

BEFORE THE INDIAN CLAIMS COMMISSION

RED LAKE BAND and PETER GRAVES,)	
JOSEPH GRAVES and AUGUST KING,)	
<u>ex rel.</u> RED LAKE BAND,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 189
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: April 19, 1974

FINDINGS OF FACT ON AWARD OF ATTORNEYS' FEE

Upon consideration of the petition for award of attorneys' fee in the above-entitled case and the statement in support thereof, filed on January 30, 1974, by Rodney J. Edwards, attorney of record for the Red Lake Band, et al., plaintiffs in this case, and upon consideration of the entire record herein, including the several contracts of employment of attorneys by the plaintiffs and assignments of interest in those contracts, the Commission makes the following findings of fact.

1. The Award.

On August 9, 1973, the Commission issued an order granting the defendant's motion for final judgment that the plaintiffs shall have and recover from the defendant the sum of \$1,843,038.50, plus an additional amount upon the principal sum of \$410,931.12 measured by simple interest at the rate of 5 percent per annum from March 31, 1973, until

paid (31 Ind. Cl. Comm. 87). Payment of this judgment, in the amount of \$1,859,306.87, was made pursuant to Public Law 93-245 adopted January 3, 1974.

2. The Petition For Attorneys' Fee.

On January 30, 1974, Rodney J. Edwards, attorney of record in the above-entitled case, filed a petition on behalf of all contract attorneys having an interest in the fee in Docket 189. The petition requested an award of attorneys' fee in the amount of \$185,930.68, being ten percent of the final judgment.

3. Notice Of Filing To Executive Agencies And Plaintiffs.

By letters of January 30, 1974, the Deputy Clerk of the Commission notified the Chairman of the Red Lake Band of Chippewa Indians; the Commissioner of Indian Affairs, Department of the Interior; and the Assistant Attorney General, Land and Natural Resources Division, Department of Justice; of the filing of subject petition for attorneys' fee. The Department of Justice replied on April 2, 1974, stating that it takes no position as to the allowance of attorneys' fee. Enclosed with the Department of Justice's reply, was a letter of March 25, 1974, from the Associate Solicitor for Indian Affairs, to the Department of Justice, stating that Office of the Solicitor, Department of the Interior, has insufficient information upon which to make a recommendation regarding the amount of compensation earned by the tribal attorneys. There was also enclosed with the Department of Justice's reply, a memorandum of March 1, 1974, from the Acting Commissioner of Indian Affairs, to the Solicitor, stating that the Bureau of Indian Affairs was similarly without sufficient information to make such a recommendation.

The Commission has received no reply to the letter notifying the Red Lake Band of Chippewa Indians of the filing of the petition for attorneys' fee in this case.

4. Attorneys' Contracts.

The claim in Docket 189 was instituted and prosecuted pursuant to the following attorneys' contracts made with the General Council or other authorized representatives of the Red Lake Band of Chippewa Indians.

(a) Contract No. I-1-ind. 42012, dated February 13, 1948, with attorneys Austin L. Lathers, Jay H. Hoag, and Clarence G. Lindquist, which was approved on April 17, 1948, for a period of five years beginning February 13, 1948. An extension of this contract for an additional period of five years beginning February 13, 1953, was approved on August 11, 1954.

(b) Contract, Symbol H-20-650, No. 559, dated June 12, 1958, with the same attorneys, which was approved on December 30, 1958, for a period of ten years, beginning February 13, 1958.

(c) Contract No. F50C14200378, dated May 8, 1968, with attorneys Jay H. Hoag, and Rodney J. Edwards, which was approved on June 20, 1968, for a period of ten years, beginning February 13, 1968.

The three contracts provide that compensation to the attorneys is contingent upon a recovery for the Indians; that the attorneys may associate with them and employ such other attorneys as they may select, provided that all expenses therefor be paid by the employing attorneys out of any

compensation they may receive for services; and that the aggregate fee shall not exceed ten percent of the amount recovered for the Indians.

The first two contracts also provide for assignment of obligations and of interests in the contracts, subject to approval by the Commissioner of Indian Affairs and the tribe. All three contracts provide that in the event of the death of any of the contracting attorneys, the estates thereof shall be allowed compensation equitably due for services theretofore rendered under the contracts. Contract No. F50C14200378 also provides that compensation for services rendered by Austin Lathers and Clarence G. Lindquist, and such other attorneys as may have performed services in connection with the preceding contracts, shall be considered and compensation therefor included in fixing and determining fees.

5. Assignment Of Interests In Attorneys' Contracts.

(a) By agreement dated November 18, 1949, approved January 27, 1950, the attorneys named in Contract No. I-1-ind. 42012, identified above, assigned an interest therein to attorneys G. Arthur Johnson, Vern R. Edwards, Rodney J. Edwards, Ward Winton, Thomas L. St. Germain heirs*, Herschel B. Fryberger, Jr., E. L. Gruber, H. J. Grannis, Preston Boyden, George E. McGrath, and Patrick A. Burke.

*/ The agreement of November 18, 1949, provided that the interests listed were subject to determination by the Court of Claims or Commission of the fees of Thomas L. St. Germain at the time of his decease. The same agreement was involved in Dockets 18-A, 18-B, and 18-T. In Dockets 18-A and B, at the urging of the attorney of record, we found that none of the heirs of Thomas L. St. Germain executed the agreement of November 18, 1949, and that it was not an effective agreement as to them. 13 Ind. Cl. Comm. 576-7 (1964), 16 Ind. Cl. Comm. 423, 424 (1965). Our reason for this holding is not now readily apparent. The record in this proceeding contains no information regarding this interest. Cf. Docket 18-T, 31 Ind. Cl. Comm. 319, 323 (1973).

(b) By assignment dated April 18, 1950, approved July 13, 1950, Austin L. Lathers, Jay H. Hoag and Clarence G. Lindquist, attorneys named in Contract No. I-1-ind. 42012, identified above, assigned an interest therein to attorneys Denis McGinn and James R. Fitzharris.

(c) By agreement dated February 15, 1954, approved July 27, 1955, Austin L. Lathers, Jay H. Hoag, and Clarence G. Lindquist, attorneys named in Contract No. I-1-ind. 42012, supra, assigned to attorney Marvin J. Sonosky, an interest in the fee in Docket 189.

(d) By an undated assignment approved June 30, 1958, Preston Boyden and George E. McGrath, attorneys named in the agreement dated November 18, 1949, identified above, reassigned a portion of their interest under this agreement to Attorneys Denis McGinn and James R. Fitzharris.

(e) By agreement of May 22, 1961, approved December 20, 1962, Austin L. Lathers, Jay H. Hoag, Rodney J. Edwards and Clarence G. Lindquist, attorneys named in Contracts No. I-1-ind. 42012 and Symbol 14-20-650 No. 599, identified above, increased the interest in those contracts which had previously been assigned to attorney Marvin J. Sonosky.

(f) By assignment dated May 26, 1964, approved August 7, 1964, Austin L. Lathers and Jay H. Hoag, attorneys named in Contract, Symbol 14-20-650 No. 599, supra, assigned an interest therein to attorney Rodney J. Edwards.

(g) By assignment dated February 25, 1965, approved June 28, 1965, Preston Boyden assigned all his interest in contract No. I-1-ind. 42012, supra, to Jay H. Hoag and Rodney J. Edwards.

(h) By assignment dated January 20, 1972, approved January 31, 1972, Patrick A. Burke assigned all his interest in contract No. I-1-ind. 42012, supra, in equal shares to Rodney J. Edwards and Marvin J. Sonosky.

(i) By an assignment dated and approved effective July 20, 1973, George E. McGrath assigned all his interest in contract No. I-1-ind. 42012, supra, to Rodney J. Edwards.

6. Deceased Attorneys.

The following attorneys who had an interest in the attorneys' fee in Docket 189 at the time of their death, are now deceased: Austin L. Lathers, Jay H. Hoag, Clarence G. Lindquist, Edward L. Gruber, Denis McGinn, Vern R. Edwards, H. J. Grannis, and Preston Boyden.

7. Legal Services Performed By Counsel.

The original petition in Docket 189 was filed in August, 1951. It covered the claim for which attorneys' fees are sought herein, as well as other claims which subsequently were severed and designated as other dockets.

The claim for which the award was made in Docket 189 was for just compensation for a Fifth Amendment taking of 52,477.89 acres of land from the Red Lake Reservation as the result of erroneous surveys.

The claim presented legal and factual matters for trial and determination which included:

- (a) Plaintiffs' right and capacity to prosecute the claim,
- (b) The nature of the plaintiffs' title to the land, if any,

(c) Whether there was a taking of the lands by the United States, and if so, whether such taking was in violation of the Fifth Amendment of the United States Constitution,

(d) Determination of when the 52,477.89 acres were disposed of by the United States under the public land laws,

(e) The value of the 52,477.89 acres as of the dates of taking,

(f) Determination of the interest factor to be used in computing just compensation,

(g) Whether the United States was entitled to an offset for 31,933.96 acres of land included in the Red Lake Reservation by an erroneous survey of 1885.

Preparation for trial required research as to law and fact on all the issues, the engaging of expert witnesses to testify as to the identification of the lands excluded by the erroneous surveys, and their value as of the dates of taking, and preparation of the documentary evidence submitted to support plaintiffs' claim.

On motions preliminary to trial and after trial, plaintiffs' attorneys filed with the Commission, briefs on the law and facts and requested findings of fact to assist the Commission in making its determinations.

After the final award was entered, plaintiffs' attorneys submitted to plaintiffs, reports with respect to the award, and attended meetings with the Indian clients to determine whether or not an appeal to the Court of Claims should be taken. After resolving the question of whether

or not to appeal, plaintiffs' attorneys followed through with assisting the Indian clients in obtaining payment of the award by Congress, which payment was included in the supplemental appropriation act, approved January 3, 1974.

In addition, attorneys for plaintiffs have advanced expenses directly for furtherance of the litigation, reimbursement of which has not yet been made.

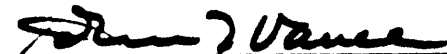
8. Conclusion.

Considering the services rendered by the attorneys in these proceedings, the difficult questions of fact and law presented, the time involved in litigation, the results obtained, and in accordance with standards obtaining for prosecuting similar claims in courts of law, the Commission finds that the attorneys for the plaintiffs are entitled to receive the full ten percent of the award as provided in Section 15 of the Indian Claims Commission Act (60 Stat. 1049, 1053) and in their respective attorneys' contracts.

The Commission finds that the attorneys for the plaintiffs are entitled to an attorneys' fee in the amount of \$185,930.68, being ten percent of the final judgment of \$1,859,306.87 which was entered in this proceeding. The Commission further finds that payment to Rodney J. Edwards, Attorney of Record, of this sum out of the funds appropriated to pay the aforementioned award, for appropriate distribution by him of the amounts due each of the participating attorneys, and/or their assignees, and to the

legal representatives of the deceased attorneys or their heirs, pursuant to their respective contracts and assignments, will represent payment in full of all claims for legal services rendered in the docket herein.

Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner

Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner