #1 post at 9:00 a.m. (D.S.T.) on June 1, 2002, and completed the claim at the #1 post at 9:02:30.

David J. Meunier's staking was a 1.6 unit (considered 2 units) mining claim (1230305) encompassing the area which included the east part of mining licence of occupation for mining claim K.R.L. 11567, the westerly part of mining licence of occupation for mining claim K.R.L. 11568, and the east half of licence of occupation for mining claim K.R.L 12034. Mr. Meunier's application to record indicated that he staked mining claim 1230305 commencing at the #1 post at 9:00 a.m. (D.S.T.) on June 1, 2002, and completed the claim at the #1 post at 9:04:23.

On review of Meunier's application to record received and filed in the Provincial Mining Recorders Office in Sudbury on June 5<sup>th</sup>, 2002, it was determined that approximately 80% of mining claim 1230305 significantly over-staked mining claims 1244579 and 1230305, which had a prior completion time. The remaining 20% over-staked mining claim 1244580, which has a later completion time.

Section 44 (2) of the Mining Act (the Act) states:

- (2) Priority of completion of staking shall prevail where two or more licensees make application to record the staking of all or a part of the same lands.

*Section 46 of the Act states in part:*

- (2) If, in the recorder's opinion, an application to record a mining claim does not comply with all the requirements for staking and recording the claim, the recorder shall not record the claim and in particular, the recorder shall not record a claim relating to land that is not open for staking.*
- (3) If the recorder does not record a claim under subsection (2), the applicant may, on paying the required fee, require the recorder to file the application and any question involved may be determined in accordance with section 48 or 112.*

At the request of the applicant, application to record for mining claim 1230305 was filed pursuant to section 46(3).

On August 2, 2002, Mr. Muenier filed a dispute pursuant to section 48 of the Act, against mining claims 1244583 and 1244579.

In his statement of claim Mr. Meunier stated:

*Claim #1244583 was improperly staked by witnessing the #1,3,4 posts from the #2 post position gaining an unfair advantage over the other competitors.*

*Claim #1244579 is invalid because staker started before 9:00 a.m. June 1<sup>st</sup>,2002.*

### **Evidence:**

This tribunal has reviewed the exhibits and submissions of all parties. However, for the purposes of clarity in this decision only evidence and testimonies relevant to determining this matter are referred to.

A preliminary issue arose at the start of the hearing. Mr. Maciejewski indicated that Mr. Blair Kite, acting provincial mining recorder, at the onset of the dispute had requested that both parties provide disclosure of the facts prior to a hearing. Mr. Strilchuk confirmed that he had sent Mr. Meunier, Mr. Pye and the Ministry of Northern

Development and Mines (MNDM) by registered mail, copies of the evidence he would present at the hearing. He further indicated that he had not received any disclosure from the disputant. In response Mr. Meunier stated that he did not recall whether Mr. Kite made this request. He asked Ken Pye (his associate) who confirmed he had received a package from the respondents, but was not certain whether there was an actual request made for disclosure. On review of the file in the Provincial Recording Office, no correspondence could be found to indicate that disclosure had been requested. The respondent presented no evidence to confirm a request had been made. It was decided by the Tribunal to continue with the hearing and make note of the fact that disclosure had been made by the respondent in this matter.

Meunier called Maciejewski as his first witness.

Meunier asked the respondent what method of time was used to determine the proper starting time. Maciejewski indicated that he used a wristwatch. He further indicated that he had been synchronized to Bell ExpressVu (satellite TV) the day before.

Maciejewski indicated that he and Jerry Strilchuk were not working together or for Goldcorp, but that he and Strilchuk had agreed to coordinate their staking efforts so they would not overlap on opening day. There were conflicting statements by Maciejewski on whether he and Strilchuk had synchronized their watches. Initially Maciejewski stated that his and Strilchuk's watches were synchronized to within a second of each other. In later statements he indicated that they did not synchronize watches but instead just checked to confirm they were close.

Meunier submitted evidence in the form of a faxed statement (later substantiated by the original copy) by Mike Kehoe a retired OPP officer, stating that he attended a staking event in June of 2002, however, did not make any written notes at the time. He was hired to drive a boat for another staking group that was in the area. His statement indicated that minutes before the legal staking time he witnessed Tony Maciejewski taking off from shore at a high rate of speed. It was a few minutes later that he received instructions over the radio to proceed (with his work). At about the same second the team from Timmins (Meunier) commenced staking. Mr. Kehoe was not present at the hearing to validate his statement or be asked questions by the respondent. It was also noted that neither the disputant or the Tribunal could not decipher some words within Kehoe's statement.

The disputant also submitted (exhibit 6) a faxed letter alleged to be written by a Mr. James R. Bur(k). The letter indicated that he was the camcorder operator on June 1st, 2002, and was responsible for recording the competition. Mr. Bur(k), was not present at the hearing to be questioned by the respondent or the Tribunal, and no other evidence was provided to confirm that the letter was written or signed by Mr. Bur(k).

A video was presented by the disputant which was submitted as evidence, and which was allegedly taken on the morning of June 1<sup>st</sup>, 2002, in and about the time the land in question came open for staking. The disputant could not confirm whether the video was the original film or a copy made of the original and whether any edits or changes had

been made. No witnesses were presented to confirm the authenticity of the video. In summary the tape showed a number of individuals at a location on the shore of a lake. It showed these individuals in discussion and who appeared to be in preparation to stake. The individuals in the video were identified as Mike Kehoe, Mike Lamont, David Meunier, Ken Pye, with one unnamed individual. The video pans to an instrument, which indicates a time counting from 8:54:41 to 8:54:45. This instrument is not shown again in the video, however, periodically Mr. Pye gives updates to the time indicated. Near the end of the film, the camera pans to a boat several hundred metres away leaving from shore. Mr. Pye indicates that the time is 8:59:20. The film ends shortly after this shot.

Maciejewski makes two points regarding the tape; firstly, that the video appears to be redone, and secondly, that he found it curious that the disputant did not continue the filming to show his staking. He also confirms that the boat shown leaving the shore was his.

When asked to review Mr. Kehoe's statement in conjunction with the video, Maciejewski notes that there is a time discrepancy between Kehoe's time and Pye's time when the respondent leaves from shore. He also states that there was no indication from Kehoe as to what method he used to determine his times. The disputant confirms that Kehoe's time may be inaccurate, but points out that Mr. Kehoe was at the site and that he remembers Maciejewski taking off early.

The disputant questioned Mr. Strilchuk on why he had not placed his posts on the north shore of the lake and had witnessed everything from the one site located at the #2 post. Mr. Strilchuk responded that he did not have access to a boat, which would have been required if he had chosen the north shore to stake, and that the #2 location was the only spot where his mining claim came into contact with mainland.

Maciejewski submitted several documents regarding approval of assessment work on mining claim 1244579 (exhibits 12, 13, and 14). They consisted of a declaration of assessment work, a work report summary, and a letter of approval of the work from the Ministry of Northern Development and Mines. The amount of work shown in these documents was an approval of \$224.00 for lake bottom sediment sampling. The respondent notes that the date of filing for the report was July 2<sup>nd</sup>, 2002. He pointed to the fact that Mr. Meunier's dispute was not filed until August 2, 2002, and argued that his claim could not be disputed once the work was filed.

Mr. Strilchuk also indicated that work had also been filed and approved on his claim.

Meunier asked Strilchuk why assessment work was so quickly carried out after recording, knowing that he had two years to complete his first unit of work. Strilchuk indicated that there were a number of companies interested in the area, work was carried out when time permitted, and in his case an instrument was available to him. Meunier suggested the work was done because he knew a dispute would be filed and it was a way to circumvent the process.

Maciejewski submitted that the mining recorder must have missed the fact that work was approved on these mining claims eliminating the requirement needed for the dispute to be heard.

Then Maciejewski called Meunier as a witness. He asked why his and Kehoe's times were different by approximately 1 minute and 30 seconds. In response, Meunier indicated that his crew was using a GPS and that Kehoe's crew was not. They were in competition and did not synchronize their time. He did not dispute that there was a discrepancy in times, and pointed out that regardless of the time differences, neither party had started staking before Maciejewski's boat left shore.

Maciejewski asked whether GPS's hundred of miles apart would record the same time. Meunier did not know the answer to this question. Reference was then made by Maciejewski to exhibit 15, an excerpt submitted by the disputant indicating GPS's are not infallible and not extremely accurate. He quotes from the article:

*“Provided the unit has collected current leap second count from the navigation message, (current leap second difference from GPS time is only broadcast once in a 12.5 minute Nav. Message), or current leap second has not changed since the last time the unit collected this variable, the time displayed on the front of the unit should be accurate to within 1 second of UTC”.*

Meunier suggested that 1 second would be fairly accurate in this case.

The Tribunal asked the brand and model of the GPS unit used by the disputant. Meunier indicated that he did not know, but would supply this information to the Tribunal within seven days following the hearing.

### **Findings:**

The argument put forward by the respondent that assessment work was carried out on mining claims 1244583 and 1244579, consequently calling into question the validity of the dispute, must be dealt with first as it calls into question the dispute proceedings.

The Tribunal referred to exhibits Nos.12, 13, and 14, which is the work approval letter from the Senior Manager, Mining Lands, Ministry of Northern Development and Mines, a work report summary for mining claim 1244579, and a declaration of assessment work performed on mining claim 1244579. The Tribunal also referred to the mining claim abstracts for 1244583 and 1244579 (which includes records of all documents filed against the mining claim).

*Section 48. (5), (6) of the Mining Act States:*

- (5) *A dispute shall not be received or entered against a mining claim,*
- (a) *after one year from the recording of the claim;*
  - (b) *after the first prescribed unit of assessment work has been performed and filed and, where necessary, approved; or*
  - (c) *except by leave of the Commissioner,*
    - (i) *after the validity of the claim has been adjudicated upon by the recorder or by the Commissioner, or*
    - (ii) *after a dispute has already been entered against the claim*
- (6) *Where a dispute is entered against a claim after the first prescribed unit or assessment work has been performed and filed but before the assessment work has been approved, where approval is necessary, the dispute shall be deemed to have been resolved in favour of the holder or holders of the claim if the assessment work is subsequently approved and the note of the dispute entered on the record of the claim shall be struck out by the recorder who shall by mail no later than the following day notify the disputant of the recorder's action and the reason therefor.*

*Section 2 of Ontario regulation 9/96 states:*

- (2) *Until a lease is applied for, the holder of a mining claim must perform and apply on that claim assessment work having the minimum value specified in Column 2 within the period specified in Column 1:*

| <i>Column 1</i>  | <i>Column 2</i>   |
|--|---|
| <i>Number of assessment years after the recording of the claim</i> | <i>Cumulative value of assessment work for each 16 hectre unit in the claim</i> |
| <i>1</i>   | <i>\$0</i>  |
| <i>2</i>   | <i>400</i>  |
| <i>3</i>   | <i>800</i>  |
| <i>4</i>   | <i>1200</i>   |
| <i>5</i>   | <i>1600</i>   |
| <i>6 and subsequent years</i>                                      | <i>An additional \$400 per year</i>   |

On review of these documents the Tribunal confirms mining claim 1244579 is a one-unit mining claim (16 hectares) requiring a total of \$400 to fulfill its first unit of assessment work. Mining claim 1244583 is a 6-unit mining claim requiring a total of \$2,400 (6 X \$400) to fulfill its first unit of assessment work. On July 2, 2002, a total of \$224 in assessment work was applied to mining claim 1244579. The Ministry subsequently approved this work on August 12, 2002. On July 2, 2002, a total of \$322 in assessment work was applied to mining claim 1244583. The Ministry subsequently approved this work on August 7<sup>th</sup>, 2002.

Although both mining claims had assessment work applied prior to the dispute and subsequently approved after the dispute was filed, the first unit of assessment work was

not applied to either mining claim and the argument put forward by the respondent on this issue is not a valid one.

The Tribunal notes that all witnesses' statements put forward by both the disputant and the respondent are not original documents. In all cases statements are copies or facsimiles of the original. In the case of the Kehoe and the Bur(k) statements, the reproduction was of such poor quality that the disputant, respondent nor the Tribunal could fully decipher the statements made. In addition, no affidavits accompanied any of the statements to confirm the authenticity of the documents or content. For these reasons the Tribunal cannot accept any of the witnesses' statements put forward and will disregard any information contained therein.

The Tribunal reviewed the tape presented by the disputant several times. There are technical inconsistencies in the tape, which question its authenticity, however, the tribunal does believe that the tape has some relevance and can not be dismissed outright.

Relevant points:

1. The tape appears to have been produced on the morning the claims in question were staked being June 1, 2002. The respondent did not put forward any arguments that this was not the case.
2. That the tape appears to show a number of individuals preparing to stake at the location where the tape was made. However, there is no evidence to verify where this location is.
3. The boat shown in the video landing several hundred metres west of the Meunier's group, was confirmed by Maciejewski to be his.
4. The tape clearly captures Maciejewski leaving from shore before the party at the video location commences staking. The tape does not show how long between the time Maciejewski left that the other parties commenced their staking.

Several questions do remain which impact on the weight which must be given to this tape by the Tribunal.

- The disputant did not know whether the video was an original or a copy.
- There were at least three separate areas of the video, which showed a break in time. It cannot be determined by reviewing the tape where and how many breaks there are on the tape.
- The disputant could not confirm whether the tape was edited or altered.
- The disputant did not provide any witnesses to substantiate the authenticity of the video or explain the technical aspects of the video.

- The GPS unit was only shown for a four second time-period, which occurred more than four and a half minutes before Maciejewski is taped leaving the shore. The GPS unit is not shown after Maciejewski left shore to confirm it was still read at time prior to 9:00 a.m. The Tribunal is left with a significant gap in time, which must be seamless in order for the GPS reading to be a factor.

With respect to the issue of time, the tribunal has been asked to determine whether the commencement of staking the disputed claims was prior to the time the land came open. Both the disputant and respondent allege that they began their staking at 9:00 a.m. on the morning of June 1, 2002. On review the Tribunal has been specifically asked to determine the legitimacy of one time method and synchronization over another. Time is an important issue and one that must be looked at with considerable diligence. This is emphasized in *Leach v. Wilson* (5 M.C.C., 368) at page 371 where the Commissioner states:

*“The sanctity of the time of opening for staking has been paramount for many years and nothing but confusion could arise if there were and permitted variations of such time. Adherence to the time of opening for staking is crucial to the entire staking system and there can be no modification of the basic requirement of not commencing to stake prior to the time that the lands come open”*

Maciejewski used a watch (of unknown make) to determine the time of opening. The watch was synchronized to Bell ExpressVu (satellite TV) the day before. No evidence or witnesses were presented by the respondent to confirm the accuracy of his watch or of the Bell ExpressVu satellite time. Alternatively, no evidence or witnesses were brought forward by the disputant to discredit the accuracy of this time measurement.

The disputant presented two points to clarify how his time was more accurate than that of the respondent.

1. That the video clearly showed the respondent leave from shore prior to other stakers competing in staking (located at the Meunier location).
2. That a GPS time could not be disputed as it was widely known that GPS technology is far superior to a watch or other methods of measuring time.

The video and the statements made at the hearing do convince the Tribunal that the respondent did leave his location prior to the other parties commencing their staking. However, this fact alone does not provide any evidence that the staking occurred prior to the opening time. It is just as easy to conclude that the disputant and other party commenced their staking some time after 9:00 a.m.

The determining factor is the accuracy of the GPS unit, and the confirmation that the unit had a time prior to 9:00 a.m. when the respondent left the shore.

Exhibit #15 submitted by the disputant, appears to be an excerpt from an internet site (<http://joe.mehaffey.com>). It also appears to be a response to the question “*Does my GPS display GPS time, UTC time, Local time or what?*” “*How does the GPS system keep time synchronized with UTC time?*” The answer to these questions is extremely technical and appears to compare the accuracy of GPS time to other types of time. There are references in the article which appear to suggest that GPS time is extremely accurate (to within one second). However, its accuracy is qualified with a number of assumptions (i.e., provided that the unit has collected current leap second count from the navigation messages...etc).

The excerpt is therefore of little value as it relates only to generalities and does not refer to the specific unit in question.

The disputant did not provide any details regarding the GPS unit, except that one was used. Make, model, cost, accuracy, setting of the instrument, operation, or reference to the display and readings was not provided. No witnesses were presented to provide any expert testimony on GPS units, their accuracy, or to clarify the technical nature of the instrument. No witnesses or expert testimony was presented to clarify the readings, setting, or the calibration of the particular instrument used. The only evidence provided to confirm the use of a GPS unit was a 4-second clip within the disputant's video showing an instrument held by Pye.

Considering the significant reliance by the disputant on the use of this instrument to make his case, much more care in the submission of detailed evidence and testimony was necessary in order for the Tribunal to properly deliberate this argument. Without these basic submissions it is impossible to give any consideration regarding the accuracy of the disputant's time versus the accuracy of the respondents.

### **Conclusions:**

The Tribunal must dismiss the dispute against mining claim 1244579 on the basis that the disputant did not provide sufficient evidence to prove his case.

### Mining Claim 1244583:

In regard to the Strilchuck claim the disputant presented two arguments as to why this claim is invalid.

1. The staker erected all witness posts from the location of the #2 post and therefore gained an unfair advantage by doing so.
2. Strilchuk and Maceijewski had synchronized watches prior to the staking of 1244583. Furthermore, evidence was presented to substantiate Maceijewski commenced his staking prior to the 9:00 a.m. opening time. With Strilchuk indicating he also

commenced staking at 9:00 a.m., it follows that he had also commenced his staking prior to 9:00 a.m.

Subsection 12(2) Mining Act staking regulation 7/96 states in part

- (2) Witness posts must be erected on the claim boundary as close to the true corner as practicable.

It would seem that the erection of all posts at one location might provide an advantage in staking. This would certainly be the case where two parties are staking the same area with one party erecting all posts at one location while the other witnessing from a variety of locations. It is noted that the #2 post location was the only location where the mining claim contacted mainland, and all other posts within the body of Red Lake. It appears that in this case the staker attempted to comply with Section 12 (2) of the staking regulation with this being the only land location along the claim boundary.

In his testimony Strilchuk points out that the #2 location was the most practicable without having access to a boat. He indicated that he would have required the use of a boat in order to stake from the north shore. No rebuttal was put forth by the disputant to challenge Strilchuk's reasons for the post location. The Tribunal is satisfied with the explanation of the witness and that the witness post location was practicable based on the circumstances.

The disputant presented no direct evidence, to substantiate the allegation that Mr. Strilchuk began his staking of 1244583 prior to 9:00 a.m. on June 1<sup>st</sup>, 2002. The disputant's argument was based on the time of staking and the allegation that Strilchuk's and Maciejewski's watches were synchronized.

The Tribunal finds that the link between Maciejewski's commencement time and the Strilchuk's commencement time is hard to substantiate without direct evidence. There are numerous factors, which could totally discount the disputant's argument. For instance the watches may have not been synchronized exactly. A difference of 20 or 30 seconds would be quite reasonable. The two watches could have been synchronized to the same time but one watch could have moved ahead or behind putting them out of sync by the time staking occurred. The watches could have been synchronized, but Maciejewski could have started his staking early, while Strilchuk started at 9:00 a.m.

### **Conclusions:**

In light of the Tribunal's decision to dismiss the dispute against mining claim 1244579, and that the dispute against 1244579 was the basis for the dispute against 1244583, the Tribunal must dismiss the dispute on this claim also. The disputant has not proven his case in this matter.

Originally signed by Roy Denomme

Roy Denomme  
Provincial Mining Recorder