

## BEFORE THE INDIAN CLAIMS COMMISSION

THE KIKIALLUS TRIBE OF INDIANS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 263
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: August 28, 1974

FINDINGS OF FACT ON AWARD OF ATTORNEYS' FEE

On June 1, 1973, Frederick W. Post, attorney of record for plaintiff, filed a petition for award of attorneys' fee herein. Having considered said petition, the defendant's response thereto, filed July 18, 1973, the contracts under which the attorneys hereinafter named served the plaintiff, the evidence supporting the petition and the entire record of all proceedings in this docket, the Commission makes the following findings of fact:

1. Award. On June 7, 1972, the Commission entered a final award in this docket in the sum of \$6,026.69 in favor of the Kikiallus Tribe of Indians. See 28 Ind. Cl. Comm. 159, 167. Funds to satisfy the award were appropriated by Public Law 92-607, approved October 31, 1972 (86 Stat. 1498, 1518-19).

2. Attorney Contracts. The representation of the plaintiff in this case was under four approved contracts. The first contract, Symbol 14-20-650 No. 14, dated August 1, 1951, between the Kikiallus

Tribe and Attorneys Warren J. Gilbert, Harwood Bannister, Malcolm S. McLeod and Frederick W. Post, was approved on October 23, 1951, for a period of five years beginning with the date of approval.

Contract, Symbol 14-20-650 No. 979, dated November 12, 1957, between the Kikiallus Tribe and Attorneys Warren J. Gilbert and Frederick W. Post, was approved on June 30, 1958, for a period of five years beginning October 23, 1956.

Contract, Symbol 14-20-0500 No. 2096, dated July 31, 1964, between the Kikiallus Tribe and Attorneys Gilbert and Post, was approved on January 5, 1965, for a period of five years beginning on October 23, 1961. The extension of this contract for a period of two years from October 23, 1966, was approved on October 19, 1969.

Contract, Symbol 14-20-0500 No. 2096, dated October 21, 1969, between the Kikiallus Tribe and Frederick W. Post, was approved on June 26, 1970, for a period of four years commencing October 23, 1968.

3. Compensation Under the Contracts and Requested Fee. Each of the above-described contracts provides that the attorneys shall receive as compensation for their services a fee not to exceed 10 percent of the amount recovered. The petition by the attorney of record requests allowance of an attorney's fee in this case in the amount of \$602.67, representing 10 percent of the aforementioned award.

4. Response of the Defendant. The defendant's response to the petition transmitted a copy of a letter dated July 6, 1973, from the

Acting Associate Solicitor of the Department of the Interior and a memorandum dated June 27, 1973, from Mr. Newton W. Edwards who signed the memorandum for the Assistant to the Secretary of the Interior. The letter concurs in the memorandum's conclusion that "\* \* \* in light of the known services rendered by the claims counsel there is no objection to the allowance of the requested attorneys' fees in the sum of \$602.67."

5. Notice to the Plaintiff. A notice of the filing of the petition for allowance of attorneys' fee, together with a copy of the petition, was mailed by the Deputy Clerk of the Commission on June 4, 1973, to Arnold P. Libby, Secretary, The Kikiallus Tribe of Indians. On October 11, 1973, the Commission received a copy of a letter, dated October 6, 1973, from Mr. Libby to Mr. John B. Burdette of the Western Washington Agency of the Bureau of Indian Affairs. That letter reads as follows:

In answer to your request of 13 May 1973. I have made no effort to obtain a quorum of Kikiallus Tribal Members. Inasmuch as the judgment was such a ridiculous sum of money the time and expense in no way warrants an effort. I did count through the copies of the tribal registrations and find that there were 62 of one quarter or higher blood lines. Of these a good number have passed on.

Mr. Norman E. Timko, Deputy Clerk wrote to me on 4 June 1973 in connection with Mr. Frederick W. Post and his claim for fees due. Mr. Post has never answered my letters nor communicated with the tribe. At one time Mr. Gilbert brought me a check for \$150.00 for a refund of expenses he was not

entitled to. He asked me to not cash the check and it was never cashed. These attorneys were of little or no help to us or if they were they failed to let us know.

As I stated, I have a copy of the involved forms which we filled out back in the fifties and I have the mailing address for all of the tribal members. I do not intend to spend any more of my time and money to prepare such items as those were. (Commission Exhibit X.)

6. Hearing Before the Commission. On June 19, 1974, the parties were notified that a hearing on Mr. Post's petition for attorneys' fee would be held at Seattle, Washington on July 23, 1974. In response to said notice, Mr. Arnold P. Libby, Secretary of the Kikiallus Tribal Council, addressed the following letter, dated June 24, 1974, to Mr. David H. Bigelow, Clerk of the Commission.

The Kikiallus Tribe met on 12th of June 1974 for the purpose of selecting a method to distribute the funds awarded under Docket No. 263.

David Paul Weston, Tribal Operations Officer for the Portland Area Office conducted the above meeting. I explained to Mr. Weston that Mr. Warren Gilbert, one of the attorneys that was supposed to be representing us, came to my office and handed me a check for \$150.00 which he and Mr. Post were to refund to us for charges not approved. Mr. Gilbert asked me to not cash the check as it would be settled later. The matter slipped my mind, the check was never cashed and I believe this sum should be deducted from any settlement to Mr. Post.

Mr. Weston suggested this letter in lieu of a trip to Seattle which would have to be paid by me personally and I would have to take time from my work.

If my testimony is necessary I will appear.  
(Commission Exhibit Y.)

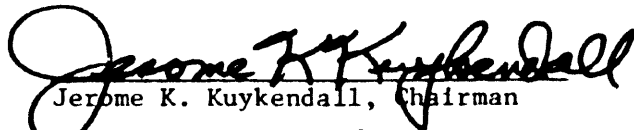
At the hearing before the Commission, on July 23, 1974, Mr. Post testified. He reviewed the history of this docket, the contracts under which services on behalf of the tribe were performed, and the actual services performed by the claims attorneys.

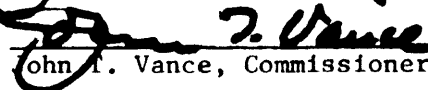
Chairman Kuykendall read into the record the two letters from Mr. Libby set out above and entered as Commission Exhibits X and Y. Mr. Post testified that he was unaware that Mr. Gilbert, who is now deceased, had delivered a check for \$150 to Mr. Libby and asked that it not be cashed and that in any event the claims attorneys had incurred expenses far in excess of \$150 for which no reimbursement was being sought.

7. Attorneys' Services. Attorneys Warren J. Gilbert, Harwood Bannister, Malcolm S. McLeod and Frederick W. Post have rendered valuable services in the successful prosecution of the plaintiff's claim in this docket. The Commission finds that the attorneys for the plaintiff are entitled to an attorneys' fee in the requested amount of \$602.67, representing 10 percent of the award to the plaintiff.

8. Conclusion. On the basis of the entire record in this docket and considering the responsibilities undertaken, the difficult problems of fact and law involved, the contingent nature of the compensation, the award obtained, and all appropriate factors pertinent to the determination of attorneys' fees under the standards established by the Indian Claims Commission Act, the Commission concludes that the attorneys for the plaintiff have rendered valuable legal services in successfully prosecuting their client's claim and ultimately

obtaining a judgment. Under the terms of their contracts and said standards, including those obtaining in the prosecution of similar claims in courts of law, the attorneys have earned an attorneys' fee of \$602.67, representing ten percent (10%) of the award to the plaintiff. Accordingly, payment of this amount to Frederick W. Post, attorney of record, on behalf of all contract attorneys who may have any interest in the fee in this case, for distribution by him to all said contract attorneys in accordance with whatever their respective interests might be, will represent payment in full of all claims for legal services in this docket. Such payment will be out of the funds appropriated to pay the award.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner