

BEFORE THE INDIAN CLAIMS COMMISSION

THE NAVAJO TRIBE OF INDIANS,)	
)	
Plaintiff,)	
)	
v.)	Docket Nos. 69, 299, and 353
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: August 23, 1974

Appearances:

William C. Schaab of Rodney, Dickason,
Sloan, Akin & Robb, Attorney for the
Plaintiff.

Dean K. Dunsmore, with whom was
Assistant Attorney General Wallace H.
Johnson, Attorneys for the Defendant.

OPINION OF THE COMMISSION

Kuykendall, Chairman, delivered the opinion of the Commission.

In Dockets 69, 299, and 353 plaintiff requested general and special accountings from defendant. Defendant has filed a single accounting report for all three dockets. On July 25, 1973, the Commission issued an opinion and order in these cases dealing with the motions of plaintiff for partial summary judgment, a complete accounting, and for rulings on issues of law. Navajo Tribe v. United States, Dockets 69, 299, and 353, 31 Ind. Cl. Comm. 40 (1973). We also ordered that the dockets be consolidated. These cases are now before the Commission on motions

filed by defendant, August 23, 1973, for rehearing and clarification of our 1973 opinion, and for summary judgment.

On June 30, 1972, plaintiff's contract with attorney Harold E. Mott expired. Plaintiff entered into a new contract with the law firm of Rodney, Dickason, Sloan, Akin & Robb on August 31, 1973. William C. Schaab of said firm filed an appearance as plaintiff's attorney of record herein on September 21, 1973. Mr. Mott's withdrawal as attorney of record was received September 26, 1973. Plaintiff has since filed responses to defendant's motions, and defendant has filed replies to plaintiff's responses.

DEFENDANT'S MOTION FOR REHEARING AND CLARIFICATION

Defendant asserts seven grounds in support of this motion.

Defendant's first argument concerns plaintiff's exception (b) in Docket 69. This exception complains that the accounting report "fails to include basic information as to quantity, size, grade and unit selling prices of the revenue sources."

Defendant contends that exception (b) "relates to the alleged cause of action stated in the fifth claim in plaintiff's original petition and which has been deleted from Docket 69. . . . Plaintiff's exceptions must be within the scope of plaintiff's other pleadings, and Exception [b] is not."

We disagree. Plaintiff's seventh claim, the only surviving claim in Docket 69, calls for a "true and complete accounting for all transactions carried out by respondent . . . in receiving . . . receipts from plaintiff's property. . . ." Exception (b) is clearly within the scope of this claim.

Defendant's second, third, and fourth arguments relate to our holding in the 1973 decision herein that the Commission has jurisdiction to order an accounting beyond August 13, 1946, concerning any wrongdoings which may be found to have occurred prior to that date and to have continued beyond it.

The Commission's views on this subject were set forth at length in Fort Peck Indians v. United States, Docket 184, 28 Ind. Cl. Comm. 171 (1972), and Blackfeet and Gros Ventre Tribes v. United States, Dockets 279-C and 250-A, 32 Ind. Cl. Comm. 65 (1973). We therefore will deny defendant's motion as to this issue, but without prejudice to its right to respond to any future motion of plaintiff for an accounting beyond August 13, 1946.

Defendant's fifth contention, which concerns exceptions (a) and (b), is that the Commission erred in ordering defendant to account for those tribal organization funds which are controlled and managed by plaintiff. Plaintiff's reply concedes this issue, so that there is no longer substantial disagreement between the parties.

Accordingly, we will modify our order of July 25, 1973, to make it clear that defendant is not required to account for tribal organization funds which have been transferred to plaintiff, but that defendant has the burden of showing such transfer.

Defendant's sixth argument concerns our granting of partial summary judgment as to exception (g) in the amount of \$10,584.76. 31 Ind. Cl. Comm. 50. The accounting report shows that this sum was expended for "agency expenses."

Defendant argues that since, in its response to plaintiff's exceptions, it denied that such expenditures were improper, the propriety of the expenses is a controverted issue. Thus, defendant argues, a hearing is required at which evidentiary material may be presented, and a summary judgment is therefore improper.

The same argument was presented to the Commission by defendant in a motion for rehearing in Blackfeet and Gros Ventre Tribes v. United States, Dockets 279-C and 250-A, 34 Ind. Cl. Comm. 122 (1974). We rejected this argument for the reason that a party opposing a motion for summary judgment cannot hold back its evidence. In Blackfeet, as in the instant case, defendant failed to introduce its evidence, if any, when faced with plaintiff's motion for summary judgment. We therefore deny defendant's motion for rehearing as to exception (g).

Defendant's final argument is a request that it be made clear that the supplemental accounting should extend only through August 13, 1946, even though the previously filed General Accounting Office report purports to extend through June 30, 1951. Any supplemental accounting required by the Commission at this time need not extend beyond August 13, 1946. See, however, our discussion of defendant's second, third, and fourth arguments, supra.

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

This is, in fact, a motion for partial summary judgment as to three issues.

Defendant's first argument is in Docket 353, and asks the Commission to rule that defendant ". . . has fully compensated the plaintiff Navajo Tribe for its interest in helium resources . . ."

Defendant's third argument is in Docket 299, and concerns plaintiff's interests in coal, vanadium, and stone, sand, and gravel resources, respectively. Defendant asks the Commission to rule that defendant has "fully accounted" to plaintiff as to plaintiff's claims concerning the aforementioned resources.

Plaintiff's exceptions (a) through (h) do not pertain to any of the resources which are the subject of defendant's first and third arguments.

The proper procedure in accounting cases is for plaintiff to file its exceptions to defendant's accounting report, and for defendant to file an answer thereto. The parties then may proceed to a hearing on the issues thus framed. Sioux Tribe v. United States, Docket 114, et al., 12 Ind. Cl. Comm. 541, 547 (1963).

Since plaintiff has not taken exception to the accounting report insofar as it pertains to the resources mentioned in defendant's motion, these matters are not at issue and a motion for summary judgment consequently is not appropriate. We will deny defendant's motion as to these matters.

Defendant's second argument is that defendant is not required to account for production and royalties for oil and gas beyond August 13, 1946. Since defendant has not been ordered to update its accounting beyond that date, defendant's motion is premature and we will deny it as to this matter without prejudice, as we have done in similar situations ante.

DEFENDANT'S REQUEST FOR STAY OF ACCOUNTING

Plaintiff has filed a motion to amend its petitions in these consolidated dockets. Defendant has asked for a stay of accounting pending resolution of this motion, pointing out that General Services Administration accounting personnel might be required to reexamine materials two or more times if new issues are developed. Defendant's point is well taken, and with one exception, hereinafter stated, we will not order a further accounting until the issue of plaintiff's motion to amend is decided.

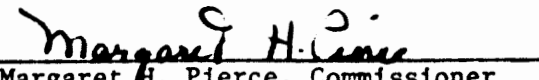
We will order defendant to supplement its accounting within 60 days by showing the dates on which control over specific tribal organization funds or enterprises were transferred to plaintiff, and the authority for the transfer. Plaintiff may have 60 days thereafter within which to make any response it deems necessary.


Jerome K. Kuykendall, Chairman

We concur:


John T. Vance, Commissioner

Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner