

File No. MA 023-94

L. Kamerman)
Mining and Lands Commissioner)

Friday, the 26th day
of April, 1996.

THE MINING ACT

IN THE MATTER OF

An appeal by the Disputant from the Decision of the Acting Mining Recorder for the Larder Lake Mining Division for the recording of filed only Mining Claims L-1202692 and 1202694.

B E T W E E N:

STRIKE MINERALS INC.

Disputant

- and -

SUDBURY CONTACT MINES LIMITED

Respondent

ORDER

UPON hearing from the parties and reading the documentation filed;

1. THIS TRIBUNAL ORDERS that the appeal concerning "Filed Only" Mining Claim L-1202694 be allowed, that the aforementioned Mining Claim be recorded and the matter is referred back to the Mining Recorder of the Larder Lake Mining Division for an Order pursuant to clause 110(6)(b) of the **Mining Act** to re-blaze the lines and cut the underbrush of Mining Claim L-1202694.

2. THIS TRIBUNAL FURTHER ORDERS that the time during which Mining Claim L-1202694 was pending before the Mining Recorder and the tribunal, being the 29th day of April, 1994 to the 26th day of April, 1996, a total of 729 days, be excluded in computing time within which work upon Mining Claim L-1202694 shall be performed.

3. THIS TRIBUNAL FURTHER ORDERS that the 26th day of April, 1998 be fixed as the date by which the first and second prescribed units of assessment work shall be performed and filed on Mining Claim L-1202694 and all subsequent anniversary dates shall be deemed to be April 26 pursuant to subsection 67(3) of the **Mining Act**.

4. THIS TRIBUNAL FURTHER ORDERS that the appeal concerning "Filed Only" Mining Claim L-1202692 be dismissed and the matter is referred back to the Mining Recorder of the Larder Lake Mining Division for an Order pursuant to section 35 of the **Mining Act** to reopen the lands for staking.

5. THIS TRIBUNAL FURTHER ORDERS that no costs shall be payable by either party to this appeal.

IT IS FURTHER DIRECTED that this Order be filed in the Office of the Mining Recorder for the Larder Lake Mining Division without fee pursuant to section 178 of the **Mining Act**.

Reasons for this Order are attached.

DATED this 26th day of April, 1996.

L. Kamerman
MINING AND LANDS COMMISSIONER

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REASONS

This matter was heard on August 29 and 30, 1995 in the Blue Room of the Royal Canadian Legion, Summerhays Avenue, Kirkland Lake, Ontario. Strike Minerals Inc. ("Strike Minerals") was represented by Carl Forbes; Sudbury Contact Mines Limited ("Sudbury Contact") by counsel Gary Sullivan with David Christie also in attendance.

Background:

This Order flows from an earlier Order of the tribunal dated January 19, 1996 in which it was determined that a final determination concerning "Filed Only" Mining Claims

L-1202692 and 1202694 could not be made until the matter of the status of Mining Claims L-1200585 and 1200588 was determined. Relevant portions of that Order are reproduced:

Status of Mining Claims L-1200585 and 1200588

The result of the Decision of the Mining Recorder was that neither of the two Sudbury Contact Mining Claims or the corresponding Strike Minerals Filed Only Mining Claims were recorded. In appealing this Decision insofar as it affected its interests only, the effect of the Strike Minerals' appeal was to appeal the refusal to record a mining claim. In order to have a full hearing on the merits of both stakings, it would have been necessary for Sudbury Contact to appeal the Decision of the Recorder insofar as it disallowed recording of its two Mining Claims.

The tribunal finds that Sudbury Contact relied on erroneous information from the tribunal that it need not appeal the Decision of the Recorder to disallow the recording of Mining Claims L-1200585 and 1200588. The result of this error is that the hearing itself did not involve a dispute of the two Sudbury Contact Mining Claims. The tribunal cannot consider the issue of the validity of the Strike Minerals Filed Only Mining Claims without first ruling on those of Sudbury Contact. The tribunal itself did not pick up on the consequences of this absence of appeal on the part of Sudbury Contact, and therefore, the matter was not resolved during the hearing.

If it is the case that the tribunal is incorrect, the result would be that, in failing to make a case against the Mining Claims, combined with the original jurisdiction of the tribunal set out in clause 113(a) of the **Mining Act**, there is no evidence to support a dispute with the result that the dispute must be dismissed. This would allow the Mining Claims to be recorded where there is a Decision of the Recorder that the stakings do not meet the requirements of the legislation, notwithstanding that the Decision was based upon a hearing of the merits and no such hearing took place before the tribunal. Such a finesse is not contemplated by the procedural requirements of Part VI of the **Mining Act**. Each decision of the tribunal must be on the "real merits and substantial justice of the case".

It becomes clear that the origins of the problem rest with the tribunal itself, for having given incorrect advice to Sudbury Contact and for having failed to correct the situation created when opportunity presented itself at the hearing.

The tribunal finds that a substantial injustice has been suffered by Sudbury Contact by virtue of the incorrect advice which it received from the tribunal regarding the filing of a Notice of Appeal. Under the circumstances, it is clear that Strike Minerals' Notice of Appeal is filed within the time requirements provided in subsection 112(3) of the **Act**. Based upon its equitable jurisdiction under section 121 of the **Act** and the jurisdiction to extend time contained in that subsection in the case of inadequate notice and substantial injustice, as well as the jurisdiction to extend time found in section 137 of the **Act**, the tribunal finds that it will extend time to Sudbury Contact for the filing of its own appeal in conjunction with that already filed by Strike Minerals, contained on Document No. 9480.00118. The time for appealing the Decision of the Recorder shall be within 15 days of the filing of this Order of the tribunal.

It should be noted that, for purposes of any prospective appeal, the jurisdiction of the tribunal to inquire into the validity of the original staking extends to all issues of staking, and not merely the matter of time taken to stake. This is the approach taken by the Recorder and his Decision clearly raises issues aside from the matter of time.

In the event that Sudbury Contact does not appeal the Decision of the Recorder within the time frames set out, the tribunal will render its decision concerning the two Strike Minerals Filed Only Mining Claims in due course.

Status of Mining Claims L-1200585 and 1200588

Notwithstanding the tribunal's Order of January 19, 1996 allowing additional time for Sudbury Contact to file an appeal concerning these two Mining Claims, no appeal has been filed. As a result, the decision of the Mining Recorder to cancel Mining Claims L-1200585 and 1200588 stands. The tribunal must now determine the status of "Filed Only" Mining Claims L-1202692 and 1202694.

Evidence and Submissions

The evidence and submissions concerning the validity of these the "Filed Only" Mining Claims was included in the hearing held on August 29 and 30, 1995 and are contained in the January 19, 1996 Order.

Essentially, there was scant evidence concerning the stakings of these mining claims, and the issue which was addressed by the Inspectors was that of whether the stakings could have taken place in the time indicated. Another issue was raised at the hearing, the facts of which are set out below.

Patrick Harrington staked the two "Filed Only" Mining Claims numbered L-1202692 and 1202694 as well as L-1202691. The land corresponding to 1202691 is not the subject of either this or the January 19, 1996 Order. However, the Application to Record (Ex. 7, Tab 23) indicates that Mr. Harrington staked both L-1202691 and 1202692 commencing at 8 a.m. on April 17, 1994. The issue raised was the extent to which the staker must be involved in the staking for it to be valid. In this regard, the interpretation of section 8 of Ontario Regulation 115/91 was discussed by Mr. Forbes and Mr. Sullivan. Essentially, the issue is whether the wording allows the staker to be in two places at once, or whether the staker is required, under the **Mining Act** to be the primary actor in all of his or her stakings.

Findings:

Mining Claim L-1202694

Mining Claim L-1202694 was staked within the first 24 hours after the lands came open for staking. Therefore, subsection 8(9) of Ontario Regulation 115/91 applies. In this regard, the evidence shows that Mr. Harrington commenced staking at the No. 1 post at 2:30 p.m. on April 16, 1994 and completed staking at the No. 1 post at 7:45 p.m. The Inspection Report of Mark Hall (Ex. 7, Tab 13) shows acceptable posts and inscriptions, with the exception of the No. 2 post at station 16, where the faces range from 3 to 3.75 inches. However, there does not appear to be a problem with the inscriptions.

The tribunal has held in **Osiel v. Abolins** (unreported) July 6, 1993, that, where there is an attempt to substantially comply with the requirements of the **Act**, and the failure to comply is not likely to mislead a staker in the vicinity, that corner posts properly inscribed measuring less than 10 centimetres will not be declared invalid.

Concerning the quality of the blazing and the cutting of the underbrush, the

tribunal finds that it will adopt its findings and reasoning from the January 19, 1996 Order in this regard, found at page 23:

The evidence of Messrs. Hall and Weirmeir does not indicate that Mining Claim L-1200587 could not be staked in the [time] indicated. Rather, the evidence is that the blazing and cutting of the underbrush could have been better.

The test for substantial compliance is set out in section 43 of the **Mining Act**. There are no circumstances which are persuasive to this tribunal to suggest that the staking was not in substantial compliance with the requirements of the legislation, save for the cutting of the blazes and underbrush. Similarly, there is no indication that the failure to perform these staking requirements adequately was due to an absence of good faith or likely to mislead. Therefore, the tribunal finds that there is deemed substantial compliance with the requirements of the **Act**. The Recorder is directed to make an Order pursuant to clause 110(6)(b) to re-blaze the claim lines and alter them so that the brush is adequately cleared.

The tribunal finds that it will order the recording of "Filed Only" Mining Claim L-1202694, and direct the Mining Recorder to make an Order pursuant to clause 110(6)(b) of the **Act** to re-blaze the claim lines and alter them so that the brush is adequately cleared.

Status of "Filed Only" Mining Claim L-1202692 and Requirements of Section 8 of O.Reg. 115/91

The tribunal finds that it prefers the common sense approach advocated by Mr. Sullivan that subsection 8(8) should be read as part of the whole section. In this way, the staker who must "inscribe on one of the corner posts the date and time of completion of the staking" is the same staker who shall stake out in a continuous action, construct and erect posts and blaze, flag or picket the perimeter. Subsection 8(7) allows for helpers to assist. It does not indicate that these helpers may perform all of these functions.

Based upon the facts admitted at the hearing and by virtue of the contents of the Application to Record, namely that Patrick Harrington purported to stake Mining Claims L-1202691 and 1202692 **both** commencing at 8 a.m., the tribunal finds that he has failed to comply with the requirements of the **Act** in the staking of these mining claims. The tribunal further finds that two mining claims under staking at the same purportedly by the same staker is likely to be

misleading to others in the field and therefore, the staking cannot be saved by the provisions of clause 43(2)(a) of the **Mining Act**. The tribunal finds that the staking of "Filed Only" Mining Claim L-1202692 is invalid and that the appeal of the disputant in this regard will be dismissed.

Exclusion of Time

Pursuant to subsection 67(2) of the **Act**, the time during which Mining Claim L-1202694 was pending before the Recorder and the tribunal, being April 29, 1994 to April 26, 1996, a total of 729 days, will be excluded in computing time within which work upon Mining Claim L-1202694 is to be performed. That portion of the Recorder's Order withdrawing Mining Claim L-1202694 from staking as a result of the tribunal's Order is declared null and void.

Pursuant to subsection 67(3) of the **Act**, April 11, 1998 shall be deemed to be the date for filing of the first and second units of prescribed assessment work on Mining Claim L-1202694. All subsequent anniversary dates shall be deemed to be April 11.

Withdrawal From Staking

The status of the lands covered by "Filed Only" Mining Claim L-1202692 is that they have been removed from staking by the Recorder. In the event that no action has been taken by either of the parties pursuant to sections 134 or 135 of the **Act** within the time frames set out therein, it will be a matter for the Recorder to issue a Reopening Order pursuant to section 35 of the **Act**.

Conclusions:

The appeal of the decision of the Mining Recorder regarding "Filed Only" Mining Claim L-1202694 is allowed. The Mining Recorder is directed to issue an Order pursuant to clause 110(6)(b) to re-blaze the claim lines and alter them so that the brush is adequately cleared. The time during which this claim was pending before the tribunal is excluded.

The appeal of the decision of the Mining Recorder regarding "Filed Only" Mining Claim L-1202692 is dismissed. The matter of issuing a Reopening Order pursuant to section 35 of the **Act** is left to the Mining Recorder.