

BEFORE THE INDIAN CLAIMS COMMISSION

THE SAC AND FOX TRIBE OF INDIANS	)	
OF OKLAHOMA, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket No. 95
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: June 19, 1974

Appearances:

Stanford L. Clinton, Attorney for  
The Sac and Fox Tribe of Missouri.

Lawrence C. Mills, Attorney for The  
Sac and Fox Tribe of the Mississippi  
in Iowa.

George B. Pletsch, Attorney for  
The Sac and Fox Tribe of Oklahoma.

James E. Clubb, with whom was Assistant  
Attorney General Wallace H. Johnson,  
Attorneys for the Defendant.

OPINION OF THE COMMISSION

Vance, Commissioner, delivered the opinion of the Commission.

This docket is before the Commission on remand from the Court of  
Claims.

The claim was brought by the Sac and Fox Indians in Iowa, Missouri,  
and Oklahoma to compel the defendant to account for various sums which  
the plaintiffs alleged were due them, but not paid, under certain treaties

and acts of Congress. On December 27, 1971, the Commission entered an opinion, findings of fact, and interlocutory order in which it was concluded that the defendant had failed to account for amounts due and owing the plaintiffs in the total sum of \$20,421.78, less any allowable gratuitous offsets. 26 Ind. Cl. Comm. 513. Both parties appealed the Commission's decision. The Court of Claims affirmed the Commission's decision in all respects except that it directed the Commission to ". . . enter judgment for the Iowa Sac and Fox for [the] sum [of \$68,089.43]," which sum represented the balance, as of June 30, 1951, under a Treasury account entitled "Sac and Fox of the Mississippi Fund, Iowa, Acts of March 3, 1909 and April 4, 1910." See Sac and Fox Tribe v. United States, 202 Ct. Cl. 1088 (per curiam), reh. denied, 202 Ct. Cl. 1090 (1973) (Skelton, J., dissenting) (aff'g in part, rev'g in part Docket 95, 26 Ind. Cl. Comm. 513 (1971)). The Commission had determined that it had no jurisdiction to enter a judgment for the balance in this account, as will be explained hereinafter.

The report of the General Accounting Office, filed herein on June 6, 1962, revealed that as of June 30, 1951, there was a balance of \$68,089.43 under the above entitled Treasury account. (See Def. Exh. 8, at 66.) This balance represented the net amount of undisbursed principal of treaty obligations capitalized under the Acts of March 3, 1909, 35 Stat. 781, 783, and April 4, 1910, 36 Stat. 270.

The issue initially before the Commission with respect to this balance was described as follows in plaintiffs' proposed finding of fact No. 18, filed June 10, 1969:

As of June 30, 1951, the General Accounting Office Reports of defendant indicate that the sum of \$68,089.43 is standing on the books of the Treasury to the account of the Iowa Sac and Fox, and we find that such sum is now due and owing to them, severally, the Sac and Fox Tribe of the Mississippi in Iowa.

Defendant countered as follows in its brief before the Commission, filed October 6, 1970:

Since this is an accounting action, and since defendant has accounted for the \$68,089.43 remaining on the books of the Treasury, petitioners have no course [sic] for complaint and the Commission has no authority to compel payment thereof.

The Commission agreed with the defendant and held as follows, at 26 Ind. Cl. Comm. 513, 534-35 (1971):

19. The plaintiffs contend, and the defendant does not dispute, that as of June 30, 1951, the General Accounting Office report shows \$68,089.43 standing on the books of the Treasury to the account of the Iowa Sac and Fox. Plaintiffs request that they be awarded this sum. While conceding this fact, the defendant contends that by carrying the sum on the books of the Treasury, it has indeed been accounted for. The Commission cannot render a judgment which would extract the plaintiffs' own funds from the defendant's custody over the defendant's objections.

In its accompanying opinion, the Commission explained its decision as follows:

. . . The Commission also notes, in passing, plaintiffs' proposed Finding No. 18, and the second half of the plaintiffs' proposed conclusory Finding No. 19, to the effect that the plaintiffs are entitled to a judgment which would extract from the Treasury of the United States some \$68,089.43 which, as of June 30, 1951, stood to the plaintiffs' credit on the books of the United States. Such sums owned by the plaintiffs which are in the defendant's custody are beyond the reach of the jurisdiction of this Commission. (26 Ind. Cl. Comm. at 517.)

Plaintiffs, in appealing our decision to the Court of Claims, briefed that court as follows:

Finding of Fact No. 19 involves a fund of \$68,089.43 which defendant admits is standing in favor of the Iowa Sac and Fox on the books of the United States as of June 30, 1951 (the date of Defendant's Exhibit 8). This is the net amount of undisbursed principal of treaty obligations capitalized under the acts of 1909 (35 Stat. 781, 783) and 1910 (36 Stat. 270).

. . . The Commission ruling is an entirely novel one, to the effect that its power to "determine" the issues in an accounting proceeding is merely to call the defendant to "account" without rendering judgment on the prayer for sums shown to be owing [sic].

The defendant simply asserted that the Commission's finding of fact No. 19 was correct.

The Court of Claims in its June 1, 1973, decision, supra, held that:

4. The Government has conceded and continues to concede that the sum of \$68,089.43 mentioned in finding 19 is due and owing the appellant Iowa Sac and Fox. There is no reason why the Commission cannot enter judgment for this sum and the Commission erred in failing to do so. The appellant is entitled to such a judgment on appellee's concession.

and ordered that:

. . . the Commission's order is reversed insofar as the Commission failed to enter judgment for the sum of \$68,089.43 referred to in the Commission's finding 19 and the Commission is directed to enter judgment for the Iowa Sac and Fox for said sum.

Defendant then sought a rehearing on the grounds that the entry of such a judgment would provide no benefit to the tribe because the amount was already credited to the Iowa Sac and Fox and would ". . . unjustly and unnecessarily cost [the plaintiffs] \$6,808.94 in attorney's fees."

The plaintiffs responded that the basic fact remained that the balance of \$68,089.43 was due and owing to them, that defendant has conceded this, and that defendant's refusal to pay this balance had necessitated retaining counsel. The court denied the motion for rehearing on October 17, 1973.

On January 24, 1974, the defendant moved the Commission to admit into evidence under this docket as defendant's exhibit No. 14 a supplemental accounting report prepared by the General Services Administration showing that between June 30, 1951, and November 30, 1973, the sum of \$45,006.09 had been disbursed from the Treasury account entitled "Sac and Fox of the Mississippi Fund, Iowa, Acts of March 3, 1909 and April 4, 1910," in the form of pro-rata shares paid to individual Sac and Fox Indians. The report showed that as of November 30, 1973, the fund contained a balance of \$23,083.34. The defendant also asked that we accept this report as a statement of fact and that we enter judgment in the amount of \$23,083.34 to carry into effect the mandate of the Court of Claims' decision of June 1, 1973. The defendant's statement in support of the motion asserted that:

. . . Assuming that the Commission has jurisdiction to render a money judgment in favor of the tribe for funds already stated to its credit on the books of the Treasury of the United States, it is clear that what the court intended was that judgment be entered for the balance standing on the books of the Treasury to the account of the Iowa Sac and Fox at the date of the final judgment.

The plaintiffs responded on February 22, 1974, citing the order of the Court of Claims directing that the Commission enter judgment for the sum

of \$68,089.43, and asserting that the defendant's contentions were too late and amounted to an attempt to induce the Commission to disobey the order of the Court of Claims.

On February 20, 1974, the defendant filed another motion asking to be permitted to file an additional statement in support of its motion of January 24, 1974. The Commission, by order entered March 6, 1974, granted permission to file this additional statement in which the defendant asserted that the Commission lacked jurisdiction to enter judgment for the June 30, 1951, balance of \$68,089.43 on the books of the Treasury to the account of the Iowa Sac and Fox because the plaintiffs' claim for such balance had accrued after August 13, 1946.

On March 22, 1974, the plaintiffs moved the Commission to vacate the Commission's order of March 6, 1974, supra, and sought leave to file objections to the filing of the defendant's additional statement of February 20, 1974. Plaintiffs' objections to said filing are not substantially different from the objections to the January 24, 1974, motion itself and need not be recited.

As an inferior court, we are under a duty, on remand, to comply strictly with the mandate of the appellate court. The Supreme Court spelled out this duty very clearly in the early case of Ex parte Sibbald v. United States, 37 U.S. (12 Pet.) 488, 492 (1838):

. . . Whatever was before the court, and is disposed of, is considered as finally settled. The inferior court is bound by the decree as the law of the case, and must carry it into execution according to the mandate. They cannot vary it, or examine it for any other purpose than execution; or give any other or further relief; or review it upon any matter decided on appeal for error apparent; or intermeddle with it, further than to settle so much as has been remanded.

See also In re Sanford Fork & Tool Co., 160 U. S. 247 (1895).


Thus the only proper action for the Commission to take is to comply with the court's mandate by entering judgment in favor of the Iowa Sac and Fox for the sum of \$68,089.43.

Based upon the reasons set out above, the Commission will take the following actions under this docket:

1. The Commission will enter an interlocutory order awarding the Sac and Fox Tribe of the Mississippi in Iowa the sum of \$68,089.43. The Commission's previous interlocutory order of December 27, 1971, 26 Ind. Cl. Comm. 536, awarding \$20,421.78 jointly to the various plaintiffs herein need not be vacated or amended since there is no conflict between it and the interlocutory order to be entered herewith.
2. The Commission will not at this time and in this phase of the proceedings rule on the motions of the parties described above.
3. This case will now proceed to the trial of the next phase thereof, namely the issues concerning appropriate deductions, if any, for payments made by the defendant on the claim, and for all other offsets, counter-claims, and demands that would be allowable under the provisions of Sec. 2 of the Indian Claims Commission Act. The issue described above, which defendant raises concerning its disbursement of the sum of \$45,006.09 to the plaintiffs will be considered in this last phase of this case.

We concur:

  
 Jerome K. Kuykendall, Chairman

  
 John T. Vance, Commissioner

Margaret H. Pierce, Commissioner

  
 Brantley Blue, Commissioner

Yarborough, Commissioner, dissenting:

As can be seen from the history of this docket recited above by the majority, the Commission has been placed in a most difficult position. We are called on to enter here a judgment that has no basis in the statutory jurisdiction of the Commission. We do this under an unambiguous mandate from the Court of Claims to enter judgment herein for the Iowa Sac and Fox plaintiffs for the exact amount of \$68,089.43 -- the balance on hand in 1951 in an Iowa Sac and Fox trust fund.

No explanation even colorably sound has yet been advanced as to where the Commission would find jurisdiction to enter such a judgment. No "claim" has been presented: the subject fund is one acknowledged to belong to the Iowa Sac and Fox plaintiffs and is properly credited to them. A claim, as we conceive it, must involve funds taken from or not credited to the tribal plaintiffs. Where a fund exists, properly credited to and belonging to a tribe, there is no dispute over the title to it and the Commission does not have before it a claim.

There is here no attack on the statutes creating or governing the subject fund, or any allegation of wrongfulness in its management from which the Commission might find a claim for money not credited to the fund, or funds paid over when they should not have been, or funds not paid over when they should have been, but no such allegation is present. The mere existence of the fund is all that is before us. We have been presented with no claim for restoring monies to the fund, but solely directed to enter judgment for the amount of it in favor of the plaintiffs.



As we conceive the limits of our power, on actual funds properly credited to the Indian tribes by the United States, their trustee, only Congress has the authority to terminate the fiduciary responsibility of the United States over the management and control of Indian trust funds. Such power ". . . has always been deemed . . . political . . . , not subject to be controlled by the judicial department of the government." Lone Wolf v. Hitchcock, 187 U.S. 553, 565 (1903). Our judgments may lead to additional Indian trust funds being created but we have no power over their disposition or distribution: actual funds are beyond our power.

From the terse discussion of this claim in the decision of the Court of Claims, it is difficult to conclude that any consideration there was given to whether the mandated action met the basic jurisdictional requirements of the Commission. (Obviously the decision of the Commission was not so explicit as to be helpful, much less persuasive.) Indeed it is submitted that the Court was not considering the matter in a jurisdictional sense at all. The Court seems to have been focusing on the issue that funds conceded to be due and owing could be made the subject of a judgment, without it having been stressed to them that the funds were not only due and owing, but already paid, by being credited to the plaintiffs.<sup>1/</sup> The decision of the Court does not include

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<sup>1/</sup> An examination of the briefs before the Court reveals no analysis of the jurisdictional issue.

an explicit finding on jurisdiction.

The result of the Court's decision makes the defendant a double payor, according to evidence newly offered by the defendant. The supplemental accounting report recently filed asserts that \$45,006.09 of the \$68,089.43 was disbursed from the subject fund to individual Iowa Sac and Fox Indians between July 1, 1951, and November 30, 1973, leaving a balance in the fund on the latter date of only \$23,083.34. Thus the entry of judgment against the defendant for \$68,089.43 will mean that the defendant will become obligated to pay a second time the sum of \$45,006.09 which has been paid out of the fund since 1951, and will double the existing balance. However, I see no greater jurisdiction to enter a judgment for the balance of the fund as of 1973 or today than as of 1951 or 1946. At any such date the balance of the fund already belongs to plaintiffs.

Under these circumstances I submit that we are under a greater duty to try to set the matter straight than undeviating acquiescence in the mandate of the appellate court. There are grounds for holding that the jurisdictional issue was not actually considered by the Court of Claims, thus is not covered by the mandate of the Court, and hence is an issue left open for consideration on remand. In re Sanford Fork & Tool Co., 160 U.S. 247 (1895). However, other authority holds that when the appellate court rules on the case, it implicitly finds the necessary jurisdiction and that jurisdiction cannot be questioned

again in the court below. United States v. Haley, 371 U.S. 18 (1962); Stoll v. Gottlieb, 305 U.S. 165 (1938). But though the doctrine of the law of the case may compel an unwilling submission to this major breach of our jurisdictional walls, I submit that we have some greater responsibility than to be bound completely by such exquisite legal logic in attempting to do justice on Indian claims under the broad mandate given us by the Congress. I suggest that as a minimum the Commission has a responsibility here to certify this issue to the Court of Claims as a question to be answered under Section 20(a) of our Act, or respectfully move the Court to clarify its mandate to us. We should take some action to signal that we do not acquiesce in the judgment as a precedent, and that other tribal plaintiffs may not expect so to double their trust funds with one easy stroke.

  
Richard W. Yarborough, Commissioner