

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

**IN THE MATTER OF: Mining claims 1242186 and 1242187, staked in Janes Township,
Sudbury Mining Division;**

**AND IN THE MATTER OF: “Filed Only” mining claims 1249933 and 1249934, staked in
Janes Township, and which completely overstaked 1242186 and 1242187 respectively;**

ALSO IN THE MATTER OF: a dispute filed by

**Albert Leblanc
David Morrison**

Disputants

-against mining claims 1242186 and 1242187

**Amberley Joan Kosy
Martyn Spencer Harrington**

Respondents

UPON: consideration of the evidence submitted by the parties,

**I ORDER: that the dispute is hereby allowed, and that mining claims 1242186 and 1242187
are hereby cancelled as of the date of this order**

**I FURTHER ORDER: that “filed Only” application to record 1249933 and 1249934 is
hereby recorded as of the date received, that the time for which 1249933 and 1249934 was
pending before the recorder, will be excluded and a new anniversary date for reporting
work will be set pursuant to Section 67(2) of the Mining Act.**

**I FURTHER ORDER: that the 25th, day of September, 2005, be fixed as the date by which
the first unit of assessment work must be performed and filed on Mining Claim 1249933
and 1249934 and all subsequent anniversary dates are deemed to be September 25th.**

Dated this Sudbury this 25th, day of September 2003.

Originally signed by Roy Denomme

**Roy Denomme
Provincial Mining Recorder**

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

REASONS:

On March 6th, 2001 Joseph G. Tippeneskum staked mining claims 1242186 a 12 unit mining claim and 1242187 a 1 unit mining claim in Janes Township. These claims were subsequently recorded in the name of Martyn Harrington and Gary D. Kosy on March 13th, 2001.

On March 13th through 17th, 2001, David Morrison staked 1249933 and 1249934, which encompassed the same area as mining claims 1242186 and 1242187 respectively. Application to record these two claims was received and taken “filed only”, in the Provincial Recording Office in Sudbury on March 20, 2001.

On May 11, 2001 David Morrison and Albert Leblanc filed a dispute against 1242186 and 1242187. In their dispute they alleged that the claims were invalid based on a number of specific deficiencies with the staking out of the claims.

A hearing to determine this matter was held on July 15th, 2003.

The dispute application was supported by an inspection report filed by Mr. Frank Racicot, from an inspection of the property carried out on May 6th 2001. The report in part confirmed the deficiencies stated by the disputants.

The report along with testimony of the disputants supported the following deficiencies in mining claims 1242186 and 1242187:

Mining Claim 1242186:

All four corner posts, tags are improperly located for this claim as noted below:

The #1 post and tag is located at the southeast corner of the mining claim

The #2 post and tag is located at the southwest corner of the mining claim

The #3 post and tag is located at the northwest corner of the mining claim

The #4 post and tag is located at the northeast corner of the mining claim

The inscriptions on all line posts observed, are incorrect as they refer to corner posts which are improperly located.

The west boundary of the mining claim follows an easterly direction for some 150 metres before turning in a northerly direction.

The east boundary of the mining claim overstakes the westerly portion of prior recorded mining claim 1235892 by some 200 metres.

Mining Claim 1242187:

No claim post or tag can be found at the northeast corner of the mining claim

All other posts, tags are improperly located as noted below:

The #1 post and tag is located at the southeast corner of the mining claim.

The #2 post and tag is located at the southwest corner of the mining claim.

The #3 post and tag is located at the northwest corner of the mining claim.

The north boundary of the mining claim does not appear to have been established as no blazing was observed along this boundary.

The east boundary of this mining claim does not appear to have been established, as no blazing was observed along this boundary.

The date inscribed on the southwest corner post for this claim was “March 04/01”, two days prior to the staking date indicated on the application to record. The application to record indicates the claim was commenced on March 6th, 2001 at 8:05 a.m. and completed on March 6th, 2001 at 5:00 p.m.

Mr. Morrison in his testimony, indicated that the location of the claim posts, tags and the inscriptions on the line posts, caused him considerable confusion. He contacted the Provincial Recording office to find out whether there had been any staking within the area he was located. He was told that no recording had been received at the office for the area in question. Based on this information, he continued with his staking. He also testified that it was not until he had staked a significant portion of mining claim 1249933 that he realized what Tippeneskum had done. However based on the deficiencies that he had found in the Tippeneskum staking he continued to stake 1249933 and 1249934.

In response, Mr. Harrington stated that he did not dispute the evidence, put forward by the Disputants, of deficiencies found in mining claims 1242186 and 1242187. Mr. Harrington indicated that Mr. Tippeneskum had carried out his staking a week before the Morrison claims, and suggested Morrison should have been able to determine that the land had been staked. He further stated that Tippeneskum, did not attempt to mislead any other staker in his staking of 1242186 and 1242187 and staked the two claims in good faith. He added that Mr. Tippeneskum was a novice staker and that the deficiencies were partly due to this inexperience. In closing Mr. Harrington indicated that he would be willing to correct any of the deficiencies found in the two mining claims.

The tribunal, in this case, is left to determine firstly; whether the staking of Tippeneskum was in substantial compliance with the provisions of the Mining Act and its regulations, and secondly, whether the inexperience of the staker was a factor in determining substantial compliance.

Section 43 of the Mining Act States:

- (1) *Substantial compliance as nearly as circumstances will reasonably permit with the requirements of this Act and the regulations as the staking out of mining claims is sufficient*
- (2) *The staking out of a mining claim shall be deemed to be in substantial compliance with the requirements of the Act and regulations even if there is a failure to comply with a number of specific staking requirements if,*
 - (a) *the failure to comply is not likely to mislead any licensee desiring to stake a claim in the vicinity;*
 - (b) *it is apparent that an attempt has been made in good faith by the licensee to comply with the requirements of this Act and the regulations.*

In review of the number of specific deficiencies that exist in both mining claims, it cannot be concluded that there was an apparent attempt made by the staker to comply with the provisions of the Mining Act. It does not appear from the evidence put forward by either party that there were physical or circumstantial factors, other than the stakers inexperience in staking, that would have alone perpetuated the significant number of deficiencies in the staking. Further it is evident from Morrison's testimony and a review of the evidence, that the line post inscriptions, would have caused significant confusion and mislead any staker trying to stake in the vicinity.

Records within the Provincial Recording Office confirm that Mr. Tippeneskum has only held a prospector's licence since November 27th, 2001. Mr. Harrington indicated that he had used Mr. Tippeneskum on previous occasions to stake, however, it appears that mining claim 1242186 and 1242187, were the first two mining claims that Mr. Tippeneskum had staked on his own in Ontario. It is clearly evident that the Mr. Tippeneskum was inexperienced at the time of staking 1242186 and 1242187.

The Mining and Lands Commissioner has examined the issue of a novice staker in the past.

In *Sutherland v Rose* 5 M.C.C. 144, said at page 154, the Commissioner states:

A minor consideration which has influenced my conclusions is the apparent lack of experience of the respondent in the staking practices of the province. While the issue is not conclusive, it has been used by my predecessors as one of several standards of measuring the performance of a staker.

In *Lacasse v. Phillips* 7 M.C.C. 560, the Mining and Lands Commissioner further clarifies the words of the *Sutherland v. Rose* case, at page 570,

This principle should not be extended beyond a minor consideration, particularly in a competitive situation, and the staking of the inexperienced staker should not

be upheld solely on this ground. Notwithstanding these potential arguments, the tribunal approaches this case by considering whether the staking of the respondent substantially complied with the Act.

It is clear that the inexperience of a staker can only be given a minor consideration and that in this case, cannot justify the number of deficiencies found in the staking of mining claims 1242186 and 1242187.

Section 71 of the Mining Act states:

(1) Non-compliance by the licensee or holder of a mining claim with any requirement of this Act or the regulations as to the time and manner of the staking out and recording of a mining claim or with a direction of the recorder in regard thereto, within the time limited therefore, shall be deemed to be an abandonment, and the claim shall, without any declaration, entry or act on the part of the Crown or by any officer, unless otherwise ordered by the commissioner, be forthwith opened to prospecting and staking out.

Pursuant to Section 71 (1) the non-compliance in the Tippeneskum staking represents an abandonment of mining claims 1242186 and 1242187. It follows, that the area covered by these mining claims was available for staking on March 13th, 2001 when Mr. Morrison staked 1249933 and 1249934. A review of the application to record for 1249933 and 1249934 has determined that it is acceptable for recording.

Therefore mining claims 1242816 and 1242187 are hereby cancelled as of the date of this order. Application to record "Filed Only" mining claims 1249933 and 1249934 is hereby recorded as of the date filed.

Roy Denomme
Provincial Mining Recorder